Maryland's Rule on Waiver of Counsel by Inaction: Making the Perfect the Enemy of the Good

Paolo Pasicolan
Comment

MARYLAND'S RULE ON WAIVER OF COUNSEL BY INACTION: MAKING THE PERFECT THE ENEMY OF THE GOOD

I. INTRODUCTION

Under Maryland law, a criminal defendant has an absolute right to counsel at trial. If she cannot afford legal representation, the State will provide it. However, a defendant can waive this right to counsel voluntarily or by inaction. In the latter case, a constructive waiver of counsel is declared if a defendant repeatedly fails to make a good faith effort to obtain a public defender. Maryland Rule 4-215 governs the process of waiver of counsel. It originates from constitutional doctrine; hence, federal case law influences its applicability. Rule 4-215 specifies a two-step waiver process. A court must first provide the defendant with a mandatory advisement of rights pursuant to section (a). Appellate review of the proper dispensation of these advisements is highly formalistic. The second step of the process is the waiver inquiry as required by Rule 4-215(c) or (d). This inquiry allows a defendant to abate a waiver by inaction by giving the court a "meritorious reason" for appearing unrepresented. Only after this process is properly administered may a court declare that a defendant waived counsel and proceed to trial.

1. See Sites v. State, 300 Md. 702, 712 n.3, 481 A.2d 192, 197 n.3 (1984) (noting that the right to counsel provisions of the Maryland Constitution are to be considered in pari materia with the Sixth Amendment); see also Gideon v. Wainwright, 372 U.S. 335, 344 (1963) (incorporating into the Fourteenth Amendment the right to counsel for all criminal defendants).
4. Md. R. 4-215(c)-(d). Section (c) governs waiver by inaction for district court cases, whereas section (d) governs waivers in circuit court.
5. See Leonard v. State, 302 Md. 111, 126-27, 486 A.2d 163, 170 (1985) ("[A] defendant may waive his right to counsel . . . by neglecting or refusing to obtain counsel.").
7. See Leonard, 302 Md. at 119-24, 486 A.2d at 166-69 (discussing the interaction between federal and Maryland law on waiver of counsel).
10. Md. R. 4-215(c) & (d).
11. Id.
12. Id.
The Court of Appeals of Maryland demands strict compliance with Rule 4-215 to promote three goals: simplicity of procedure, fairness in administration, and the protection of a defendant’s fundamental rights. This Comment examines how, contrary to the goals mentioned above, the waiver process has become inefficient, unfair, and unnecessarily formalistic. The process is inefficient in part because appellate courts have construed the statutory language narrowly and created additional procedural requirements that are often vague and difficult to apply. They also have elevated form over substance to reverse seemingly valid waiver determinations, thereby allowing virtually no valid waivers. In effect, appellate courts have judicially vetoed legislation by gradually construing Rule 4-215 in a narrow fashion. As this Comment ultimately suggests, these judicial machinations are unnecessary because a less rigid interpretation of the rule will still protect a defendant’s fundamental right to counsel. This Comment advocates that Maryland can achieve equilibrium between fairness and efficiency by allowing substantial compliance with the rule so long as it does not prejudice the defendant. It specifically suggests that, at the very least, appellate courts should consider maintaining the current construction of the rule without creating new

14. See, e.g., *Johnson* v. State, 355 Md. 420, 454, 735 A.2d 1003, 1021 (1999) (allowing the defendant to appear unrepresented seven times before declaring a waiver of counsel by inaction); *Moten* v. State, 339 Md. 407, 408-09, 663 A.2d 593, 594-95 (1995) (reversing a conviction because the trial judge did not formally inform the defendant of his possible punishment, even though the defendant said he understood the consequences because he had recently been convicted of the same crime); *Webb* v. State, 144 Md. App. 729, 734, 800 A.2d 42, 45 (2002) (invalidating a waiver determination because the judge had the prosecutor read aloud the defendant’s charges rather than personally dictating them to the defendant).
15. See, e.g., *Richardson* v. State, 381 Md. 348, 371, 849 A.2d 487, 500 (2004) (requiring a trial judge to conduct a “personal interrogation” to determine that a defendant understood mandatory advisements given via video or en masse); *Johnson*, 355 Md. at 461, 735 A.2d at 1025 (requiring the mandatory advisements to be given point-by-point at one time).
16. See, e.g., *Moten*, 339 Md. at 408-09, 663 A.2d at 594-95 (invalidating a waiver determination because the defendant was not formally informed of the possible punishment upon conviction in the precise manner prescribed by rule and despite evidence that the defendant actually knew about the punishment); *Parren*, 309 Md. at 276, 523 A.2d at 605 (same).
18. See *Johnson*, 355 Md. at 446-49, 464, 735 A.2d at 1018-19, 1027 (examining, but ultimately declining to adopt, a harmless error analysis in evaluating waiver determinations).
requirements unless they are absolutely necessary to avert structural injustice.\textsuperscript{19}

II. BACKGROUND

A. Constitutional Bases of the Maryland Rule on Waiver of Counsel

The Maryland rule on waiver of counsel is rooted in two constitutional rights that govern representation at trial: the right to counsel and the right of self-representation.\textsuperscript{20} The former is expressly embodied in the Sixth Amendment, which states that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”\textsuperscript{21} The Supreme Court has construed this language to guarantee criminal defendants the assistance of counsel in both federal and state courts.\textsuperscript{22} Implicit in the right to counsel is the correlative right to refuse the services of a lawyer.\textsuperscript{23} Without it, the government might conceivably force counsel upon an unwilling defendant.\textsuperscript{24} Over time, the Court recognized this implied right of self-representation as an independent constitutional right under the Sixth Amendment, thereby incorporating it into the Fourteenth Amendment and applying it to the states.\textsuperscript{25} To trigger this right, a defendant must “knowingly and intelligently” waive the right to counsel.\textsuperscript{26} The standard of proof necessary for a trial judge to approve such a waiver depends on the particular facts of each case, including the background, experience, and conduct of the accused.\textsuperscript{27} In some

\textsuperscript{19} See infra notes 219-230 and accompanying text (discussing how a harmless error analysis promotes efficiency and fairness without undermining a criminal defendant’s fundamental rights).


\textsuperscript{21} U.S. CONST. amend. VI.

\textsuperscript{22} The Supreme Court’s modern construction of the Sixth Amendment right to counsel finds its genesis in Powell v. Alabama, where the Court formally recognized this right as “fundamental.” 287 U.S. 45, 63, 68 (1932). The holding in Powell, however, limited the right to counsel to capital cases in federal court, involving defendants of limited capacity. Id. at 71. In Gideon v. Wainwright, the Court expanded the right to counsel to all criminal cases and incorporated it into the Fourteenth Amendment’s Due Process Clause, making it mandatory for the states. 372 U.S. 335, 342, 344 (1963).


