

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ZACHARY ROBINSON, and MICHAEL LEWIS, *et al.*,)
 on behalf of themselves and a class and subclass of)
 similarly situated persons,)
)
 Plaintiffs,)
)
 v.)
)
 LEROY MARTIN JR., E. KENNETH WRIGHT JR.,)
 PEGGY CHIAMPAS, SANDRA G. RAMOS, and)
 ADAM D. BOURGEOIS JR., on behalf of themselves)
 and a class of similarly situated persons,)
)
 Defendants.)

No. 2016 C 133
 Hon. Celia G. Garza

DOROTHY BROWN, CLERK
 CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 CHANCERY DIVISION

2017 JUL 24 PM 1:04

FILED - 1

**JUDICIAL DEFENDANTS' SUPPLEMENTAL SECTION 2-619
MOTION TO DISMISS FOR MOOTNESS**

Defendants Presiding Judge Leroy Martin Jr., Presiding Judge E. Kenneth Wright Jr., Judge Peggy Chiampas, Judge Sandra G. Ramos, and Judge Adam D. Bourgeois Jr. (collectively, "Judicial Defendants"), by their attorney, Lisa Madigan, Attorney General of Illinois, submit this supplemental motion to dismiss the amended complaint with prejudice, and in support state:

1. On July 17, 2017, after briefing on the pending motion to dismiss was completed, Chief Judge Evans issued General Order No. 18.8A (the "Order") concerning bail hearings in Cook County. (Ex. A.) The Order not only implements recent legislation, but also provides defendants in criminal cases with the very procedures requested by plaintiffs in this litigation. In particular, the order requires judges to perform an inquiry into a criminal defendant's ability to pay monetary bail and to issue a finding that any such monetary bail is not oppressive and is considerate of the defendant's financial resources. As a result, plaintiffs' request for a declaration is moot and should be dismissed.

Plaintiffs' Amended Complaint

2. Plaintiffs Zachary Robinson and Michael Lewis were defendants in criminal cases pending in the Circuit Court at the time of filing of the Complaint. (Am. Compl. ¶¶19, 25.) Both plaintiffs had been arrested and appeared in bond court where judges issued orders requiring monetary bail as a condition of release. (Am. Compl. ¶¶19-20, 25-26.)

3. This action against Judicial Defendants is brought against three judges who issued orders concerning plaintiffs' pretrial release and two other judges. On October 14, 2016, plaintiffs filed a seven-count putative class action against Judicial Defendants and Cook County Sheriff Thomas Dart. On March 17, 2017, plaintiffs filed an amended complaint, asserting the same seven counts against only the Judicial Defendants.

4. In briefing on the pending motion to dismiss, plaintiffs characterized their claims and relief sought as:

Plaintiffs simply seek relief that would correct the unconstitutional *process* by which Defendants determine bail orders. Specifically, Plaintiffs seek a declaration that "ordering an arrestee to pay a monetary condition of pretrial release without making an inquiry into and findings concerning the arrestee's ability to pay the ordered amount," which results in arrestees being jailed solely because they cannot pay a monetary deposit, violates the class members' statutory, state constitutional, and federal constitutional rights.

(Resp. at 4-5 (citing Am. Compl. Prayer for Relief at pp. 25-31)(emphasis in original).)

Plaintiffs have said that this relief is purely prospective. (*See, e.g.*, Resp. at 21.)

5. Thus, plaintiffs seek an order declaring that judges must inquire and make findings regarding a criminal defendant's ability to pay monetary bail prior to the imposition of monetary bail as a condition of release.

Public Act 100-1, The Bail Reform Act of 2017

6. Public Act 100-1 was signed by the Governor on June 9, 2017. Referred to as the Bail Reform Act of 2017, the Act amended bail proceedings in Illinois. The Act provides,

among other things, that criminal defendants charged with certain offenses who are in custody “due to an inability to post monetary bail shall be brought before the court ... for a rehearing on the amount or conditions of bail or release pending further court proceedings.” 725 ILCS 5/110-6(a-5).

