

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

CESAR CEPEDA, JR., )  
BRIAN BONETTI, )  
BROOK CONSTEIN, )  
BRIAN O. COOK, JR, )  
JEROME DIAZ-CRUZ, )  
ANTHONY DIGUARDI, JR. )  
HABRAM FALU, )  
RICHARD FERNANDEZ, )  
JASON HIESTAND, )  
ANTHONY J. LOPEZ, )  
RAYMOND MARTINEZ, )  
JAVIER MONTALVO, )  
ERROL MORRISON, )  
JOSHUA NATAL, )  
FERNANDO OCASIO, JR., )  
JAMES F. SLOANE, )  
KENNETH SMITH, and )  
CHARLES STRUMPF )

Petitioners, )

v. )

THE COURT OF COMMON PLEAS FOR THE )  
COUNTY OF BERKS )

Respondent. )

Case No. \_\_\_\_\_

**APPLICATION FOR EXTRAORDINARY RELIEF  
UNDER PA R.A.P. § 3309 AND KING'S BENCH POWERS**

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July 23, 2009

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**APPLICATION FOR EXTRAORDINARY RELIEF  
UNDER PA R.A.P. § 3309 AND KING’S BENCH POWERS**

Petitioners Cesar Cepeda, Jr., Brian Bonetti, Brooke Constein, Brian O. Cook, Jr., Jerome Diaz-Cruz, Anthony DiGuardi, Jr., Haram Falu, Richard Fernandez, Jason Hiestand, Anthony J. Lopez, Javier Montalvo, Raymond Martinez, Errol Morrison, Joshua Natal, Fernando Ocasio, Jr., James F. Sloane, Kenneth Smith, and Charles Strumpf (collectively, “Petitioners”) are all indigent persons currently incarcerated pursuant to orders of the Respondent for allegedly not paying court-ordered child support obligations and who were not provided appointed counsel in the proceedings that led to

their incarceration. Petitioners, through their undersigned attorneys, respectfully request that this Honorable Court exercise its powers of general superintendency over the Court of Common Pleas for Berks County in order to (1) rectify forthwith a manifest injustice of constitutional proportions by striking the orders incarcerating Petitioners because the process attending the issuance of those orders violated Petitioners' Fourteenth Amendment Due Process rights, particularly the right to counsel; and (2) provide guidance to the Court of Common Pleas of Berks County and to the lower courts generally on a matter of great public concern as to which there is no reasonable ground for dispute, namely, the right of indigent litigants to appointed counsel in judicial proceedings where the litigant may lose his physical liberty if he loses the litigation, in accordance with established precedent of the United States Supreme Court beginning with Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963). Both federal and Pennsylvania jurisprudence have established that the right to appointed counsel in proceedings that may result in confinement applies even where the proceedings are styled as "civil" and not "criminal" See, e.g., In re Gault, 387 U.S. 1, 41, 87 S. Ct. 1428, 1451 (1967). The right to counsel is all the more compelling here because indigency is a defense to claims of non-payment of child support, and that defense may be successfully established with the assistance of counsel. Nonetheless, the Court of Common Pleas of Berks County has refused to correct the constitutional wrong done to Petitioners here, leaving Petitioners no avenue for timely relief except this Court.

As grounds for the Application, Petitioners aver as follows:

## **I. INTRODUCTION**

1. Petitioners are all indigent persons who appeared before the Court of Common Pleas of Berks County in 2008 and 2009 on charges that they failed to pay

court-ordered child support obligations. None of the Petitioners was provided appointed counsel. All of the Petitioners were sentenced to serve time in Berks County Prison based on a finding of civil contempt. The U.S. Supreme Court and the courts of this Commonwealth have made clear that due process requires that an indigent defendant who is facing the loss of personal liberty be provided appointed counsel. The fact that the proceedings are civil in nature is of no moment, as the Fourteenth Amendment's Due Process Clause imposes procedural precautions, including the right to appointed counsel, for anyone deprived of liberty through state action. Petitioners thus submit this Application to secure for themselves the protections of established law. They seek immediate release from incarceration pending new hearings at which they will have the assistance of appointed counsel.