\textsuperscript{24} Id.

\textsuperscript{25} See Faretta v. California, 422 U.S. 806, 807 (1975) (holding that a state may not force a criminal defendant to accept state-appointed counsel). In Johnson v. Zerbst, the Court had previously allowed defendants to waive the right to counsel in federal court thereby invoking the implied right of self-representation. 304 U.S. 458, 467-68 (1938) (holding that when the right to counsel is properly waived, the assistance of counsel is no longer a necessary element of due process).

\textsuperscript{26} Faretta, 422 U.S. at 835 (citing Zerbst, 304 U.S. at 464-65).

\textsuperscript{27} Zerbst, 304 U.S. at 464.
jurisdictions, a defendant's obstructionism may constitute a constructive waiver of the right to counsel.\textsuperscript{28}

Maryland law generally parallels federal law in this area. Article 21 of the Maryland Declaration of Rights states that "in all criminal prosecutions, every man hath a right . . . to be allowed counsel."\textsuperscript{29} The Court of Appeals interprets this right to be in pari materia with the Sixth Amendment right to counsel,\textsuperscript{30} meaning that a valid waiver of counsel in state court also must be made knowingly and intelligently.\textsuperscript{31} Maryland, however, has chosen to impose requirements that exceed this constitutional floor,\textsuperscript{32} and Rule 4-215 sets the applicable standard.\textsuperscript{33} It enumerates the actions a person must take to waive counsel and the procedural requirements with which a trial court must comply to sanction the waiver.\textsuperscript{34} Under Rule 4-215, a person can waive counsel expressly\textsuperscript{35} or by inaction.\textsuperscript{36} The latter is a two-step process.\textsuperscript{37} To declare a valid waiver of counsel by inaction, a judge must (1) provide the mandatory advisements of subsection (a)\textsuperscript{38} and (2) conduct a waiver inquiry specified under subsections (c) or (d).\textsuperscript{39}

\textbf{B. The Formalistic Application of the Mandatory Advisements}

Maryland Rule 4-215(a) requires a trial court to (1) provide the defendant with a copy of the charging document, containing notice of the right to counsel; (2) inform the defendant of the right to, and


\textsuperscript{29} Md. Const. Decl. of Rts. art. 21.

\textsuperscript{30} Sites v. State, 300 Md. 702, 712 n.3, 481 A.2d 192, 197 n.3 (1984).


\textsuperscript{32} State v. Wischhusen, 342 Md. 530, 543 n.10, 677 A.2d 595, 601 n.10 (1996).

\textsuperscript{33} Md. R. 4-215. Maryland Rule 4-215 was derived from former Rules 723 and 726. \textit{Id.}

\textsuperscript{34} \textit{Id.}

\textsuperscript{35} Md. R. 4-215(b). A person also may discharge his or her counsel. Md. R. 4-215(e).

\textsuperscript{36} Md. R. 4-215(c)-(d). Section (c) pertains to the district court and section (d) to the circuit court. \textit{See also} Leonard v. State, 302 Md. 111, 126-27, 486 A.2d 163, 170 (1985) (finding that a criminal defendant may waive his right to counsel by affirmatively refusing, or neglecting, to obtain counsel).


\textsuperscript{38} Md. R. 4-215(a). The mandatory advisements are also referred to as the "checklist" and the "litany." Johnson v. State, 355 Md. 420, 426, 454, 735 A.2d 1003, 1006, 1021 (1999).

\textsuperscript{39} Md. R. 4-215(c) & (d).
importance of counsel; (3) advise the defendant of the nature of the charges and their allowable penalties; (4) conduct a Rule 4-215(b) waiver inquiry if the defendant expressly waives counsel; and (5) advise the defendant that if he appears unrepresented at trial, the court could find that he waived counsel and proceed with the trial.  

In Parren v. State, the Court of Appeals held that Rule 4-215(a) demands strict compliance; substantial compliance will not suffice.\footnote{309 Md. 260, 280, 523 A.2d 597, 607 (1987).} Parren involved a waiver of counsel made expressly rather than by inaction.\footnote{Id. at 266, 523 A.2d at 600.} It is nonetheless instructive because an express waiver of counsel under Rule 4-215(b) requires a similar bipartite process, the first step of which is identical to that of a waiver by inaction.\footnote{See Md. R. 4-215(b) ("If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry.").} That is, a court must properly advise the defendant pursuant to Rule 4-215(a) before counsel can be voluntarily discharged or waived. The defendants in Parren chose to voluntarily waive counsel and represent themselves at a criminal trial that resulted in their conviction.\footnote{Parren, 309 Md. at 267, 523 A.2d at 600.} The Court of Appeals reviewed the waiver determination, which was affirmed by the Court of Special Appeals, and held that the trial court complied with every statutory requirement except subsection (a)(3).\footnote{Id. at 266, 282, 523 A.2d at 600, 608.} Specifically, the judge failed to formally advise the defendants of the penalties associated with their alleged crimes.\footnote{Id.} The Parren court recognized that the defendants probably had actual, if not constructive, knowledge of the penalties because, during pre-trial proceedings, the defendants cited the sections of the Maryland Code that contained them.\footnote{Id. at 276, 523 A.2d at 605.} The Court of Appeals nevertheless reversed their convictions because the trial judge did not strictly comply with Rule 4-215(a).\footnote{Id. at 280, 523 A.2d at 607.} Strict compliance, the court declared, is necessary to ensure simplicity of procedure, fairness in administration, and the protection of a defendant's fundamental rights.\footnote{Id.}

The Court of Appeals reaffirmed Parren in Moten v. State, a factually similar case. As in Parren, the defendant in Moten discharged his assigned counsel and proceeded pro se to a seemingly preordained trial conviction.\footnote{339 Md. 407, 408-09, 663 A.2d 593, 594 (1995).} Once again, it was undisputed that the judge failed
to inform the defendant of the relevant penalties as required by sub-
section (a) (3).\(^{51}\) To the Court of Special Appeals, however, the omis-
sion was harmless error because there was convincing evidence that
the defendant knew his possible punishment.\(^{52}\) Moten had been con-
victed of the same crime two months earlier, and in the present case,
when the trial judge asked him if he understood the consequences of
a guilty verdict, he answered yes.\(^{53}\) Reversing the intermediate court’s
decision, the Court of Appeals declined to sanction a harmless error
analysis and upheld Parren without modification, ordering a new trial
for the defendant.\(^{54}\) Two years later, in Okon v. State,\(^{55}\) the Court of
Appeals reinforced Parren and Moten in a one-page opinion.\(^{56}\)