7. In addition to requiring automatic rehearing, the Act amends Illinois’ bail statute in multiple ways, including (a) requiring the appointment of counsel at bail hearings, (b) providing for the use of a “risk assessment tool,” (c) establishing a monetary offset against bail for each day of incarceration, (d) confirming a presumption against monetary bail, and (e) providing that a court “shall consider the defendant’s socio-economic circumstance when setting conditions of release or imposing monetary bail.” The effective date of the Act is January 1, 2018.

Judge Evans’ General Order No. 18.8A

8. On July 17, 2017, Chief Judge Evans issued General Order No. 18.8A regarding bail hearings in Cook County.

9. Following Public Act 100-1, the Order confirms the automatic review, confirms and expands the County’s existing use of a risk-assessment tool to aid in bail determinations, and provides for a presumption that any conditions of release will be non-monetary in nature and the least restrictive condition necessary to assure the defendant’s continued appearance.

10. The Order also addresses the procedures used in bail hearings, specifically requiring an inquiry into the defendant’s ability to pay and findings on the record regarding the ability to pay.

11. With respect to the inquiry into a defendant’s ability to pay monetary bail, the Order contains the following procedures for bail determination hearings:

Prior to setting or modifying a condition of release that includes monetary bail, the court shall conduct an inquiry into the defendant's ability to pay monetary bail. Such inquiry shall allow the prosecutor, defense counsel, and the defendant the opportunity to provide the court with information pertinent to the defendant's ability to pay monetary bail. This information may be provided by proffer, and may include statements by the defendant's relatives or other persons who are present at the hearing and have information about the defendant's ability to pay monetary bail. All information shall be admissible if it is relevant and reliable, regardless of whether it would be admissible under the rules of evidence applicable at criminal trials.

(Order at ¶ 6.)

12. To assist in that inquiry, the Order directs Pretrial Services to “request information from the defendant regarding the defendant's ability, within 48 hours, to post monetary bail.” (Order at ¶ 2.) Any information obtained “shall be provided to the court.” (*Id.*)

13. The Order also establishes a procedure for the issuance of findings on the record prior to the issuance of monetary bail. (Order at ¶ 7.) Under the procedure, the court “shall, in substance, make the following findings and state them, together with sufficient supporting facts, on record in open court” including that “the amount of bail is not oppressive, is considerate of the financial ability of the accused, and the defendant has the present ability to pay the amount necessary to secure his or her release on bail.” (Order at ¶ 7(b).) The Order also provides that the judge shall state on the record if the court is not presented with sufficient information to make a finding regarding the defendant's ability to pay the ordered bail. (Order at ¶ 9.)

14. Indeed, after the Order was entered, plaintiffs' counsel publicly commented “Chicago is now the largest place in the country to eradicate wealth-based detention,” See Richard A. Oppel, Jr., *Defendants Can't Be Jailed Solely Because of Inability to Post Bail, Judge Says*, NEW YORK TIMES, July 17, 2017, available at <https://www.nytimes.com/2017/07/17/us/chicago-bail-reform.html>.

The Order Moots the Litigation

15. The Chief Judge's Order provides for the very relief requested by plaintiffs from this Court. The Order requires that bail hearings include an inquiry into the defendant's ability to pay monetary bail (Order at ¶ 6) and findings on the record that any monetary bail ordered is considerate of the financial ability of the accused and not oppressive, and that the defendant has the present ability to pay the amount necessary for his release. (Order at ¶ 7).

16. Thus, even if Judicial Defendant's pre-Order practices differed from the requirements of the Order, it is indisputable that the practices mandated by the Order contain the exact relief that plaintiffs seek in their Amended Complaint. (Am. Compl. pp. 25-31.)