## **II. JURISDICTION**

2. This Court has King's Bench jurisdiction to decide this matter by the exercise of its power of general superintendency over all the lower tribunals of this state. In re Avellino, 547 Pa. 385, 390, 690 A.2d 1138, 1140 (1997); Carpentown Coal & Coke Co. v. Laird, 360 Pa. 94, 98-99, 61 A.2d 426, 428-29 (1948). Application of the King's Bench power is particularly suited to this case, which asks that the Court exercise its power of supervision over the Court of Common Pleas for Berks County to correct a pattern of constitutional transgression. Pa. Const. Art. V, § 10(a).

3. Alternatively, this Court has extraordinary jurisdiction to hear this matter pursuant to 42 Pa. C.S. § 726: "The Supreme Court may...in any matter pending before any court or magisterial district judge of the Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage

thereof and enter a final order or otherwise cause right and justice to be done.” The exercise of extraordinary jurisdiction is appropriate here because (1) the constitutional rights of indigent persons charged with failing to pay child support obligations is an issue of immediate public importance, and (2) the record clearly demonstrates that Petitioners were not afforded the right to counsel. See Wash. County Comm’r v. Pa. Labor Relations Bd., 490 Pa. 526, 532-33, 417 A.2d 164, 167 (Pa. 1980); Commonwealth v. \$9,847.00 U.S. Currency, 550 Pa. 192, 196, 704 A.2d 612, 614 (1997) (noting that the scope of an indigent defendant’s right to appointed counsel is a matter of “immediate public importance.”) In addition, the Respondent has refused both formal and informal requests for the relief sought here, leaving Petitioners no other avenue of relief. Notably, this Court has previously invoked its extraordinary jurisdiction to clarify the rights of indigent persons subject to continued incarceration for failure to pay criminal fines. Commonwealth ex rel. Benedict v. Cliff, 451 Pa. 427, 429, 304 A.2d 158, 159 (Pa. 1973).

### **III. PARTIES**

4. Petitioner Cesar Cepeda, Jr., BCP No. 1996-0117, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Cepeda is serving three consecutive five-month sentences after being found in contempt of court for failure to pay child support on July 3, 2008.

5. Petitioner Brian Bonetti, BCP No. 1999-5399, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Bonetti is serving two consecutive three-month sentences after being found in contempt of court for failure to pay child support on June 26, 2009.

6. Petitioner Brooke Constein, BCP No. 2007-6536, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533.

Mr. Constein is serving a six-month sentence after being found in contempt of court for failure to pay child support on February 12, 2009.

7. Petitioner Brian O. Cook, Sr., BCP No. 2003-5210, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Cook is serving a six-month sentence after being found in contempt of court for failure to pay child support on March 19, 2009.

8. Petitioner Jerome Diaz-Cruz, BCP No. 1991-0605, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Diaz-Cruz is serving three consecutive six-month sentences after being found in contempt of court for failure to pay child support on April 3, 2009.

9. Petitioner Anthony DiGuardi, Jr., BCP No. 2003-5033, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. DiGuardi is serving three consecutive three-month sentences after being found in contempt of court for failure to pay child support on June 11, 2009.

10. Petitioner Habram Falu, BCP No. 1998-1763, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Falu is serving a three-month sentence after being found in contempt of court for failure to pay child support on June 11, 2009.

11. Petitioner Richard Fernandez, BCP No. 2009-2586, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Fernandez is serving a six-month sentence after being found in contempt of court for failure to pay child support on April 24, 2009.

12. Petitioner Jason Hiestand, BCP No. 2009-1637, is currently incarcerated in Berks County Prison 1287 County Welfare Road, Leesport, PA 19533. Mr. Hiestand is serving a six-month sentence after being found in contempt of court for failure to pay child support on March 26, 2009.

13. Petitioner Anthony J. Lopez, BCP No. 2009-1560, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Lopez is serving a six-month sentence after being found in contempt of court for failure to pay child support on March 31, 2009.

14. Petitioner Raymond Martinez, BCP No. 1997-5047, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Martinez is serving a six-month sentence after being found in contempt of court for failure to pay child support on May 29, 2009.