The Court of Appeals extended the doctrine of strict compliance
to waivers of counsel by inaction in Johnson v. State.\(^{57}\) The trial judge
in that case held that the defendant waived counsel by inaction after
appearing unrepresented seven times.\(^{58}\) The Court of Special Appeals
found substantial compliance with Rule 4-215(a) because three docu-
ments showed that the defendant had been given virtually all the
mandatory advisements.\(^{59}\) First, the bail review docket, signed by the
district court judge, indicated that the defendant received a copy of
the charging document, was informed of the right to and importance
of counsel, and was referred to the public defender.\(^{60}\) Second, the
“Initial Appearance Report,” signed by both a district court commis-
ioner and the defendant, contained each charge and their allowable
penalties.\(^{61}\) Third, the “Notice of Advice of Right to Counsel,” signed
by both the commissioner and the defendant, warned the defendant
that failure to obtain a public defender may result in a waiver of coun-
sel.\(^{62}\) The Court of Appeals agreed that there was substantial compli-
cance, but it nevertheless vacated the judgment because Rule 4-215(a)
demands strict compliance.\(^{63}\) The court identified several procedural
discrepancies that left the waiver proceeding wanting.\(^{64}\) A district

\(^{51}\) Id. at 409, 663 A.2d at 594.
\(^{52}\) Id., 663 A.2d at 595.
\(^{53}\) Id. at 408-09, 663 A.2d at 594-95.
\(^{54}\) Id. at 409, 663 A.2d at 595.
\(^{55}\) 346 Md. 249, 696 A.2d 441 (1997).
\(^{56}\) Id. at 249, 696 A.2d at 442.
\(^{57}\) 355 Md. 420, 446, 735 A.2d 1003, 1017 (1999).
\(^{58}\) Id. at 454, 735 A.2d at 1021.
\(^{59}\) Id. at 425-26, 435, 735 A.2d at 1006, 1011.
\(^{60}\) Id. at 426, 735 A.2d at 1006.
\(^{61}\) Id.
\(^{62}\) Id.
\(^{63}\) Id. at 452-53, 735 A.2d at 1020-21.
\(^{64}\) See id. at 453-64, 735 A.2d at 1021-25.
court commissioner rather than a judge signed the Initial Appearance Report, which covered all five mandatory advisements, as well as the Notice of Advice of Right to Counsel, which included advisements (2) and (5). The Johnson court concluded that to strictly comply with Rule 4-215(a), a trial judge must go through the mandatory advisements with the defendant “point-by-point” and not in a “piecemeal” fashion.

The Court of Special Appeals in Webb v. State emphasized that if a judge does not personally dispense each and every mandatory advisement, the subsequent waiver determination is ipso facto invalid. The trial judge in that case attempted to comply with Rule 4-215(a) by going through the mandatory advisements with the defendant. Subsection (3) requires that the defendant be advised of the nature of the charges and the allowable penalties. To comply with this subsection, the judge asked the defendant if he knew the charges he faced, and he said yes. The judge then asked the defendant if he nevertheless wanted the charges read to him, and he said yes. To meet this request, the judge directed the state’s attorney to read aloud the charges and their associated penalties. The defendant was then asked if he understood the state’s attorney’s recitation, and he said he did. The judge gave the remainder of the mandatory advisements in proper fashion. Three months later, the defendant appeared in court for trial without counsel and the judge declared a waiver by inaction. The Court of Special Appeals reversed this finding because the state’s attorney, rather than the judge informed the defendant about the relevant charges.

Recognizing the formalistic requirements of Rule 4-215(a), the trial court system devised videotaped advisements to eliminate procedural error. The validity of such a procedure was examined in Richardson v. State. The defendant in that case was given the mandatory

---

65. Id. at 455, 735 A.2d at 1022.
66. Id. at 461, 735 A.2d at 1025.
68. Id. at 734-35, 800 A.2d at 44-45.
70. Webb, 144 Md. App. at 734, 800 A.2d at 45.
71. Id.
72. Id.
73. Id. at 735, 800 A.2d at 45.
74. Id. at 734, 800 A.2d at 45.
75. Id. at 736, 800 A.2d at 46.
76. Id. at 740, 800 A.2d at 48.
advise during his first appearance in court. At that time, he was grouped with other defendants and shown an "Advisement of Rights" videotape, containing a judge's recitation of each section (a) advisement. After viewing the video, the defendants were brought before a bail review judge who examined each defendant's case individually. In processing Richardson's case, the judge did not ask whether he watched the video, understood it, or had questions about it. Over the next three months, the defendant appeared in court without counsel three times, which led the trial judge to declare a waiver by inaction. After a trial conviction, the defendant appealed, arguing that the video advisements were insufficient to allow him to make a knowing and intelligent waiver. The Court of Special Appeals ordered a remand, which Richardson appealed, and the Court of Appeals granted certiorari.

The Court of Appeals recognized that the videotape contained every advisement required by the letter of Rule 4-215(a). The court nevertheless vacated the waiver determination, finding that the mere showing of a video does not ensure the defendant's comprehension of those rights. The court held that a trial judge must ensure that the defendant understands the mandatory advisements and the record reflects such an understanding. To be valid, therefore, videotaped or en masse advisements must be supplemented with a "personal interrogation" by a judge to verify that the defendant understood the advisements. Because Richardson received no such interrogation, the court concluded that the record did not unequivocally support a finding of waiver by inaction.

78. See id. at 368, 849 A.2d at 499.
79. Id. at 351, 849 A.2d at 489; Brief for Petitioner at 7, Richardson v. State, 381 Md. 348, 849 A.2d 487 (2004) (No. 41).
80. Richardson, 381 Md. at 354, 849 A.2d at 490.
81. See id. at 354, 849 A.2d at 491.
82. Id. at 355-60, 849 A.2d at 491-94.
83. Id. at 350, 849 A.2d at 488-89.
84. Id. at 360-61, 849 A.2d at 494-95.
85. See id. at 368-69, 849 A.2d at 499 ("[T]he requirement that each defendant be advised pursuant to rule 4-215(a) was discharged by showing a videotape of a judge giving the required advice . . . .").
86. Id. at 376, 849 A.2d at 503.
87. Id. at 369, 849 A.2d at 499.
88. Id. at 371, 849 A.2d at 500.
89. Id. at 376, 849 A.2d at 503.
C. A Waiver Inquiry Lets Defendants Give a "Meritorious Reason" for Appearing Unrepresented

After the court provides the mandatory advisements, Rule 4-215 requires it to conduct a waiver inquiry. Section (c) governs this inquiry in district court while section (d) applies in circuit court. Most waiver determinations precede a jury trial and hence are in circuit court. This Comment will consequently focus on section (d). That section provides that if a defendant appears at trial without counsel, but nonetheless expresses a desire for representation, "the court shall permit the defendant to explain the appearance without counsel." If the court determines that this explanation is "meritorious," it shall postpone the trial; otherwise, it may declare a waiver of counsel by inaction and proceed to trial.

