Duvall v. State

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Raker Cathell Harrell Battaglia Greene Eldridge, John C. (Retired, Specially Assigned) Wilner, Alan M. (Retired, Specially Assigned), JJ.

Opinion

This matter arises from the administrative judge's denial of defense counse l's request for a continuance prior to trial because of defense counsel's conflict of interest. Juwaughn Alexander Duvall ("Petitioner") was convicted in the circuit Court for Montgomery County, after a jury trial, of first deg ree burglary, conspiracy to com mit first degree burglary, attempted robbery with a dangerous and deadly weap on, and first deg ree assault.

We conclude that a conflict of interest existed in this case. Petitioner denied the charges filed against him. He informed his defense counsel that another individual, who was represented by the Montgomery County Office of the Public Defender, on unrelated charges, was in fact responsible for the crimes for which Petitioner had been charged. Because there existed a conflict of interest and defense counsel requested a continuance prior to trial, the administrative judge erred, as a m atter of law, in failing to gra nt the postpo nement to allow defense counsel a reasonable time to resolve the con flict. Petitioner is therefore entitled to a reversal of his convictions and a new trial. Because of this holding, we need not address the propriety of th e trial cou rt's action s during the trial.

FACTUAL AND PROCEDURAL BACKGROUND

For approximately one year, Alidad Chacon had been selling marijuana from the basement of a house that he shared with his mother, sister, and nephew in Montgomery Cou nty, Maryland. He stored the marijuana in a safe be hind a curta in in his bedroom, which was located in the basement, and sold the marijuana only to close friends. In June, 2003, two men broke into the house with the intent to steal the marijuana. Chacon's nephew, Ruben Mesones, saw the intruders when he went to the laundry room in the basement of the house.

Mesones described one of the men as bald or nearly bald, approximately 5'6" tall, in his 20s, and wearing a camouflage mask, camouflage gloves, and a black t-s hirt. At trial, Mesones identified this man as Petitioner. The other man was taller, heavier, had darker skin and was wearing a "do-rag" and a cap.

The man wearing the m ask tried to throw Mesones down on the ground so Mesones shouted to his

aunt to call the police. When trying to stand up, Mesones was hit on the head twice with a g un by the man w earing th e cap. The man with the cap broke dow n Chacon's door, pointed a gun at him, and asked where the safe was, while the man with the mask ran upstairs. Chacon subsequently opened the safe. The man with the cap took the contents of the safe -- a digital scale and approximately two ounces of marijuana -- and f led into the yard through the basement door.

Mesones chased after the man with the mask and caught him on the stairs. Mesones's aunt helped M esones restra in the individual and then removed his mask. The man exclaimed that he knew them. M esones's au nt told Mesones to let the man go and the man ran out the front door. Mesones and his aunt went to a police officer's house who lived nearby and described to the officer the man with the mask. The officer called the police station and the aunt told the 911 operator that she knew the name of the man with the mask because he was the father of her friend's baby; she identified him as Petitioner. The aunt explained that she had met him only once, at a nightclub, a few years prior and had photographs from that night. She showed the photographs to the police.

Chacon told the police that this was not the first time that someone had stolen drugs from him. He explained that Adam Muse, an acquain tance wh o was familiar with the safe and its contents, had stolen the drugs from Chacon's bedroom on an earlier occasion. Chacon, Mesones, and Mesones's aunt, who also knew Muse, claimed that Muse was not the man in the mask on the night in question.

Petitioner was arrested on August 25, 2003 and was interrogated by the police. He asked why he was arrested and thought tha t it was beca use he ow ed $12,00 0 in child sup port. Petitioner's mother testified that Petitioner and his friend had driven from Virginia to Germantown, Maryland to help her move into her new home on the date of the incident. She testified that they were with her all day and, further, that her son had never shaved his head bald.

Petitioner was represented by an attorney from the Office of the Public Defender located in Montgom ery County. His counsel's theory was th at Petitioner was not the man with the mask who broke into Chacon's home, but that Muse was that man. Petitioner argued that he was not at the scene of the crime and that it was a case of mistaken identity. Further, he asserted that Muse fit the physical description that Mesones had given of the man in the mask, had committed a similar crime at that exact location on a previous occasion, and had knowledge of the marijuana in the basemen t safe. In add ition, Petitioner is approx imately 6 f eet tall, w hile Muse is ap proxim ately 5'6" tall.

When Petitioner's attorney learned that Muse was being represented by another attorney from the Montgom ery County Office of the Public Defen der in a pending rob bery case, she filed a motion for a continuance with the court, on January 15, 2004, more than two months in advance of the 180 day deadline.[1] The administrative judge denied the written motion on January 23, 2004. The motion was renewed on the scheduled trial date, January 27, 2004. At the hearing before the administrative judge on that date, defense counsel explained that she filed the motion for a continuance "for the purpose of securing a panel attorney to represent [Petitioner] an d that a Status Co nference be set to

set a trial d ate."[2] At the hearing, defense cou nsel stated to th e judge that "[t]he prob lem arises, Y our Hon or, in the fact that my of fice represe nts both [P petitioner] at this time and a man named Adam M[use]." Defens e counsel explained that the case was one of mistaken identity and that Adam Muse is v ery possibly the man who actually comm itted the crime s, not Petitioner. Defense counsel then explained the nature of the conflict. She said:

My office represents Mr. M[use]. Therefore, I could not ask -- [sic] Ron Gottlieb represe nts him for a trial that's set next week. I could not ask for permission to speak with him because even doing that would be a conflic t. I could not review our file on the case because that would be a conflict. I could not review the picture of Mr. M[use] in our file because that would be a conflict, and I could not in any way talk with Mr. M[u se]. I'm not saying Mr. M [use] wo uld absolutely talk to me in this case. Obv iously, he could decide not to. But I hadn't, I don't even have th e oppo rtunity to ask him.

I very infrequently in 11 years have thought that something was a conflict. There are people I know who find conflicts out of nothing. I do n't.

The administrative judge denied the continuance. She stated:

Okay. Well, this is w hy I ruled that w ay. Your trial is first . . . If there's a conflict, then Mr. Gottlieb can move to continue M[use]'s case and remove himself from that case[3] . . . . But I don't want to ge t into Catch-22 [sic] where you both point fingers at the oth er -- and both try to m ove cases . . . .