15. Petitioner Javier Montalvo, BCP No. 1997-0323, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Montalvo is serving three consecutive six-month sentences after being found in contempt of court for failure to pay child support on December 5, 2008.

16. Petitioner Errol Morrison, BCP No. 1988-1652, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Morrison is serving two consecutive three-month sentences after being found in contempt of court for failure to pay child support on June 11, 2009.

17. Petitioner Joshua Natal, BCP No. 2003-6716, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533.

Mr. Natal is serving a six-month sentence after being found in contempt of court for failure to pay child support on April 3, 2009.

18. Petitioner Fernando Ocasio, Jr., BCP No. 2008-6851, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Ocasio is serving a six-month sentence after being found in contempt of court for failure to pay child support on November 7, 2008.

19. Petitioner James F. Sloane, BCP No. 1984-0742, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Sloane is serving five consecutive five-month sentences after being found in contempt of court for failure to pay child support on December 18, 2008.

20. Petitioner Kenneth Smith, BCP No. 2003-0563, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Smith serving two concurrent six-month sentences after being found in contempt of court for failure to pay child support on March 3, 2009.

21. Petitioner Charles Strumpf, BCP No. 2002-2616, is currently incarcerated in Berks County Prison, 1287 County Welfare Road, Leesport, PA 19533. Mr. Strumpf is serving a six-month sentence after being found in contempt of court for failure to pay child support on May 1, 2009.

22. Respondent is the Court of Common Pleas for Berks County, established pursuant to 42 Pa. Stat. § 911, and located at 633 Court Street, Reading, PA 19601.

#### **IV. FACTS**

23. On June 17, 2008, Mr. Cepeda was taken into custody in Berks County. Following his arrest, it was discovered that a bench warrant had been issued for



his arrest in June 2006 based on an alleged failure to appear at a May 2006 hearing concerning child support obligations.

24. On July 3, 2008 Mr. Cepeda came before the Court of Common Pleas of Berks County for Contempt Conferences/Hearings in the cases numbered 389700-99, 259200-99, and 052300-96. Each case concerned Mr. Cepeda's alleged failure to comply with a child support order.

25. The July 3, 2008 Hearing was held before The Honorable Timothy J. Rowley of the Court of Common Pleas for Berks County. A transcript of that hearing is attached as Exhibit 1.

26. Mr. Cepeda was not represented by counsel at the hearing. Moreover, at no point during the hearing did the Court advise Mr. Cepeda that he had the right to appointed counsel or engage in a colloquy to ascertain that waiver of counsel was knowing and voluntary.

27. With respect to each case, the Court of Common Pleas found Mr. Cepeda in contempt of court for (1) failure to make regular payments on his support orders and/or arrears; (2) failure to report changes in his address and/or employment; and (3) failure to appear at a May 2006 contempt hearings. See Ex. 2 (Cepeda Orders). As a result, the court sentenced him to incarceration for three consecutive five-month sentences, during which time he is subject to work release. Id. Mr. Cepeda, who is indigent, can purge his contempt by making, for each sentence, a lump sum payment of \$1000 or a \$300 payment through work release earnings.

28. To date, Mr. Cepeda has not purged his contempt and he is thus still incarcerated at Berks County Prison.

29. Following his incarceration, Mr. Cepeda contacted the American Civil Liberties Union of Pennsylvania (“ACLUPA”). The ACLUPA referred Mr. Cepeda’s situation to the undersigned counsel at Pepper Hamilton LLP.

30. On April 15, 2009, counsel wrote to Judge Rowley regarding the failure to afford Mr. Cepeda his right to counsel at the contempt hearing that resulted in his incarceration. Counsel requested that Mr. Cepeda be released immediately if he had been imprisoned without the benefit of counsel. See Ex. 3 (Apr. 15, 2009 Letter from A. Bomstein to the Hon. T. Rowley).

31. Judge Rowley responded on April 28, 2009. In his response, Judge Rowley said that Mr. Cepeda’s case had been referred to the Administrative Office of the Pennsylvania Courts. He also said that the court considered this “matter to be of great import” and assured that it would be “fully addressed.” See Ex. 4 (Apr. 28, 2009 Letter from Hon. T. Rowley to A. Bomstein).