Rule 4-215(d) is mandatory and noncompliance constitutes reversible error. Unlike section (a), this section does not require the inquiry to be conducted in any particular form. At minimum, however, a court must allow the defendant to explain an appearance without counsel and consider whether this explanation is "meritorious." Maus v. State involved the failure of a trial judge to ask the defendant why he appeared unrepresented. The defendant in that case appeared for his probation hearing without counsel three times. When this happened a fourth time, the judge declared a waiver by inaction without asking the defendant for an explanation. The court then proceeded with the hearing, which predictably resulted in the revocation of the defendant’s probation. The Court of Special Appeals affirmed, but the Court of Appeals reversed, admonishing

---

90. Md. R. 4-215(c) & (d).
91. Id.
92. Subsection (c) is nearly identical in language and application except that it sets additional conditions for a district court to meet before proceeding to trial. Md. R. 4-215(c). To wit, a district court may declare a waiver by inaction and proceed to trial only if the defendant either is charged with an offense not punishable by a fine exceeding five hundred dollars or imprisonment, or appeared before a judicial officer of the district court pursuant to Rule 4-213(a). Id.
93. Md. R. 4-215(d).
94. Id.
97. Id. at 187, 626 A.2d at 972.
98. Md. R. 4-215(d); Moore, 331 Md. at 185, 626 A.2d at 971.
100. Id. at 113, 532 A.2d at 1080.
101. Id. at 109-10, 532 A.2d at 1078-79.
102. Id. at 110-11, 532 A.2d at 1079.
103. Id.
that it is not enough for a trial judge to allow a defendant an opportunity to explain an unrepresented appearance before declaring a waiver; he must ask the defendant for such an explanation.\footnote{Id. at 95, 113, 532 A.2d at 1071, 1080.}

Once a court asks a defendant to explain an appearance without counsel, it must consider whether the explanation is meritorious.\footnote{Md. R. 4-215(d). Maryland Rule 4-215(c), which applies to the district court, is similarly constructed. Md. R. 4-215(c).} What constitutes a meritorious reason remains purposely undefined.\footnote{See Crowder v. State, 305 Md. 654, 657, 506 A.2d 240, 241 (1986) (stating that no useful purpose would be served by deciding waiver cases based on decisions by other courts and that waiver decisions should be made on a case-by-case basis).} The Court of Appeals recognizes, however, a rebuttable presumption against waivers.\footnote{Johnson v. State, 355 Md. 420, 443, 735 A.2d 1003, 1015 (1999) (citing State v. Renshaw, 276 Md. 259, 264-66, 347 A.2d 219, 224 (1975)).} Additionally, the Court of Special Appeals has indicated, albeit in dicta, that the public defender's denial of a proper request for assistance constitutes a meritorious reason for appearing unrepresented.\footnote{Moreland v. State, 68 Md. App. 78, 85, 510 A.2d 261, 264 (1986).}

Regardless of merit, a court's consideration of a defendant's explanation for appearing unrepresented must be more than "cursory."\footnote{Johnson, 355 Md. at 446, 735 A.2d at 1017; see also Berry v. State, 41 Md. App. 563, 566, 389 A.2d 59, 61 (1979) (stating that "cursory questioning" during a waiver inquiry is invalid), rev'd on other grounds, 287 Md. 491, 413 A.2d 557 (1980).} In \textit{Moore v. State},\footnote{Id. at 181-82, 626 A.2d at 969.} the trial judge asked the defendant why he failed to obtain counsel during the two months between his arrest and trial.\footnote{Id. at 182, 626 A.2d at 969.} The defendant claimed that he could not finish paying his lawyer's fee and did not qualify for a public defender because his income was too high.\footnote{Id. at 186-87, 626 A.2d at 971.} Without additional inquiry, the court deemed that the defendant waived counsel by inaction.\footnote{Id.} The Court of Appeals reversed, however, because the defendant's explanation may have been meritorious, but the trial judge failed to verify it.\footnote{Id. at 181-82, 626 A.2d at 969.} The \textit{Moore} court identified scenarios where further inquiry may have allowed a court to distinguish between a reason that is meritorious and one that is not.\footnote{Id. at 186-87, 626 A.2d at 971.} For instance, the failure to pay one's lawyer, by itself, is not a meritorious reason.\footnote{Id.} If, however, recent unemployment rather than neglect produced such an outcome, that would
make the reason meritorious. Similarly, a defendant has a facially meritorious reason for appearing without counsel if she could not afford a private attorney and the public defender refused to represent her. This reason becomes invalid if the defendant could pay her attorney but did not, or she had a reasonable opportunity to apply for a public defender but made no good faith effort to do so.

The extent to which a court must undertake further inquiry into a defendant’s lack of counsel was addressed again in Gray v. State. The Gray court held that if a defendant’s explanation is “facially meritorious,” further inquiry is required. During the waiver inquiry in Gray, the defendant explained that he thought he could afford a private attorney but was ultimately unable to do so. Then, he applied for a public defender, but missed the deadline. The trial court declared a waiver by inaction because the judge believed that two months was enough time for the defendant to determine whether he could hire private counsel or whether he needed to apply for a public defender. The Court of Appeals reversed, stating that a waiver by inaction presupposes a neglect or refusal to obtain counsel and finding that the judge erred in failing to conduct a further inquiry into the defendant’s facially meritorious reason for appearing without counsel. The court noted that the record did not reflect the extent to which the defendant tried to obtain private counsel because the court did not conduct a further inquiry into the matter.