Petitioner's attorney then reiterated that she felt there existe d a conflict of interest. The administrative judge asked Petitioner whether he wanted the case continued. Petitioner explained that he did n ot want a continuance and would proceed without counsel because he has five children and "a good job waiting on [him]." He stated that he was "ready to go without counsel" because he knew where he was on the date in question. The judge asked Petitioner whether he understood the charges against him and he explained that he did. The judge announced the charges and their mandatory sentences and Petitioner again explained that he understood the ch arges. He stated, how ever, that he did not understand "all these postpone ments and continuan ces." The court thereafter told Petitioner that his attorney was requesting a continuance to talk to someone who she felt she could not speak to because someo ne in he r office represented him in anoth er case.

The State argued that defense counse l's request for a continuance was improper and not relevant to the case. The State explained that each witness would testify that Muse was not the man in the house and argued that defense counsel was th erefore m aking a "las t-second attempt to get a postponement." The administrative judge responded by stating:

Well, I think [def ense counsel] is doing what she is supposed to do, and that's zealously represent the interests of her client. She has made her motion and this, [sic] basica lly she is renewing it today on the day of trial. I'm going to deny the motion to continue. She is still counsel of record, and I'll find

out w ho is available an d send you f or trial.

Petitioner's attorn ey again renewed her motion before the judge assigned to preside at Petitioner's trial. The trial judge denied defense counsel's motion for a continuance.[4] The trial proceeded and, after a jury trial, Petitioner was convicted of first degree burglary, conspiracy to commit first degree burg lary, attempted ro bbery with a d angerous and deadly weapon, and first degree assault. Petitioner filed a motion for a new trial, which the court denied. Thereafter, Petitioner was sentenced to a concurrent 10-year term of imprisonment for each of his convictions.

Petitioner filed a timely appeal to the Court of Sp ecial Appeals. The inte rmediate appellate court affirmed the judgment of the Circuit Court in an unreported opinion. Petitioner filed a petition for writ of certiorari in this Court, which we granted.[5] Duvall v. State, 395 Md. 420 , 910 A.2d 106 1 (2006).

DISCUSSION

We conclude that a conflict of interest existed and, therefore, the administrative judge erred, as a matter of law, when she denied defense counsel's motion for a continuance. Because of our ho lding, we n eed to answ er only Petitioner's first question. We therefore address only the parties' arguments that deal specifically with that question. Petitioner argues that "[b]y forcing defense c counsel to go to trial while she w as laboring under a conflict of interest which prevented her from zealously repre senting her client, the Circuit Court denied [Petitioner] his right to the effective assistance of counsel." Petitioner contends that because the theory of his case was that Adam Muse committed the robbery and not Petitioner, and because Muse was being represented by another public defender from the Montgom ery County Office of the Public Defender at the time of Petitioner's trial, there existed a conflict of interest in his case. According to Petitioner, the administrative judge should have gran ted his attorney's motion for a continuance because o f the existence of this conflict. Petition er argues that he is, therefo re, entitled to a new trial.

The State counters tha t Petitioner's argumen t is without m erit because there did not exist a conflict in this case. The State contends that there is no conflict because the State's witnesses all ex plain ed that, if called to testify, they would state that they knew Adam Muse and that Muse was not present during the robbery in question. In addition, according to the State, there was no conflict because Muse was not a co-defenda nt, not the State's witness, and was not involved in Petitioner's case, other than the fact that Petitioner wro te Muse's name on his prop osed witn ess list for purp oses of vo ir dire. The State avers, therefore, that the administrative judge properly denied the motion fo r a continua nce. Mo reover, the S tate contends that because Petitioner elicited evidence concerning Muse during trial and attempted to shift the blame to Muse during closing arguments, Petitioner's defense was not impaired.

We agree with Petitioner that his cou nsel's predicament created an actual conflict of interest and that, therefore, the admin istrative judge should have g ranted defense cou nsel's motion for a

continuance. Because defense counsel's theory at trial was that Muse was the perpetrator of the robbery, rather than Petitioner, and because Muse was being represented by an attorney w ho also w orked in the Montgomery County Office of the Public Def ender, there existed, at the very least, a strong potential for a conflict of interest; we believe, however, in this case, that an actual conflict of interest existed. Therefore, Pe titioner is entitled to a new trial and we reverse the judgment of the Court of Special Appeals.

The Right to Effective Assistance of Counsel Free from Conflicts

"The Sixth Amendment to the United States Constitution[6] and Article 21 of the Maryland Declaration of Rights,[7] as a safegu ard necess ary to ensure fu ndamen tal human rights of life and liberty, guarantee to any criminal defendant the right to have the assistance of counsel." Lettley v. State, 358 Md. 26, 33, 746 A.2d 392, 396 (2000). The Sup reme Court has explained that "'the right to counsel is the right to the effective assistance of counsel.'" Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2063, 80 L.Ed.2d 674, 692 (1984) (citations omitted); accord Mosle y v. State, 378 Md. 548, 557, 836 A.2d 678, 683 (2003); In re Parris W., 363 Md. 717, 724 , 770 A.2d 202, 206 (2001); State v. Tichn ell, 306 Md. 428, 440, 509 A.2d 1179, 1185 (1986). "This right has been accorded, [the Supreme Court] ha[s] said, 'not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial.'" Mickens v. Taylor, 535 U.S. 162, 166, 122 S.Ct. 1237, 1240, 152 L.Ed. 2d. 291, 300 (2002) (quoting United States v. Cronic, 466 U.S. 648, 658, 104 S.Ct. 2039, 2046, 80 L.Ed. 2d 657, 66 7 (1984)).