32. On June 11, 2009, counsel for the ACLUPA spoke by telephone with the Hon. Jeffrey L. Schmehl, President Judge of the Berks County Court of Common Pleas. President Judge Schmehl informed counsel that the Court would require attorneys from the Public Defenders office to be present at support contempt hearings beginning in July 2009. Regarding the request that Mr. Cepeda and others in the same situation be released immediately on the grounds that they had been imprisoned without the benefit of counsel, however, President Judge Schmehl responded that he would have to get back to counsel in a few days. Counsel for the ACLUPA followed up the next day, June 12, 2009, with a letter on this same subject. See Ex. 5 (June 12, 2009 Letter from M. Roper to the Hon. J. Schmehl).

33. On July 2, 2009, President Judge Schmehl informed Mr. Cepeda's counsel by telephone that the court planned to schedule those incarcerated without counsel for new hearings with counsel as the court's calendar permitted, but would not release them prior to those hearings.

34. Mr. Cepeda has not received a new hearing with counsel. Mr. Cepeda remains incarcerated in Berks County Prison for failing to pay child support obligations even though there is no dispute that he was not advised of his right to court-appointed counsel or provided such counsel.

35. As described in Paragraphs 4-21, supra, Petitioners Bonetti, Constein, Cook, Diaz-Cruz, DiGuardi, Falu, Fernandez, Hiestand, Lopez, Martinez, Montalvo, Morrison, Natal, Ocasio, Sloane, Smith, and Strumpf are all currently incarcerated in Berks County Prison after being found in contempt of court for allegedly failing to pay child support obligations. All Petitioners (1) are indigent; (2) were not represented by counsel at the hearing before the Berks County Court of Common Pleas that resulted in their incarceration; (3) were not advised that they had a right to court-appointed counsel in connection with that hearing; and (4) did not engage in a colloquy to determine that their right to counsel was being waived knowingly and voluntarily. None of these Petitioners has received a new hearing at which he was provided counsel. Copies of the relevant court orders or hearing summaries with respect to each Petitioner are attached as Exhibits 6-20.<sup>1</sup>

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<sup>1</sup> As of the date of filing, Petitioners have not obtained copies of the confinement orders for Mr. Strumpf and Mr. Natal.

**V. CLAIM: THE ORDERS OF THE BERKS COUNTY COURT OF COMMON PLEAS INCARCERATING MR. CEPEDA AND THE OTHER PETITIONERS VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I OF THE PENNSYLVANIA CONSTITUTION BECAUSE THE COURT FAILED TO PROVIDE THE PETITIONERS WITH APPOINTED COUNSEL.**

36. The United States Supreme Court has clearly stated that no person may be deprived of his or her liberty without benefit of counsel. Scott v. Illinois, 440 U.S. 367, 373-74, 99 S. Ct. 1158, 1162 (1979); Argersinger v. Hamlin, 407 U.S. 25, 37, 92 S. Ct. 2006, 2012 (1972); Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963). Indeed, “the preeminent generalization that emerges from this Court’s precedents on an indigent’s right to appointed counsel” is that the right exists when “the litigant may lose his physical liberty if he loses the litigation.” Lassiter v. Dep’t of Social Services of Durham City, N.C., 452 U.S. 18, 25, 101 S. Ct. 2153, 2158 (1981). More recently, in Alabama v. Shelton, the Court held that even a suspended incarceration could not be imposed against an indigent defendant who was not represented by counsel at all stages of the proceedings where the sentence “may end up in the actual deprivation of a person’s liberty.” 535 U.S. 654, 657-58, 122 S. Ct. 1764, 1767 (2002).

37. The Sixth Amendment of the U.S. Constitution – which is enforced against the states through the Due Process Clause of the Fourteenth Amendment – preserves the right to counsel “in all criminal prosecutions.” U.S. Const., Am. VI. However, as noted above, the U.S. Supreme Court has stated that “it is the defendant’s interest in personal freedom” and not simply the Sixth Amendment “which triggers the right to appointed counsel....” Lassiter, 452 U.S. at 26, 101 S. Ct. at 2158. Accordingly, the Due Process Clause of the Fourteenth Amendment guarantees a right to appointed counsel in proceedings that may result in confinement to an institution “even though [the]

proceedings may be styled as ‘civil’ and not ‘criminal.’” In re Gault, 387 U.S. 1, 41, 87 S. Ct. 1428, 1451 (1967).