A similar situation occurred in Blackston v. Blackston. In that case, the defendant’s explanation for appearing without counsel was

117. Id.
118. Id.
119. Id.
121. Id. at 112, 114, 656 A.2d at 769, 770.
122. Id. at 110, 656 A.2d at 768.
123. Id. at 109, 656 A.2d at 767. The public defender requires an indigent defendant to apply ten working days before trial. Id. at 109 n.2, 656 A.2d at 767 n.2.
124. Id. at 110, 656 A.2d at 768.
125. Id. at 112, 656 A.2d at 769.
126. Id. at 114, 656 A.2d at 770.
127. Id. at 113, 656 A.2d at 769.
128. 145 Md. App. 348, 802 A.2d 1124 (2002). Blackston does not directly involve Maryland Rule 4-215. The defendant in that case was found in contempt of court for failing to pay child support. Id. at 351, 802 A.2d at 1125. A contemnor can be incarcerated following a hearing, and he is therefore entitled to be represented by counsel. Md. R. 15-206(e). As in criminal cases, however, a contemnor can waive counsel by inaction pursuant to Maryland Rule 15-206(e). The Blackston court applied case law on Maryland Rule 4-215 because “Maryland Rule 15-206(e) is, in substance, identical to rule 4-215(d).” Blackston, 145 Md. App. at 358, 802 A.2d at 1129.
that his reported income from the previous year made him ineligible for a public defender, but his current finances did not allow him to retain private counsel. The trial court did not consider this a meritorious reason and declared a waiver by inaction. The Court of Special Appeals reversed, reasoning that the trial judge should have questioned the defendant about his finances before deciding whether his explanation was meritorious.

The Court of Appeals in *Moreland v. State* also stated that the trial court is responsible for preserving on the record the factual justification for the waiver. The defendant in that case appeared for trial unrepresented three times before the judge conducted a waiver inquiry. When asked to explain the absence of counsel, the defendant claimed that the public defender rejected his application for exceeding the income threshold. Without further inquiry, the trial judge declared a waiver of counsel by inaction, presumably because he found the explanation to be without merit. The Court of Special Appeals disagreed because the record suggested two mutually exclusive scenarios of equal probability that explained why the defendant had no counsel. The defendant could have failed to make a good faith effort to apply for a public defender. Or, the defendant could have made a timely request that was rejected. Because the law requires a waiver to be supported unequivocally by the record, the *Moreland* court vacated the judgment.

Since Rule 4-215 was amended in 1986, in only one instance, in *Felder v. State*, has a trial court's waiver of counsel by inaction been ultimately upheld on appeal. The defendant in that case was given the mandatory advisements at his initial court appearance. Three weeks later, he appeared at trial without counsel and requested a postponement. The judge granted his request after reiterating the

---

130. *Id.* at 353, 802 A.2d at 1126.
131. *Id.* at 358, 802 A.2d at 1130.
133. *Id.* at 79-80, 510 A.2d at 261-62.
134. *Id.* at 80, 510 A.2d at 262.
135. *Id.* at 80-81, 510 A.2d at 262.
136. *Id.* at 83-84, 510 A.2d at 263-64.
137. *Id.* at 84, 510 A.2d at 263.
138. *Id.*, 510 A.2d at 263-64.
139. *Id.* at 84, 510 A.2d at 264.
140. Maryland Rule 4-215 was amended on April 7, 1986. *Md. R. 4-215*.
142. *Id.* at 645-46, 666 A.2d at 873.
143. *Id.* at 646, 666 A.2d at 874.
mandatory advisements and recommending that the defendant apply for a public defender that day.\textsuperscript{144} One month later the defendant appeared without counsel for the third time.\textsuperscript{145} When asked to explain the absence of counsel, the defendant explained that his family tried to hire private counsel but ultimately failed to do so.\textsuperscript{146} Consequently, when he applied to the public defender's office, they rejected him because it was within ten days of trial.\textsuperscript{147} The defendant acknowledged, however, that he did not apply for a public defender after the postponement when the judge specifically advised him to do so.\textsuperscript{148} Based on these circumstances, the trial judge rejected his explanation as nonmeritorious and declared a waiver of counsel.\textsuperscript{149} The defendant appealed his conviction, arguing that the trial court abused its discretion; he did not specifically allege, however, the misapplication of Rule 4-215.\textsuperscript{150} The Felder court therefore held that there was no abuse of discretion because the trial judge complied with Rule 4-215.\textsuperscript{151}

D. Maryland's Waiver of Counsel by Inaction as Currently Applied

In sum, the following two-step process is required to apply Maryland's rule on waiver of counsel by inaction.\textsuperscript{152} First, a trial court must dispense the mandatory advisements pursuant to section (a).\textsuperscript{153} This section demands strict compliance.\textsuperscript{154} A judge—and no other—must personally dispense each and every mandatory advisement point-by-point at one time.\textsuperscript{155} If the court provides the mandatory advisements through a video or en masse, a judge must personally interrogate the defendant afterwards to verify that the advisements were understood.\textsuperscript{156} The second step of the waiver process is the waiver inquiry.\textsuperscript{157} During this inquiry, the trial judge must ask the defendant for an explanation for appearing unrepresented and carefully con-

\textsuperscript{144.} \textit{Id.}\n\textsuperscript{145.} \textit{Id.} at 647, 666 A.2d at 874.\n\textsuperscript{146.} \textit{Id.}\n\textsuperscript{147.} \textit{Id.}\n\textsuperscript{148.} \textit{Id.}\n\textsuperscript{149.} \textit{Id.}\n\textsuperscript{150.} \textit{Id.} at 650, 666 A.2d at 876.\n\textsuperscript{151.} \textit{Id.} at 651, 666 A.2d at 876.\n\textsuperscript{152.} Md. R. 4-215.\n\textsuperscript{153.} Md. R. 4-215(a).\n\textsuperscript{154.} Parren v. State, 309 Md. 260, 280, 523 A.2d 597, 607 (1987).\n\textsuperscript{155.} Johnson v. State, 355 Md. 420, 461, 735 A.2d 1003, 1025 (1999).\n\textsuperscript{156.} Richardson v. State, 381 Md. 348, 371, 849 A.2d 487, 500 (2004).\n\textsuperscript{157.} Md. R. 4-215(c) & (d).
sider whether the reason given is meritorious.\textsuperscript{158} The court must indulge every reasonable presumption against a waiver, which means that a facially meritorious reason necessitates further inquiry.\textsuperscript{159} A judge can only declare a waiver by inaction when the record unequivocally supports the conclusion that the defendant neglected or refused to obtain counsel.\textsuperscript{160}

\section*{III. Analysis}

The Court of Appeals demands strict compliance with Rule 4-215 to promote three goals: simplicity of procedure, fairness in administration, and the protection of a defendant's fundamental rights.\textsuperscript{161} Regrettably, these goals have not been fully realized. The waiver process is complex and inefficient because appellate courts frequently change the way Rule 4-215 is applied, either by construing it narrowly or implying from it unfounded procedural requirements. They often do so to reverse seemingly valid waiver determinations where justice was served and the spirit of the law, if not its letter, was upheld. Consequently, trial judges are unsure whether they are properly administering the waiver procedure or committing an error that will spawn a new rule. The waiver process is unfair because appellate courts routinely elevate form over substance to reverse a finding of waiver where a defendant's rights have not been violated. Such formalism is unnecessary because a defendant's fundamental right to counsel can be protected by a less rigid construction of the law. The Court of Appeals can balance fairness and procedural efficiency by relaxing the doctrine of strict compliance or, alternatively, adhering to the current construction of the rule, and only creating new requirements when absolutely necessary to avert structural injustice.