Moreover, in Austin v. State, 327 Md. 375, 381, 609 A.2d 728, 730-31 (1992), we stated that "[t]he constitutional right to counsel, under the Sixth Amendment and Article 21 of the Maryland Declaration of Rights, includes the right to have counsel's representation free from conflicts of interest." (citing Woo d v. Georgia, 450 U.S. 261, 271, 101 S.Ct. 1097, 1103, 67 L.Ed.2d 220, 230 (1981)); accord Lettley, 358 M d. at 34, 746 A.2d at 39 6; Graves v. State, 94 Md. App. 649, 656, 619 A.2d 123, 126 (1993). Furthermore, "[a] defense attorney's representation must be untrammeled and unimpaired, unrestrained by commitm ents to others; counsel's loyalty must be undivided, leaving counsel free from any conflict of interest." Lettley, 358 Md. at 34, 746 A.2d at 396. The Maryland Rules of Professional Responsibility also prohibit attorneys from representing a client if that representatio n involves a conflict of interest.[8]

To establish a violation of the constitutional right to the effective assistance of counsel, a defend ant must prove both th at his or her attorney's representation was deficient and that he or she was prejudiced a s a result o f that deficien cy. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed. 2d a t 696. We have exp lained, how ever, that:

A narrow exception to the Strickland standard exists where defendant's ineffective assistance claim is based on a conflict of interest. . . . In addressing an ineffective assistance claim alleging conflict of interest, we do not apply the Strickland two-pronged test but rather a more lenient standard that

does not require a showing of prejudice.

Lettley, 358 Md. at 34-35, 746 A.2d at 397. In Lettley, 358 Md. at 35-39, 746 A.2d at 397-99,we outlined the three significant Supreme Court cases regarding the ineffective assistance of counsel resulting from conflicts of interest. Writing for the majority, Judge Raker explained:

In Glasser, which is sometimes referred to as the watershed conflict of interest case, the Supreme Court, in the context of co-defendants, reversed Glasser's conviction primarily on the grounds that Glasser's counsel " struggle[d] to serve two masters" because his conflict of interes t violated Glasser's right to effective a ssistance of counsel. See Glasser, 315 U.S. at 75. The Court noted that the possibility of the inconsistent interests of Glasser and th e co-defe ndant was "broug ht home" to the court, but instead of jealously guarding Glasser's rights, the court created the conflict by appointing, over objection, counsel with conflicting interests, thereby depriving Glasser of his right to have the benefit of undivided assistance of counsel. See id. at 71. As to Glasser's prejudice, the Court said: To determine the precise degree of prejudice sustained by Glasser as a result of the court's appointment of Stewart as counsel for [a co-defendant] is at once d iffic ult an d unnece ssary. The right to have the assistance of counsel is too fundamental and abso lute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial.

Id. at 75-76.

In Holloway, again in the context of co-defendants at trial, the Supreme Court reversed a conviction on the ground that counsel's conflict of interest deprived the defendants of effective assistance of counsel. Three defendants were on trial for robbery and rape, in a consolidated trial. Defense counsel asked the court before trial to appoint separate counsel for the three defendants, the request based on the defendants' statements to him that there was a possibility of a conflict of interest in each of their cases. The trial court denied defendants' requests and the case pro ceeded to trial. All three de fendants were convicted. The Su preme Cou rt noted that trial counsel, as an officer of the court, alerted the co urt to the conflict, and focused explicitly on the probable risk of a conflict of interests. See Holloway, 435 U.S. at 484. The trial court, however, "failed either to appoint separate counsel or to take adequate steps to ascertain whether the risk was too remote to w arrant separa te counsel." Id. The Co urt held that this "failure, in the face of the representations made by co unsel we eks before trial and again before the jury was empaneled, deprived petitioners of the guarantee of 'assistance of counsel.'" Id. Recognizing that joint representation is not per se violative of the constitutional guarantee of effective assistance of coun sel, the Court nonetheless said that "since the decision in Glasser, most courts have held that an attorney's request for the appointment of separate counsel, based on his representations as an officer of the court regarding conflict of interests, should be granted ." Id. at 485.

Turning to the question of proof of prejudice, the Holloway Court concluded that prejudice is presumed, regardless of whether it was shown independently. See id. at 489. The Court "read the

Court's opinion in Glasser . . . as holding that whenever a trial court improperly requires joint representation over timely objection reversal is automatic." Id. at 488. The Court recognized that joint representation of conflicting intere sts is suspect because of w hat it tends to prevent the attorney from doing, and that a rule requiring a defendant to show that a conflict, which he and his counsel tried to avoid by timely objection, prejudiced him in some specific fashion would not be susceptible of intellig ent, evenhand ed application. See id. at 490. Again rejecting a harmless error standard, the Court said:

But in a case of joint representation of conflicting interests the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process. It may be possible in some c ases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing av ailable it would be difficult to judge intelligently the impact of a conflict on the attorney's representatio n of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible. Thus an inquiry into a claim of harmless error here would require, unlike most cases, unguided speculation.

Id. at 490-91.

Two years later, the Supreme Court again addressed the conflict of interest issue, in Cuyler. In Cuyler, the potential conflict of interest was not b rought to the trial court's attention. Three co-defen dants were jointly represented by two attorneys. Sullivan did not object to the multiple representation until after he was convicted and he moved for post-conviction relief on the grounds that he was denied effective assistance of counsel. In establishing a standard to be applied to cases in which the potential conflict is not brought to the trial court's attention, the Supreme Court held that "in order to establish a violation of the Sixth Amendment, a defendan t who raised no objection at trial must demonstrate that an actual conflict of interest adv ersely affected his lawyer's performance." 446 U.S. at 348 (em phasis added). In this context, "the possibility of conflict is insufficient to impugn a criminal conviction." 446 U.S. at 350. Commenting on Glasser, the Court held:

Glasser established that uncon stitutional multiple representation is never harmless error. Once the Court concluded that Glasser's lawyer had an actual conflict of interest, it refused to 'indulge in nice calculations as to the amount of prejudice' attributable to the conf lict. The con flict itself demonstrated a denial of the 'right to have the effective assistance of counsel.' 315 U.S. at 76, 62 S.Ct. at 467. Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demons trate prejudice in order to obtain relief. But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.

446 U.S. at 349-50. Contrary to the resolution in Holloway, Sullivan, w ho did not object before trial, was required to show that an actual conflict of interest adversely affected his lawyer's performance.