38. This Court has similarly noted that the Due Process Clause of the Fourteenth Amendment requires the appointment of counsel in non-criminal matters that may result in incarceration. Specifically, in Commonwealth v. \$9,847.00 U.S. Currency, 550 Pa. 192, 704 A.2d 612 (1997), the Court evaluated whether an indigent defendant was entitled to counsel in connection with civil forfeiture proceedings. Quoting Lassiter, the Court observed that there is a presumption that an indigent defendant is entitled to counsel in any proceeding where “he may be deprived of his physical liberty.” 550 Pa. at 197, 704 A.2d. at 615 (citations omitted); see also Bonilla v. Commonwealth, 958 A.2d 1069, 1073 (Pa. Cmwlth. 2008) (quoting 9,847.00 U.S. Currency); Harris v. Pa. Dep’t. of Corrections, 714 A.2d 492, 494-95 (Pa. Cmwlth. 1998) (same); Corra v. Coll, 451 A.2d 480, 483 (Pa. Super. 1982) (noting that “the civil/criminal distinction is unavailing in determining whether counsel is constitutionally required.”)

39. The Pennsylvania Superior Court has recognized that an indigent defendant faced with incarceration for alleged failure to comply with support obligations is entitled to assistance of counsel. In Commonwealth ex. rel. Brown v. Hendrick, the defendant initiated a habeas corpus petition after he was incarcerated following a civil contempt hearing for failure to support his wife and children. 283 A.2d 722 (Pa. Super. 1971). The Common Pleas Court denied the petition and the defendant appealed. The Superior Court reversed, noting that an indigent defendant has the right to assistance of counsel where he may be deprived of liberty. Id. at 723; see also Corra, 451 A.2d at 483-84 (holding that denial of counsel for indigent defendants in paternity proceedings is

inconsistent with due process while noting that a determination of paternity “may result in the future loss of liberty.”).

40. In a similar vein, the Supreme Court of New Jersey recently addressed the right of an indigent defendant to counsel when facing incarceration for an alleged failure to comply with support obligations in Pasqua v. Council, 892 A.2d 663 (N.J. 2006). The court held that due process requires that such a defendant be afforded a right to counsel:

It is at that hearing that an indigent parent untrained in the law, and perhaps anxious and inarticulate, needs the guiding hand of counsel to help prove that his failure to make support payments was not due to willful disobedience of a court order but rather to his impecunious circumstances.

\* \* \*

However well intentioned and scrupulously fair a judge may be, when a litigant is threatened with the loss of his liberty, process is what matters. A person of impoverished means caught within the tangle of our criminal or civil justice system and subject to a jail sentence is best protected by an adversarial hearing with the assistance of a trained and experienced lawyer. Although requiring counsel may complicate the procedures pertaining to enforcement of court orders, it protects important constitutional values, including the fairness of our civil justice system. Id. at 673-74.

41. Indeed, as the New Jersey Supreme Court noted in Pasqua, numerous courts across the country that have addressed the issue have reached the identical result: See, e.g., Walker v. McLain, 768 F.2d 1181, 1185 (10th Cir. 1985); Sevier v. Turner, 742 F.2d 262, 266-67 (6th Cir. 1984); Ridgeway v. Baker, 720 F.2d 1409, 1415 (5th Cir. 1983); Ex. parte Parcus, 615 So.2d 78, 84 (Ala. 1993); Black v. Div. of Child Support Enforcement, 686 A.2d 164, 168 (Del. 1996); McNabb v.