A. Constantly Modifying Rule 4-215 Does Not Promote Simplicity in Procedure

The Court of Appeals strictly enforces Rule 4-215 in part to promote simplicity in procedure.\textsuperscript{162} The present waiver process seems simple and straightforward when neatly summarized in an academic

\begin{enumerate}
\item \textsuperscript{158} Mo. R. 4-215(d). Aside from the two mandatory components, a waiver inquiry is not required to follow a particular form. Moore v. State, 331 Md. 179, 187, 626 A.2d 968, 972 (1993).
\item \textsuperscript{159} Gray v. State, 338 Md. 106, 112, 114, 656 A.2d 766, 769, 770 (1995).
\item \textsuperscript{160} Moreland v. State, 68 Md. App. 78, 84, 510 A.2d 261, 264 (1986).
\item \textsuperscript{162} Id. at 281, 523 A.2d at 607.
\end{enumerate}
Yet, despite the abundance of defendants who refuse or neglect to actively seek representation, only once has an appellate court upheld such a waiver. This suggests that Rule 4-215, while simple in the abstract, is difficult to apply. Difficulties arise largely because appellate courts continually change the way the rule is applied. Such frequent modification breeds error rather than promoting procedural simplicity because it confuses trial courts about the proper process.

Reviewing courts have changed the way Rule 4-215 is applied in at least two ways. First, they have construed the rule narrowly to require statutory elements to be followed in a particular manner that is hardly self-evident from the statutory text. For instance, section (a) instructs that “[a]t the defendant's first appearance in court without counsel . . . the court shall [provide the mandatory advisements].” The Johnson court read this to mean that only a judge—and no other—can dispense the section (a) advisements. The Webb court narrowed this interpretation even further, and required the mandatory advisements to come literally straight from the judge's mouth. Appellate courts also have narrowly interpreted the text of section (d). That section states that in conducting a waiver inquiry “the court shall permit the defendant to explain the appearance without counsel.” The Maus court construed this to mean that a trial court should not merely allow a defendant to explain an appearance without counsel upon request; rather, the judge must actually inquire of the defendant why she has no counsel.

The second way in which appellate courts have modified Rule 4-215 is by implying new procedural requirements beyond the plain language of the statute. In interpreting section (a), for example, the Johnson court held that, to be valid, all five mandatory advisements must be given “point-by-point” at one time. This interpretation, while reasonable, is neither explicitly commanded nor manifestly implicit. Indeed, an opposite interpretation is equally reasonable be-

---

163. See supra notes 152-160 and accompanying text (summarizing the waiver process).
165. Md. R. 4-215(a) (emphasis added).
167. Webb v. State, 144 Md. App. 729, 740, 800 A.2d 42, 48 (2002). This rule presumably applies to videotaped advisements as well, but it has not been tested since a judge narrated the video in Richardson. Richardson v. State, 381 Md. 348, 352, 849 A.2d 487, 489 (2004).
168. Md. R. 4-215(d) (emphasis added).
170. This seems anathema to the courts' strict construction of Rule 4-215, but appellate courts have neither acknowledged nor explained this inconsistency.
171. Johnson, 355 Md. at 461, 735 A.2d at 1025.
cause the statute suggests that the mandatory advisements may be given by a court over several appearances. Indeed, Rule 4-215(a) states that the court shall provide the mandatory advisements if "the record does not disclose prior compliance with this section by a judge."172 This suggests that judges may provide the advisements that their predecessors omitted. Another procedural requirement implied from section (a) is the Richardson rule, which requires judges to interrogate defendants to determine if they understood the mandatory advisements given via video or en masse.173 The text of the rule specifies no such verification procedure.174 Appellate courts also have engrafted procedural requirements onto the section (d) waiver inquiry. The Gray court obligated trial judges to conduct a "further inquiry" into a defendant's "facially meritorious" reason for appearing unrepresented.175 Additionally, the Moreland court burdened trial judges with establishing an evidentiary record that unequivocally supports the waiver determination.176 Neither of these requirements is in the rule.177

These judicially devised procedural requirements do not promote procedural simplicity because appellate courts create them to overturn seemingly proper waiver determinations. In Moore, for instance, the district court arguably complied with every element of Rule 4-215 then existing.178 The Court of Appeals nevertheless invalidated its waiver determination because the trial judge failed to make a "further inquiry" into the merits of the defendant's excuse for appearing without counsel.179 The rule does not mandate a further inquiry,180 and the court had not before required such an inquisition.181 A similar fate befell the trial court in Moreland. The trial judge in that case properly dispensed the mandatory advisements, but his ruling was nevertheless vacated because the record did not "unequivocally support" the waiver.182 The burden of proving a meritorious reason

173. Richardson, 381 Md. at 371, 849 A.2d at 500.
174. See Md. R. 4-215(a).
177. See Md. R. 4-215(d).
179. Id. at 186-87, 626 A.2d at 971.
180. See Md. R. 4-215(d).
181. See Moore, 331 Md. at 186-87, 626 A.2d at 971-72 (citing no precedent to require a further inquiry).
for appearing without counsel is not specified by the rule.\textsuperscript{183} Indeed, the text suggests that the onus is on the defendant since section (d) requires her to give a meritorious reason to avert a waiver by inaction.\textsuperscript{184} That notwithstanding, the \textit{Moreland} court burdened trial judges to establish on the record that the defendant did not have a meritorious reason for appearing without counsel.\textsuperscript{185}

The waiver procedure is additionally complex because judicially created requirements are often vague. For example, \textit{Gray} requires that if a defendant provides a "facially meritorious" reason for appearing without counsel, a judge must conduct a "further inquiry" into its validity.\textsuperscript{186} The Court of Appeals, however, does not explain how extensive such an inquiry must be. Using the \textit{Moore} court's hypothetical to illustrate this point, a defendant has a facially meritorious reason for appearing without counsel if she could not afford a private attorney and the public defender refused to represent her.\textsuperscript{187} Appellate courts have not explained to what degree of certainty this explanation must be proven,\textsuperscript{188} nor have they indicated the specific kind of evidence required to verify such a claim.\textsuperscript{189} The same is true for the \textit{Moreland} court's requirement that a waiver determination be unequivocally supported by the record.\textsuperscript{190} Similarly, \textit{Richardson} requires trial judges to verify that a defendant understood the mandatory advisements given via video or en masse.\textsuperscript{191} The \textit{Richardson} court, however, does not explain how comprehensively a defendant must demonstrate her understanding of the advisements. Case law does not indicate whether a judge may simply ask the defendant whether she understood the advisements and be satisfied with an affirmative response.