To date the Supreme Court has never squarely resolved the question of whether proof of an adverse effect of a conflict of interest is required to reverse a conviction. See e.g., Bonin v. California, 494 U.S. 1039, 1043, 110 S.Ct. 1506, 108 L.Ed. 2d 641 (1990) (M arshall, J., dissentin g). Numerous case s in other jurisdictions addressing conflict of interest conclude, how ever, that the time at w hich a con flict of interest, or a potential on e, is raised and is brou ght to the co urt's attention g overns ho w this issue is to be tre ated. See, e.g., Selsor v. Kaiser, 22 F.3d 1029, 1032 (10th Cir. 19 94); United States v. Fish, 34 F.3d 488, 4 92 (7th Cir. 1994); Hamilton v. Ford, 969 F.2d 1006, 1011 (11th Cir. 1992); People v. Burchette, 257 Ill. App. 3d 641, 628 N.E.2d 1014, 1023, 195 Ill. Dec. 550 (Ill. App. Ct. 1994); State v. Wille, 595 So. 2d 1149, 1153 (La. 1992), cert. denied, 506 U.S. 880, 113 S.Ct. 231, 121 L.Ed. 2d 167 (1992); State v. Marshall, 414 So. 2d 684, 687 (La. 1982); State v. Lemon, 698 So. 2d 1057, 1061 (La. Ct. App . 1997); State v. Dillman, 70 Ohio App. 3d 616, 591 N.E.2d 849, 852 n.1 (Ohio Ct. App. 1990). See also CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 8.2, at 414 (1986) ("The different, and lesser, showing that obtained reversal in Holloway depended on the lawyer's trial objection there."). The cases reason that when a possible conflict exists, but the trial court is not advised of the conflict in a timely manner, the Cuyler standard applies. In order to establish a violation of the Sixth Amendment rig ht to effective assistance of counsel, the defendant must show that an actual conflict of in terest adversely affected h is lawyer's performance. On the other hand, when the defendant advises the trial court of the possibility of a conflict of interest, the Glasser/Holloway standard applies. "[A] court confronted with and alerted to possible c onflicts of in terest must tak e adequa te steps to ascertain whether the conflicts warran t separate counsel." Wheat v. United States, 486 U.S. 153, 160, 108 S.Ct. 1692, 100 L.Ed. 2d 140 (1988). The trial court is requ ired to "either appoint sep arate coun sel, or to take ad equate step s to ascertain whether the risk was too remote to warra nt separate counsel." Holloway, 435 U.S. at 484. If the trial court fails to take "adequate steps" or improperly requires joint or dual representation, then reversal is automatic, without a showing of prejudice, or ad verse effect upon the representation.

After this Court's decision in Lettley, the Supreme C court decided Mickens v. Taylor, 535 U.S. 162, 122 S.Ct. 1237, 152 L.Ed. 2d. 291 (2002). In Mickens, the Supreme C court evaluated, with regards to the constitutional right to the effective assistance of counsel, whether the criminal defendant was entitled to the automatic reversal of a conviction when the trial judge failed to inquire into a potential conflict of interest. The Court reviewed its prior decisions and explained, as the State points out, that Holloway "creates an automatic re versal rule only where defense counsel is forced to represent co[-]defendants over his [or her] timely objection, unless the trial court has determined that there is no conflict." Mickens, 535 U.S. at 168, 122 S.Ct. at 1241-42, 152 L.Ed. 2d. at 302. The Supreme Court also explained, however, that for Six th Amendment purposes, "'an actual conflict o f interest,' mean[s] precisely a conflict that affect[s] counsel's performance -- as opposed to a mere theoretical division of loyalties." Mickens, 535 U.S. at 1 71, 172 n.5, 122 S.Ct. at 1243, 1244 n.5, 152 L. Ed. 2d. at 30 4, 304 n.5 . The Court ultimately held that the criminal defendant had to establish that the potential

conflict of interest adversely affected his coun sel's performance before he would be entitled to re versal.[9] This last princ iple is essential to our analysis of the case sub judice, as we have determined that an actual conflict of inte rest existed.

This Court addressed ineffectiveness of counsel due to a conflict of interest in Austin, 327 M d. at 381 -82 n.1, 609 A .2d at 73 1 n.1, infra. We stated that:

"In certain Sixth Amendment contexts, prejudice is presumed.

Actual or construc tive denial of the assistance of counsel altogether is legally presumed to result in prejudice. So are various kinds of state interference with counsel's assistance . . . . "One type of actual ineff ectiveness claim warran ts a similar, though more limited , presumption of preju dice. In Cuyler v. Sullivan, 446 U.S. at 345-50, 100 S.Ct. at 1716-19, 64 L.Ed.2d at 343-47, the [Supreme] Court held that prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circu mstances , counsel breaches the duty of loyalty, perhaps the most ba sic of coun sel's duties. M oreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of couns el to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conf licts, see, e.g., Fed.Rule Crim.Proc. 44(c), it is reasonable for the crim inal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest." (quoting Strickland, 466 U.S. at 692, 104 S.Ct. at 2067, 80 L.Ed.2d at 696). We shall discuss Austin in more detail, below.

Conflicts within the Office of the Public Defender

The case sub judice involves two attorneys from the same district office[10] of the Public Defender, representing two dif ferent d efendants (no t co-def endants). While this Court has never constructed a bright line rule as to conflicts of interest within public defenders' offices, it has examined conflicts of interest within private law firms.[11] In Austin, 327 Md. at 381, 609 A.2d at 730, two attorneys from the same private law office were representing two codefenda nts. As in the case sub judice, we examined "whether defense counsel labored under such a conflict of interest that the d efendan t's constitutiona l right to the assistance of counsel was violated." We explained that "[t]he cases wh ich have considered the issue have generally concluded that rep presentation of co[-]defend ants by partners or associates in a private law firm should be treated the same, for purposes of conflict of interest analysis, as representation of co[-]defendants by one attorney." Austin, 327 Md. at 383, 609 A.2d at 732. We con cluded that "the potential for a conf lict of interest is present whenever co[-]defenda nts are represented by the same lawyer o r by lawyers wh o are assoc iated in practice." Austin, 327 M d. at 385 , 609 A .2d at 73 3.

We declined, however, to examine in Austin whether public de fender offices w ere considered private law firms for purposes of such conflicts of interest analyses. We explained that "[w]ith regard to public defender offices, there appears to be some disagreement among the cases as to wheth er,

and to what extent, a public defender's office is to be view ed like a sing le private law firm for pu rposes of a pplying conflict of interest principles. . . .We have no occasion in the instant case to explore this matter. " Austin, 327 Md. at 384-85 n.3, 609 A.2d at 732-33 n.3. This Court has, therefore, never before resolved whether general conflict of interest principles apply, as a per se rule, to the representation of individuals with adve rse intere sts within the same public def ender d istrict off ice.