Osmundson, 315 N.W.2d 9, 10 (Iowa 1982); Rutherford v. Rutherford, 464 A.2d 228, 237 (Md. 1983); Mead v. Batchlor, 460 N.W.2d 493, 504-05 (Mich. 1990); Cox v. Slama, 355 N.W.2d 401, 403 (Minn. 1984); Allen v. Sheriff of Lancaster County, 511 N.W.2d 125, 127 (Neb. 1994); McBride v. McBride, 431 S.E.2d 14, 19 (N.C. 1993); State ex rel. Gullickson v. Gruchalla, 467 N.W.2d 451, 453 (N.D. 1991); Tetro v. Tetro, 544 P.2d 17, 19 (Wash. 1975); Smoot v. Dingess, 236 S.E.2d 468, 471 (W. Va. 1977). Notably, the result reached by all of these courts is the same result compelled by this Court's statement of the law in \$9,847.00 U.S. Currency.

42. Providing indigent defendants with counsel in child support hearings when they face incarceration is essential because indigency is a defense to a claim for non-payment of child support obligations, as recognized in Pasqua and other cases. Indeed, the U.S. Supreme Court has held that it is unconstitutional to imprison an indigent defendant for failure to pay court-ordered fines or restitution, unless the sentencing court determines that the failure to pay was willful or that there are not "adequate alternative methods" of punishing the defendant. Bearden v. Georgia, 461 U.S. 660, 668-69, 103 S. Ct. 2070-71 (1983). Further, this Court has held that this "[S]tate is prohibited from committing its citizens for fines without reasonable opportunity being afforded to them to meet the court's directive consistent with their respective financial situations." Commonwealth ex rel. Benedict v. Cliff, 451 Pa. 427, 433, 304 A.2d 158, 161 (1973). Defendants facing incarceration thus must be given an opportunity to establish their indigency as a defense to allegations of non-payment. Here, Petitioners were denied the opportunity to consult with counsel and determine whether their financial situation excused or mitigated their alleged failure to meet their child

support obligations. In other words, Petitioners are being incarcerated for set terms of confinement even though they may have meritorious defenses to the state's charges.

43. Thus, it is clear that the Court of Common Pleas of Berks County has violated Petitioners' rights under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution as well as Article I, Section I of the Pennsylvania Constitution by failing to afford them a right to counsel in connection with child support hearings that resulted in their incarceration.

44. The important constitutional issue raised in this proceeding extends beyond Berks County. Since 2002, the American Civil Liberties Union of Pennsylvania has, on behalf of indigent civil contempt defendants in situations identical to that of Petitioners, convinced Courts of Common Pleas in Lawrence, Westmoreland, Beaver, Montgomery, Lehigh and Clearfield Counties to release individuals from detention and to change policy and practice to provide for appointed counsel in cases involving alleged non-payment of child support. Berks County is the first to refuse the ACLUPA's entreaty to correct the problem without litigation. Upon information and belief, Courts of Common Pleas in several other Pennsylvania Counties still fail to provide counsel to such defendants, thereby necessitating prompt and decisive action by this Court.

## **VI. RELIEF**

WHEREFORE, Petitioners respectfully request that this Honorable Court:

a. Assume jurisdiction over this matter pursuant to its powers of general superintendency over all the lower courts of this state and/or its extraordinary powers under 42 Pa. C.S. § 726;

b. Issue forthwith an order striking as void the orders of the Court of Common Pleas of Berks County under which the Petitioners are currently

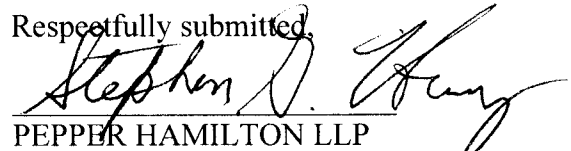


incarcerated pending the scheduling of new contempt hearings prior to which each Petitioner shall be provided appointed counsel.

c. Direct the Court of Common Pleas of Berks County that it may not conduct civil contempt proceedings that may result in incarceration where the right to counsel is not ensured.

d. Award such relief as is just and appropriate.

Respectfully submitted,




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July 23, 2009

## CERTIFICATE OF SERVICE

I, Frank H. Griffin, IV hereby certify that on July 23, 2009, the foregoing Application for Extraordinary Relief was served on the Respondent Court of Common Pleas for Berks County, 633 Court Street, Reading, PA 19601 by hand delivering a copy to the Prothonary's office as well as the chambers of the President Judge, the Hon. Jeffrey L. Schmehl.



Frank H. Griffin, IV