The lack of precedent affirming waivers of counsel by inaction leaves trial courts with no insight as to the situations in which waivers by inaction may be valid, and, even worse, gives courts the impression that waiver by inaction is effectively never valid. Indeed, the one case where a waiver was upheld, \textit{Felder}, carries almost no precedential

\begin{itemize}
\item \textsuperscript{183} See Md. R. 4-215(d).
\item \textsuperscript{184} Id.
\item \textsuperscript{185} Moreland, 68 Md. App. at 84, 510 A.2d at 264.
\item \textsuperscript{187} Moore v. State, 331 Md. 179, 186-87, 626 A.2d 968, 971 (1993).
\item \textsuperscript{188} Maryland appellate courts have not indicated whether a meritorious reason must be proven by a preponderance of the evidence, clear and convincing evidence, or proof beyond a reasonable doubt.
\item \textsuperscript{189} There is no indication as to what kind of documentary evidence, e.g., tax returns, affidavits from the public defender explaining their rejection of the defendant, suffices to support a finding that the defendant has a meritorious reason.
\item \textsuperscript{190} Moreland, 68 Md. App. at 84, 510 A.2d at 264.
\item \textsuperscript{191} Richardson v. State, 381 Md. 348, 371, 849 A.2d 487, 500 (2004).
\end{itemize}
weight. The defendant in that case appeared unrepresented at his first trial date, so the judge strongly advised him to apply immediately for a public defender. When he appeared without counsel for trial a month later, the court deemed that he waived counsel by inaction. To appeal his conviction, the defendant did not challenge the court’s application of Rule 4-215; rather, he alleged abuse of discretion by the trial judge. Consequently, the Felder court’s commentary on the proper application of the rule is dicta. The dearth of waiver determinations squarely upheld on appeal is problematic as it evinces an unwritten judicial policy to veto legislation. Every time an appellate court has construed the controlling statute, it has restricted a trial judge’s discretion to declare a waiver by inaction. Indeed, the Court of Appeals has upheld every narrow interpretation of Rule 4-215 and reversed any lower court attempt to relax the waiver process. Should this trend continue, and there is no evidence to indicate otherwise, the rule will be construed so narrowly that it will become a dead letter.

B. Elevating Form over Substance Results in the Unfair Administration of Rule 4-215

Maryland appellate courts also justify their strict enforcement of Rule 4-215 as a means to ensure fairness in administration. Contrary to this goal, the doctrine of strict compliance has created a waiver procedure that is unfair, as appellate courts routinely elevate form over substance. That is, reviewing courts reverse waiver deter-
minations, not because of substantive injustice, but because the trial court departed from the prescribed form of the waiver procedure. The *Johnson* court, for instance, reversed a waiver determination because a court commissioner, rather than a judge, gave the defendant the mandatory advisements. The court did not consider whether the defendant understood the advisements or whether a general policy of having commissioners provide them will result in defendants better understanding their trial rights. The court invalidated the waiver because Rule 4-215 requires “the court” to provide the mandatory advisements, and a court commissioner is not “the court.” The formalistic approach employed by the appellate courts is even more apparent in *Webb*. The trial judge in that case went through the mandatory advisements with the defendant point-by-point, during a hearing on the record. Instead of personally informing the defendant of the possible penalties, however, the judge instructed the state’s attorney to read the charges aloud in court. The state’s attorney’s statements were made under the direction and authority of the trial judge. The *Webb* court nevertheless deemed this a violation of the rule and, ipso facto, reversible error. In both *Johnson* and *Webb*, the trial courts achieved the purpose of the law. They informed the defendants of the rights and processes necessary for them to make informed decisions about their respective legal predicaments.

Another way that appellate courts elevate form over substance in applying Rule 4-215 is by valuing constructive knowledge over actual knowledge. Under well-established principles in both property law

understanding of the law that would “exalt form over substance and would not serve the ends of justice”),

200. *Johnson*, 355 Md. at 455, 735 A.2d at 1022.
201. Md. R. 4-215(a).
202. *Johnson*, 355 Md. at 455, 735 A.2d at 1022.
204. Id.
205. Id. at 740, 800 A.2d at 48.
206. See supra notes 57-76 and accompanying text (summarizing *Johnson* and *Webb*).
207. See supra notes 59-62, 68-74 and accompanying text (showing how the defendant in *Johnson* was given the mandatory advisements, albeit by a court commissioner, while the defendant in *Webb* was warned about the possible penalties of a conviction, albeit by the state prosecutor).
208. A subsequent purchaser is indisputably subject to an equitable servitude if she has actual knowledge of it. *Grant S. Nelson et al., Contemporary Property* 663-64 (2d ed. 2002). She may be subject to such a servitude if it is “apparent from the appearance of the property.” *Id.* at 644. It is undisputed that bona fide purchasers are not protected from recording acts if they have actual notice of the prior conveyance. *Id.* at 1008-30. However, there is ongoing dispute over the sufficiency of constructive notice. *Id.*
and civil procedure, actual knowledge trumps constructive knowledge, the latter being but a fictional substitute for the former. Under Maryland's case law on waiver of counsel by inaction, however, constructive knowledge is more important than actual knowledge. For example, Rule 4-215(a)(3) requires the court to advise the defendant of the nature of the charges and their allowable penalties. The trial judges in both Parren and Moten failed to do so, partly because there was clear and convincing evidence on the record that the defendants actually knew the relevant punishments. During a pretrial proceeding, the defendant in Parren cited the specific statutory provision that contains the punishment for his crime. The defendant in Moten had been recently convicted of the identical charged crime, and he confirmed on the record that he understood the penal consequences of a conviction. The trial courts in both Parren and Moten clearly achieved the spirit of the law, if not its letter, yet the Court of Appeals nevertheless vacated their respective judgments because they did not provide the defendants with constructive notice.