The Court of Special Appeals did confront this issue, how ever, in Graves v . State, 94 Md. App. 649, 654-56, 619 A .2d 123 , 126 (1993), rev'd on other grounds, 334 Md. 30, 637 A.2d 1197 (1994). Graves was charged with assault and attempted robbery with a dangerous and deadly w eapon. A man named Trusty w as a co-defendant in th e case. Both men w ere represented by assistant public defenders from the same district office of the Office of the Public Defender. G raves filed a motion fo r a mistrial and motion to strike the appearance of the Office of the Public Defender, in his case, on the grounds that a conflict of interest existed. The trial court denied the motion for a mistrial and refused to strike the appearance of the Office of the Public Defender. Graves appealed to the Court of Special Appeals.

The intermediate appellate court did not adopt a per se rule that a public defende r's office is the sam e as a private law firm, w ith regards to conflicts of interests. It stated, however, that "[a]lthough we do not adopt a per se rule, we regard the loyalty of each Maryland lawyer to a client to be of the 'utmost importance,' which is not to be 'diminished, fettered, or threatened in any mann er by his loyalty to another client.'" Graves, 94 Md. App. at 667, 619 A.2d at 132 (quoting Allen v. District Court, 519 P.2d 351, 353 (Colo. 1974) (en banc)). Furthermore, the Graves court determined that "[f]or the purposes of this opinion, district offices of the district public defender are analogous to independent private law firms." Graves, 94 Md. App. at 670, 619 A.2d at 133. The court continued:

When [a] potential c onflict is brought to the attention of the court, it must cond uct a full evid entiary hearing to determine if "facts peculiar to the case preclude the representation of competing interests by separate members of the public defender's office." Miller, 404 N.E.2d at 203.

Graves, 94 Md. App. at 671, 619 A.2d at 134. The court determined that the record was incomple te as to Trusty's representation but that the record was clear that the trial court found that a conflict of interest arose between the assistant public defenders, "but it failed to explore fully the nature and extent of any conflict." Graves, 94 Md. App. at 673, 619 A.2d at 135. The court exp lained:

When the issue is raised by the court, the Public Defender, the State or a defendant, the trial court, in determining whether there is a conflict of interest, shou ld

1. determine whether attorneys employed by the same public defender's office can be considered the same as private attorneys associated in the same law firm;

2. weigh factors relating to the protection of confidential information by considering whether there

are separate offices, facilities and personnel; and

3. determine whether, as a consequence of having access to confidential information, an assistant public defender refrained f rom effe ctively representing a defendant. [] We do n ot intend that the three con siderations set out above should in any way limit the court in its determination of whether a conflict of in terest exists. Wh en the potential conflict is brought to the attention of the court, it mu st conduct a full evidentiary hearing to determine if "facts peculiar to the case preclude the representation of competing interests by separate members of the public defender's office." State v. Miller, 404 N.E.2d 199, 20 3 (1980).

The court remanded th e case to the trial court to conduct an evidentiary hearing to determine whether, and to what ex tent, a conflict of interest existed that prejudiced Graves at trial. Graves, 94 Md. App. at 673, 619 A.2d at 135. The court explained that if the trial court discovered no conflict, then the judgments could stand. If it found a conflict that prejudiced Graves, then the court was to vacate the judgments and a ward Graves a new trial.

The intermediate app ellate court in Graves also ackno wledged , as this Court did in Austin, supra, that jurisdictions remain divided on the issue of how to treat public defender's offices during a conflict of interest analysis. Some jurisdictions have treated public defender's offices in the same manner as private law firms during the course of a conflict of interest analysis. See, e.g., Williams v. Warden, 586 A.2d 582 , 589 n. 5 (Conn. 19 91); Rodriguez v. State, 628 P.2d 950, 953-54 (Ariz. 1981) (en b anc); State v. S mith, 621 P.2d 697, 698-99 (Utah 1 980); Allen, 519 P.2d at 353; Ward v. State, 753 So.2d 705, 708 (Fla. Dist. Ct. App. 2 000).

Other jurisdictions have instead expressed a need for the trial court to examine the potential for con flict. See, e.g., Asch v. State, 62 P.3d 945, 953 (Wyo. 2003) (concluding that "a case-by-case inquiry, rather than per se disqualification, [is] appropriate for cases alleging a conflict of interest based on representation of co-defendants by separate attorneys from the State Public Defend er's Office"); State v. B ell, 447 A.2d 525, 529 (N.J. 1982) (requiring the court to determine the likelihood of prejudice resu lting); People v. Robinson, 402 N.E.2d 157, 162 (Ill. 1979) (requiring the trial court to conduct a case-by-case in quiry to determine wheth er, and to what extent, a conflict o f interest existed).

In addition, as P petitioner sets fo rth in his brief, th e Restatement (Third) of the Law Governing Lawyers §123 (2 000), agrees with Pe titioner's position in this case. It explains that any conflict of interest affecting one law yer applies to any and all other lawyers who are "associated with that lawyer in rendering legal services to others through a law partnership, professional corporation, sole proprietorship, or similar association." It explains further that the "rules on imputed conflicts and screening of this Section apply to a public-defender organization as they do to a law firm in private practice in a similar situation." Restatement (Third) of the Law Govern ing Law yers § 123 cm t. (d)(iv) (2000). We hold that, at a minimum, each district office of the public defender should be treated as a

priva te law firm for conflict of interest purposes.

The Instant Case

In the case sub judice, defense counsel notified the administrative judge, in advance of trial, that she was laboring under a conflict of interest. The Glasser/Holloway line of reasoning, and not the Cuyler line of reasoning, is therefore applicable because only the former line of reasoning is applicable in cases where the trial court is notified of the con flict. As explained supra, under the former line of Supreme C court reasoning, and in accordance with Graves, a court that is confronted with the possibility of a conflict of interest must take adequate steps to determine whether such a conflict exists. Under Mickens, 535 U.S. 162, 122 S.Ct. 1237, 152 L.Ed. 2d 291, wh en an actual conflict ex ists, the criminal defendant is entitled to a reversal. We conclude, therefore, that the administrative judge erred, as a matter of law, when she denied defense counsel's motion for a continuance because an actual conflict existed and she failed to take adequate steps to cure that conflict or permit defense counsel to cure the con flict.

