

STATE OF MICHIGAN

IN THE 16th CIRCUIT COURT FOR MACOMB COUNTY

In re DONNA ELAINE ANDERSON,
individually and on behalf of all others
similarly situated,

HON. JAMES M. MACERONI

Circuit Court Case No. 15-2380-AS

Arising from 38th District Court
Case Nos. 14EA04628A-OM
15EA04176B-OM
District Judge Carl F. Gerds III

DANIEL S. KOROBKIN (P72842)
MICHAEL J. STEINBERG (P43085)
American Civil Liberties Union Fund
of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6824
dkorobkin@aclumich.org

THOMAS C. ROMBACH (P40392)
Law Offices of Thomas C. Rombach
51249 Washington Street
New Baltimore, MI 48047
(586) 725-3000
tomrombach@aol.com

Attorney for Hon. Carl F. Gerds III

MIRIAM J. AUKERMAN (P63165)
American Civil Liberties Union Fund
of Michigan
1514 Wealthy St. SE, Ste. 242
Grand Rapids, MI 49506
(616) 301-0930
maukerman@aclumich.org

IHRIE O'BRIEN
By: **RICHARD S. ALBRIGHT** (P57060)
CALVIN C. BROWN (P61725)
24055 Jefferson Ave., Suite 2000
St. Clair Shores, MI 48080
(586) 778-7778

Attorneys for Plaintiff
Donna Elaine Anderson

Attorneys for City of Eastpointe

STIPULATION AND ORDER
OF SUPERINTENDING CONTROL

PLAINTIFF **DONNA ELAINE ANDERSON**, the **38TH DISTRICT COURT**, and the
CITY OF EASTPOINTE stipulate to the following:

1. This action for superintending control was commenced on July 9, 2015.

2. Counsel have entered appearances on behalf of the City of Eastpointe and Judge Carl F. Gerds III.

3. To fulfill his personal commitment to best practices, Judge Gerds, as the presiding judge of the 38th District Court, states that he has previously implemented the Michigan Court Rule amendments proposed in ADM File No. 2015-12, published for comment by the Michigan Supreme Court on November 25, 2015. The Staff Comment indicates: "The proposed rule revisions are intended to provide clarity and guidance to courts regarding what courts would be required to do before incarcerating a defendant for failure to pay."

4. The following order may be entered pursuant to MCR 3.302(E)(3)(a)(ii).

Having reviewed this stipulation and being otherwise fully apprised, the Court finds that it has jurisdiction in this matter and that the following stipulated order of superintending control should be entered.

Accordingly, IT IS ORDERED as follows:

1. The District Court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order.

2. If the District Court finds that a defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law.

3. The District Court shall consider the following criteria in determining manifest hardship:

- (a) Defendant's employment status and history.
- (b) Defendant's employability and earning ability.
- (c) The willfulness of the defendant's failure to pay.
- (d) Defendant's financial resources.
- (e) Defendant's basic living expenses including but not limited to food, shelter, clothing, necessary medical expenses, or child support.
- (f) Any other special circumstances that may have bearing on the defendant's ability to pay.

4. In all pending cases in which Donna Elaine Anderson is a defendant in the District Court, any initial sentence imposed on Ms. Anderson shall be non-custodial and consistent with this order.

5. This order applies to the 38th District Court, its agents and staff, and Judge Carl F. Gerds III as the presiding judge.

6. This order shall terminate two years after the date it is entered.

7. If Michigan Court Rule amendments similar to those proposed in ADM File No. 2015-12 are adopted by the Michigan Supreme Court and any provision of those Michigan Court Rule amendments conflicts with this order, then: (a) the Michigan Court Rule amendments shall supersede the provisions of this order with which they conflict, and (b) all provisions of this order that do not conflict with the Michigan Court Rules shall remain in effect until this order terminates.

IT IS SO ORDERED.

This order resolves the last pending claim and closes the case.

JAMES M. MACERONI
CIRCUIT JUDGE

Dated: _____

Circuit Court Judge

MAR - 8 2016

Stipulated and approved by:

Thomas C. Rombrach (P 40392)
Attorney for Hon. Carl F. Gerds III

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
By Stephan J. Barber Court Clerk

Calvin C. Brown (with permission TCR) (P 61725)
Attorney for City of Eastpointe

Daniel S. Korobkin (with permission TCR) (P 72842)
Attorney for Donna Elaine Anderson