Elevating form over substance burdens the court system and delays justice to incoming criminal defendants. As with any other procedural rule, Rule 4-215 seeks to provide defendants with a fair process that is sufficiently expeditious so as not to deny justice to other defendants. The legislature intended for the rule to deter defendants from refusing to obtain counsel or failing to make an effort to do so. Unfortunately, the strict application of Rule 4-215 does not deter defendants from refusing counsel, but allows defendants to use the rule as a tactical mechanism to delay trial and as grounds for appeal. The strict application of the rule also burdens the court system because trial judges are repeatedly postponing cases where the defendant's own conduct caused the delay. For example, the defendant in Johnson made seven unrepresented appearances. Similarly, the defendant in Moreland occupied the court system for nine months despite an eas-

212. Parren, 309 Md. at 276, 523 A.2d at 605.
213. Moten, 339 Md. at 408-09, 663 A.2d at 594-95.
214. Id. at 409, 663 A.2d at 595; Parren, 309 Md. at 280, 523 A.2d at 607.
215. See Johnson v. State, 355 Md. 420, 452, 735 A.2d 1003, 1020 (1999) ("[I]n addition to serving as a protective measure for the accused, Rule 4-215 also serves judicial economy and efficiency by preventing excessive and costly appeals.").
216. Id. at 454, 735 A.2d at 1021.
ily dispensable case.\textsuperscript{217} Of course, it took much longer to process Moreland's case fully because a waiver determination reversed on appeal is almost always remanded back for retrial.\textsuperscript{218}

\textbf{C. Fundamental Rights Can Be Protected Without Sacrificing Procedural Efficiency}

Another reason that appellate courts strictly enforce Rule 4-215 is to protect a criminal defendant's fundamental rights.\textsuperscript{219} As intended by the rule, no defendant has in effect been unjustly deprived of the right to counsel due to inaction; but this is largely because waiver determinations are almost never upheld on appeal.\textsuperscript{220} This suggests that courts prefer to sacrifice judicial economy to protect a defendant's fundamental rights. Such a tradeoff is unnecessary, however, because a less stringent standard of review can both protect a defendant's rights and promote procedural efficiency. In many cases discussed above, the defendants would not have been deprived of their fundamental rights had the appellate courts affirmed rather than reversed their waiver determinations. The defendants in \textit{Parren} and \textit{Moten}, for instance, knowingly and intelligently waived their right to counsel by inaction.\textsuperscript{221} The same can be said of the defendant in \textit{Johnson}, who appeared in court without counsel seven times over the course of nine months before a judge finally declared a waiver of counsel by inaction.\textsuperscript{222} During that period, he was repeatedly reminded of his right to counsel and the obligations associated with it, but he did nothing.\textsuperscript{223} The \textit{Webb} case was reversed solely on a semantic technicality because the judge had the state's attorney read the charges rather than doing it himself.\textsuperscript{224}

These cases were reversed primarily because the court believes that a Manichean application of the rule will promote simplicity in procedure and fairness in administration.\textsuperscript{225} Given that these ends


\textsuperscript{218} See Mitchell v. State, 337 Md. 509, 516, 654 A.2d 1309, 1313 (1995) ("Without exception, we have ordered a new trial in cases involving a trial court's failure to comply with Rule 4-215(d)").

\textsuperscript{219} \textit{Parren}, 309 Md. at 281, 523 A.2d at 607.

\textsuperscript{220} \textit{Felder v. State} is the only instance where a trial court's waiver of counsel by inaction has been ultimately upheld on appeal. 106 Md. App. 642, 666 A.2d 872 (1995).

\textsuperscript{221} See supra notes 41-54 and accompanying text.


\textsuperscript{223} Id. at 434, 735 A.2d at 1011.

\textsuperscript{224} See supra notes 67-76 and accompanying text.

\textsuperscript{225} See Parren v. State, 309 Md. 260, 282, 523 A.2d 597, 608 (1987) (absolving trial courts of even minor procedural violations "would enhance complexity rather than secure
have not been achieved by the chosen means,\textsuperscript{226} it may be better for the court to relax the rigid construction of the rule.\textsuperscript{227} Specifically, the Court of Appeals should reconsider adopting a “substantial compliance”/“harmless error” standard based on “unequivocal support” on the record. Under such a standard, a trial court must substantially comply with the rule, and any procedural error will not be reversed if it is harmless beyond a reasonable doubt.\textsuperscript{228} Concomitantly, the record must unequivocally support any waiver-by-inaction determination.\textsuperscript{229} Such a policy would eliminate hypertechnical scrutiny of a trial court’s findings and avoid the reversal of truly trivial procedural oversights that do not affect the trial. Of course, such a proposal would not bar appellate courts from reversing flagrant abuse of judicial discretion. Should this be too radical a departure from precedent, then at the very least there is no need to make the procedure to waive counsel by inaction any stricter. Indeed, appellate courts should stop construing the statutory language more narrowly and creating new procedural requirements beyond those specified under the rule. Lastly, to promote a truly fair and simple waiver process, the Court of Appeals should affirm the next properly administered waiver of counsel by inaction to create a template for lower courts to follow.\textsuperscript{230}

\section*{IV. Conclusion}

Maryland provides counsel at state expense to criminal defendants who cannot afford a lawyer. It is incumbent upon such defendants, however, to make a good faith effort to obtain a public defender; otherwise, they may forfeit the right to counsel by inaction. Maryland Rule 4-215 specifies the process that advises defendants of their legal rights and obligations so that any waiver of the right to counsel is done knowingly and intelligently. This rule seeks to create a procedure that is fair and efficient: one that preserves an individual’s funda-

\begin{footnotesize}
\textsuperscript{226} See supra notes 162-218 and accompanying text.
\textsuperscript{228} See Johnson, 355 Md. at 425-26, 735 A.2d at 1006 (noting the State’s position that the trial court properly found the defendant waived his right to counsel where there was substantial compliance with the rule).
\textsuperscript{230} See Felder v. State, 106 Md. App. 642, 650, 666 A.2d 872, 876 (1995) (determining that there was no failure of compliance with the rule, yet raising a question as to the widespread applicability of the decision).
\end{footnotesize}
mental rights but also dispenses justice swiftly. Regrettably, Maryland's appellate courts have exalted the former at the unnecessary expense of the latter. They have done so by requiring strict compliance with the rule, a policy that has proven counterproductive because it has resulted in a waiver process that is difficult to apply, unfair, and unnecessarily formalistic. Appellate courts can craft a fair and efficient waiver process by either easing the strict construction of Rule 4-215 or, alternatively, avoiding further unnecessary procedural engraftments.

Paolo Pasicolan