In this case, defense counsel explained, both orally and in writing, that because of the nature of the con flict in the M ontgomery County Office of the Public Defender, sh e would be unable to re present Petitioner effectively since anoth er assistant public defender in that office was representing Muse in another case. She explained that, because of the nature of her office, and the theory of her case, she had conflicted duties of loyalty to Petitioner and Muse. As a result of the duties of loyalty, Petitioner's counsel was not able to interview Muse or speak to Muse's attorney abou t this case prior to the commence ment of Petitioner's trial. Furtherm ore, if defense c counsel gained acces s to information pertainin g to Muse's role in the robbery at issue, she would not have been able to inform the police or elicit the information at trial; her obligations to Muse would have prevented her from doing so, and these obligations directly conflicted with her obligations to represent Petition er zealously. We determine that the limitation s espoused by defense counsel would be detrimental to Petitioner's case and, thus, a clear conflict of interest existed in the case sub judice. As we determined in Lettley, 358 Md. at 44, 746 A.2d at 402, "[t]he conflict of interest is inherent in the divided loyalties."

As we have previously stated, defense counsel's representa tions about specific conflicts of interest should be credited, and we therefore give cred ence to them here. See Lettley, 358 Md. at 48, 746 A.2d at 404. Lawyers are officers of the court and should be treated as such. See Attorney Grievance Comm'n v. Link, 380 Md. 405, 427, 844 A.2d 1197, 1211 (2004). If the administrative judge questioned defense counsel's credibility or motives in requesting the motion to continue, then she could hav e conducted an e videntiary hearing. If she did not have an issue, which is what the record suggests, then she should have granted the motion to co ntinue u nder the circum stances.

As we stated supra, the Supreme C court held, in Cuyler, 446 U.S. at 345-50, 100 S.Ct. at 1716-19, 64 L.Ed.2d at 343-47, that prejudice is presumed when counsel becomes burdened by the existence of an

actual conflict of interest because, in those situations, counsel must breach the duty of loyalty, "perhap s the most b asic of counsel's duties." Austin, 327 Md. at 381 n.1, 609 A.2d at 730 n.1 (quoting Strickland, 466 U.S. at 692, 104 S.Ct. at 2067, 80 L.E d.2d at 6 96). The Supreme C court also explained in Strickland, 466 U.S. at 692, 104 S.Ct. at 2067, 80 L.Ed.2d a t 696, that it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and th e ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts . . . it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflic ts of interest.

We adopt the interpretation of the courts that have interpreted the Supreme Court's holdings to mean that when the trial court is notified of a potential co nflict and fa ils to take adeq uate steps to investigate the potential for conflict or requires conflicted representation, despite the conflict, reversal is automatic, without a showing of prejudice of adverse effect upon representation. See Lettley, 358 Md. at 38-3 9, 746 A.2d at 39 9 (summarizing S upreme Co urt jurisprudence and the interpretation by oth er jurisdictions of this jurisprudence). Furthermore, drawing upon the Supreme Court's recent decision in Mickens, 535 U.S. 162, 122 S.Ct. 1237, 152 L.Ed. 2d 291, because the conflict in this case was an actual conflict, Petitioner is entitled to a reve rsal. See also G atewood v. State, 388 Md. 526, 538, 880 A.2d 322, 329 (2005) (stating that when a trial judge fails to evaluate whether a conflict of interest existed, the appropriate remed y is reversal).

Defense counsel clearly explained to the administrative judge that she was laboring under a conflict of interest. She explained that the case was one of mistaken identity and that Muse was an important witness with whom she could not speak because he was being represented by another attorney in the same office of the Public Defender. She requested a continuance, because o f this conflict, for the purpose of finding a p anel attorney w ho could resume representation of Petitioner. The administrative judge stated that "[i]f there [was] a conflict, then Mr. Gottlieb c[ould] move to continue M[use]'s case a nd remove himself from that case" (em phasis add ed). The judge, therefore, failed to fully examine or acknowledge that a conflict actually existed in Petitioner's case. Instead, she determined that because Petitioner's trial would c ommen ce before Muse's trial, Petitioner's co unsel could represent Petitioner, and then Muse's attorney could a sk for a continu ance. In doing so, the court denied Petitioner effective representation, in this case, because defense c counsel could not effectively qu estion Muse or prese nt evidence against M use during Petitioner's trial. Under the circumstances, the only possible cure would have been a waiver of the conflict by the defen dant or replacement of the defen dant's attorney.

As the Supreme Court stated in Mickens, 535 U.S. at 173, 122 S.Ct. at 1244, 152 L.Ed. 2d. at 306, "where the potential conflict is in fact an actual one, only inquiry will enable the judge to avoid all possibility of reversal by either seeking waiver or replacing a conflicting attorney." The adm inistrative judge in this case, however, failed to exp lain adequately to Petitioner about the actual conflict of interest and failed to determine whether he wanted to waive the conflict.[12] The judge asked Petitioner whether he wanted a continuance or whether he wanted to proceed without counsel.

Petitioner explained that he would proceed without counsel if his attorney could not represent him.[13] Petitioner did not, at any point, agree to waive his right to conflict-free rep presentation. At no time did the court explain to Petitioner that he had a right to waive the conflict of interest and have his attorney go forward and represent him. Because an actual conflict existed, the administrative judge had a duty to determine whether Petitioner waived the conflict before she allowed defense counsel to continue her representation of Petitioner. See Austin , 327 Md. at 393, 609 A.2d at 739 (stating that once the judge perceived the conflict, he should have asked the client whether he waived the conflict; in failing to do so, and allowing the conflicted representation to contin ue, the ju dge rea ched an impro per com promise).

In denying the continuance, the administrative judge also failed to allow time for the District Public Defend er to panel the case to ano ther lawyer. As stated supra, the administrative judge could have granted the continuance without violating the Hicks rule. At the time that defense counsel filed the motion for a continuance, the trial date was within Hicks. Even if the case could not have been reset within Hicks, the administrative judge would have been able to find good cause for resetting the trial date outside of Hicks.