17. Because General Order No. 18.8A provides plaintiffs with what was sought in the litigation, this Court cannot grant "effectual relief" to plaintiffs, and the case is moot. *Green v. Bd. Of Mun. Emps, Officers' & Officials' Annuity & Benefit Fund of Chicago*, 309 Ill. App. 3d 757, 763-64 (1st Dist. 1999) (holding that statutory amendment mooted case). Where, as here, the issues have ceased to exist, the matter is moot. *Forest Pres. Dist. of Kane Cnty. v. City of Aurora*, 151 Ill.2d 90, 94 (1992) (statutory amendment mooted litigation); see 735 ILCS 5/2-701(a) (stating that courts may issue declaratory judgments "in cases of actual controversy").

18. In a similar case, the Illinois Supreme Court held that a procedural due process challenge was moot where "the Act's pre-amendment enforcement provisions, challenged by plaintiffs here, have been completely replaced with a new enforcement process that includes notice, a formal hearing, and administrative review. Consequently, we conclude that plaintiffs' procedural due process claim is moot." *Bartlow v. Costigan*, 2014 IL 115152, ¶ 35. Any challenge to the procedures in effect prior to the revision "would have no practical effect" which prevents the court from granting any effective relief to plaintiffs. *Id* at ¶ 36; see also *Richardson*

v. Rock Island Cnty. Officers Electoral Bd., 179 Ill.2d 252, 257 (1997) (dismissal is appropriate because amendment to statute “forecloses the possibility that the issues presented in this appeal will recur in a future case”).

19. Any declaration by this court on the Judicial Defendants’ purported practices prior to the effective date of the Chief Judge’s Order will have no practical effect and would merely constitute an advisory opinion, particularly where, as here, plaintiffs’ request for relief is prospective in nature. In such instances, the matter should be dismissed as moot. *Id.*

20. Furthermore, this case is moot even if this Court considers the procedures required in the Chief Judge’s Order to constitute a voluntary cessation by the Judicial Defendants. Under the voluntary cessation doctrine, “a defendant’s voluntary cessation of allegedly unlawful conduct cannot moot a case unless it is absolutely clear that the defendant’s wrongful conduct could not reasonably be expected to recur.” *Fisch v. Loews Cineplex Theatres, Inc.*, 365 Ill. App. 3d, 537, 540 (1st Dist. 2005). As the Seventh Circuit noted, “a case does cease to be a live controversy if the possibility of recurrence of the challenged conduct is only a ‘speculative contingency.’” *Burbank v. Twomey*, 520 F.2d 744, 748 (7th Cir. 1975). In *Burbank*, a due process challenge to a prison policy was mooted where the relief sought was provided by a “change in policy in the present case [that] has been codified into a formal, published administrative regulation of the Illinois Department of Corrections.” *Id.* The Seventh Circuit contrasted this formal change with a “mere informal promise or assurance on the part of the defendants” or an order that, by its terms, was of “brief duration and the plaintiff may well be again confronted with the challenged conduct when the order terminates.” *Id.* Further, “[w]hen the defendants are public officials, however, we place greater stock in their acts of self-

correction, so long as they appear genuine.” *Magnuson v. City of Hickory Hills*, 933 F.2d 562, 565 (7th Cir. 1991).

21. Here, there is no reasonable basis to expect that the allegedly wrongful procedures for bail hearings will continue to occur in the face of the Order that expressly replaces any prior procedures with the same process requested by plaintiffs. As such, this case is moot even under the voluntary cessation doctrine. *See Fisch*, 365 Ill. App. 3d at 541-42; *Burbank*, 520 F.2d at 748.

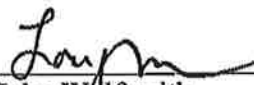
WHEREFORE, for the above and foregoing reasons, Judicial Defendants respectfully move this Court to dismiss the Amended Complaint.

Dated: July 24, 2017

Respectfully Submitted,

LISA MADIGAN
Attorney General for the State of Illinois

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