The State contends that no conflict existed becau se Muse and Petitioner were not co-defendants. We reject this contentio n. While Muse a nd Petitione r were no t co-defen dants at trial, their interests were still in conflict because Petitioner contended that he was innocent and that Muse was the perpetrator of the crimes for which Petitioner was charged and subseque ntly convicted. We hav e never he ld that conflicts exist only in cases involving co-defendants; to the contrary, we have held that conflicts of interest exist even in cases w here the individuals are not co-defendants. In Lettley, 358 Md. at 29, 746 A.2d at 394, appellant was convicted of attempted first degree murder, use of a handgun in the commission of a crime of violence, and reckless endangerment. He contended, on appeal, that his attorney "labored under an actual conflict of interest requiring reversal of his convictions," because the attorney represented both appellant and another client, who was not a co-defendant in the case but was someone who had confessed to the attorney that he had committed the crimes at issue. We held that a conflict of interest did exist and that "the defenda nt's right to conflict-free representatio n is not limited to situations inv olving mu ltiple representation, but extends to any situation in which defense counsel owes conflicting duties to the defendant and some other third person." Lettley, 358 Md. at 34, 74 6 A.2d at 397. H ere, Petitioner's counsel owed conflicting duties to Petitioner and Muse.

We also reject the State's contention that a conflict of interest did not exist because the State's witnesses all claimed that Muse was not present during the robbery in question. Petitioner's counsel req uested a co ntinuance prior to the comme ncemen t of Petitioner's trial; hence the evidence presented at Petitioner's trial is irrelevant to this analysis. For the same reason, we also reject the State's argument that because Petitioner elicited evidence concerning Muse during trial and attempted to shift the blame to Muse during closing arguments, Petitioner's defense wa s not impaired, and he is no t entitled to reversal. The conflict was present prior to the start of the trial and

still prevented Petitioner's counsel from investig ating M use's role in the p ertinent offenses.

Decisions rendered in other jurisdictions support this holding. For example, in Allen, 519 P.2d at 352, the public defender's office represented a criminal defendant, Allen, who offered crucial evidence against another ind ividual that w as represen ted by the pub lic defender's office. Allen's attorney filed a motion to withdraw from the case on the grounds that a conflict of interest prevented both Allen and the other individual from obtaining effective assistance of counsel. The trial court denied the motion. The Supreme Court of Colorado stated that

[t]he need for defen se counsel to be com pletely free from a conflict of interest is of great importance and has a direct bearing on the quality of our criminal ju stice system . . . . A lawyer shall not continue multiple employment if the exercise of his independ ent professional judgm ent in [sic] behalf of a client will be or is likely to be adversely affected by his representation of another client . . . ." [The Code of Professional Responsibility] is intended to guarantee the independence of counsel from the conflicting in terests of other clien ts in order to preserve the integrity of the attorney's adversary role . . . . It is of the utmost importance that an attorney's loyalty to his client not be diminished , fettered, or thre atened in any manne r by his loyalty to ano ther clien t.

Allen, 519 P.2d at 352-53. The court determined that Allen's attorney could not have represented Allen effectively because of this conflict. It explained that although two different public defenders were representing the two different individuals, any knowledge or information gained by one public defender wou ld be imputed to the other. Accordingly, the court determined that the trial court erred in denying Allen's attorney's motion to withdraw from the case. It stated that such "genuine conflicts of interest must be scrupulou sly avoided." Allen, 519 P.2d at 353. See also, Com monw ealth v. G reen, 550 A.2d 1011, 1012-13 (Pa. Super. 1988) (concluding that the public defender's office of a county was, "by its very nature, a law firm," and that a conflict of interest existed because of representation by co-defendants by the same county office; the criminal defendant was therefore entitled to a ne w trial); Turner v. S tate, 340 So.2d 132, 133 (Fla.Dict.Ct.A pp. 1976) (stating that a public defender's office in any given circuit should be treated the same as a private law firm for conflict of interest purposes and that a public defender may not represent a criminal de fendant if such repre sentation w ill affect adversely the representation of ano ther clien t).

Post-Conviction Proceeding

The State argue s that this Court should decline to decide whether there existed an actual conflict of in terest in this case and, instead , that this issue should be explored in a post-conviction proceeding. We disagree. We can address the matter appropriately on direct appeal. Accordingly, there exists no need to reman d the case a nd address the issue in collateral proceedings.

In Smith v. Sta te, 394 Md. 184, 199 , 905 A.2d 315, 324 (2006), w e explained that a claim for the ineffectiveness of counsel ordinarily should be addressed in a post-conviction procee ding. See also

In re Parris W., 363 Md. at 726, 770 A.2d at 207; Ware v. State, 360 Md. 650, 706, 759 A.2d 764, 793 (2000); Perry v. Sta te, 344 Md. 204, 227, 686 A.2d 274, 285 (1996); Walker v. S tate, 338 M d. 253, 2 62, 658 A.2d 2 39, 243 , cert. denied, 516 U .S. 898, 116 S.Ct. 254, 133 L.Ed. 2d 179 (1995). We stated in Smith that:

The main justification for the rule is that, generally, the trial record does not provide adequate detail upon which the reviewing court could base an assessment regarding whether counsel rendered ineffective assistance because the character of counsel's representation is not the focus of the proceedings and there is no discussion of cou nsel's strategy supporting the condu ct in issue.

Smith, 394 Md. at 200, 905 A.2d at 324. We explained, however, "that the general rule, [] is not 'absolu te and, wh ere the critical fa cts are not in d ispute and th e record is sufficiently developed to permit a fair evaluation of the claim, there is no need for a collateral fact-finding proceeding, and review on direct appeal may be appropriate and desirable.'" Id. (quoting In re Parris W., 363 Md. at 726, 77 0 A.2d at 207). We thereafter determined that a failure to address the ineffectiveness claim on appeal would be a waste of judicial resources and proceeded with our analysis of whether Smith's constitutional right to effective assistance of counsel was violated. Smith, 394 Md. at 201, 905 A.2d at 325.

Our reasoning and decision in Austin is most instructive on this point, as Austin involved issues similar to those present in the case sub judice. In Austin, 327 Md. at 394, 609 A.2d at 73 7, we exp lained that: It is true that in cases involving claims of deficient performance by defense counsel, although not involving conflict of interest claims, we have taken the position that "[i]n the usual case, a post conviction proceeding is most appropriate." Harris v. State, 299 Md. 511, 517, 474 A.2d 890, 892-893 (1984), and cases there cited. As previously noted, however . . . a claim that the constitutional right to counsel was violated because of defense counsel's conflict of interest has been treated by courts as different from a claim that the co nstitutional right to counsel was violated because of defense counsel's deficient performance apart from conflict of interest. Moreover, in Pressley v. S tate, supra, 220 Md. 558, 155 A.2d 494, and Brown v. State, supra, 10 Md.App. 215, 269 A.2d 96, the conflict of interest issue was decided on direct appeal based on the criminal trial record. In the instant case, it was the action of the trial court as the result of the conflict which caused an adverse effect on defense counsel's representation. There is no need to await a fact-finding post conviction hearing.

Similarly, in Lettley, 358 Md. at 32, 746 A.2d at 396, we stated that "[w]here the claim is based on conflict of interest, and the record is clear . . . there is no need to await a post-conviction hearing." Because the record was clear and the necessary facts were contained in the record, we stated th at "[n]o useful purpo se would be served by relegating the issue to post-conviction proceedings." Id.

In accordan ce with this reasoning, we hold that there is no need to await a fact-finding post conviction hearing, as the State suggests. As in Austin and Lettley, it was the trial court's action, as

the re sult of a conf lict of interest -- the administrative judge's denial of defense counsel's motion for a continuance -- that caused the adve rse effect on Petitioner's representation. Consequently, the trial court's judgment is reversed and Petitioner is entitled to a new trial.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AND TO REMAND THE CASE TO THE CIRCUIT COURT FOR A NEW TRIAL. MONTGOMERY COUN TY TO PAY THE COSTS IN THIS COURT AND THE COURT OF SPECIAL APPEALS.

1. Md. R. Crim. Cau ses 4-271 states, in pertinent part: (1) The date for trial in the circ uit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursu ant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. When a case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatica lly entered in the circuit court pursuant to Rule 4-214 (a), the date of the appearance of c counsel for purposes of this Rule is the date the case was docketed in the circuit court. On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a cha nge of a c circuit court trial date. If a circuit court trial date is changed, any subsequent cha nges of the trial date may be made only by the county administrative judge or that judge's d esignee for go od cause show n. (Empha sis added.) This rule is known commonly as the Hicks rule. State v. Hicks, 285 Md. 310, 403 A.2d 356 (1979). Defense counsel entered her appearance on September 26, 2003, and Petitioner first appeared before the court on N ovembe r 7, 2003. In accordan ce with Hicks, Petitioner must have been tried on or before March 24, 2004, unless the administrative judge or the judge's designee found good cause to extend the trial date beyond Hicks.

2. We note that defense counsel in the case sub judice could have, instead, filed a motion to withdraw from the case as a result of the conflict of interest, pursuant to Maryland Rule 4-214(c), entitled "Striking appea rance." By filing a motion fo r a continuance, so that the case co uld be re-assigned to a p anel attorney, de fense cou nsel essentially did just that.

3. Muse's trial was set for February 2, 2004.

4. As a practical matter, only the administrative judge or her desig nee had th e authority to grant the continuance. Thus, it is not dispositive that the trial judge d enied the m otion to continue. See Md. R. Crim. Causes 4-271(a) (stating that "[o]n motion of a party, or on the court's initiative, and for good cause sho wn, the co unty administrative judge or tha t judge's designee may grant a change of a circuit court trial date") (emphasis ad ded). See also Goldring v. State, 358 Md. 490, 505 , 750 A.2d 1, 9 (20 00) (holding that charges were properly dismissed because the case was improperly postponed by a circuit court judge, and not an administrative judge or his or her designee). It is dispositive that the judge with the authority to gran t the postpon ement, den ied the requ est.

5. Petitioner pre sented the f ollowing questions in his petition fo r writ of certiorari: 1. Was Petitioner deprived of his right to the effective assistance of counsel where the trial court denied defense counsel's request for a continuance after counsel learned that the individual who the defense contended was responsible for the charged offenses was also

represented by the Office of the Public Defender? 2. Was Petitioner deprived of his right to present a defense by the trial court's decision to prohibit him from calling as a witness the individual who the defense contended was responsible for the charged offenses, or, in the alternative, from introducing extrinsic evidence that the individual had the opportunity to commit the offenses and was in jail at the time of trial on charges of committing a similar offense? 3. Did the trial court err in admitting irrelevant and prejudicial evidence that Petitioner was unemployed, homeless, and behind in his child support payments at the time of the offenses?

6. The Sixth Amendment provides in pertinent part: In all criminal pro secutions, the accused shall enjoy the right . . . to have the Assistance of counsel for his defence [sic]. U.S. CON ST. amend. V I.

7. Article 21 o f the Ma ryland Decla ration of R ights provid es in pertinen t part: That in all criminal prosecutions, every man hath a right . . . to be allowed counsel. . . . Md. Decl. Rts. art. 21.

8. Rule 1.7, entitled "Conflict of Interest: General Rule," states: (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited b y the law yer's responsibilities to another client, a former client or a third person or by a personal interest of th e lawyer. (b) Notwithstanding the existence of a conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representatio n to each affected client. (2) the representation is not prohibited by law. (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and. (4) each affected client gives informed consent, confirmed in writing.

9. The Supreme Court made clear the breadth of its holding by stating "[l]est today's holding be misconstrued, we note that the only question presented was the effect of a trial court's failure to inquire into a potential conflict . . ." Mickens v. Taylor, 535 U.S. 162, 174, 122 S.Ct. 123 7, 1245 , 152 L.Ed. 2d. 291, 30 7 (2002).

10. Md. Code (1957, 2003 Repl. V ol.), Art. 27A § 2(c), defines "District," in the context of district offices of the public defender. It states that "'District' means an area comprising one or more political subdivisions conforming to the geographic boundaries of the District Court districts established in § 1-602 of the Courts Article of the Code."

11. See also Maryland Rule of Professional Conduct 1.10, entitled "Imputation of Conflicts of Interest: General Rule," which explains, in pertinent part, that: (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

12. See Maryland Rule of Professional Responsibility 1.7 explaining that a client can continue his or her representation by an attorney with a conflict of interest, so long as the client gives informed consent, in writing.

13. Petitioner was entitled to discharge his counsel, pursuant to Maryland Rule 4-215 (e), so long as the court found a

meritorious reason for the defendant's request.