



May 3, 2019

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
e-mail: criminalrules@pacourts.us

Re: Proposed new PA Rules of Criminal Procedure impacting the incarceration of indigents for failure to pay in summary cases and the right to counsel.

Dear Mr. Wasileski and the Criminal Procedural Rules Committee:

My name is Jake Goodman and I am the Executive Director of the Opportunity Fund, a foundation based in Pittsburgh that supports, among other things, social and economic justice.

Since 2015, we have been providing grants to organizations working on civil rights. We frequently meet with these organizations and, I am proud and grateful to write, with the individuals, loved ones and community members of those whose lives are directly impacted by the web of injustices caused by their lack of access to what are, and should be, basic civil rights.

The issue and impact of court fees and fines in juvenile courts are often detrimental as they are exacerbated by children's financial dependence. In our conversations with applicants, grantees, and neighborhood residents, we hear heartbreaking stories of young individuals who are penalized simply because they do not have the funds to pay court fees or retain counsel – and whose lives are then forever changed. The heartbreak of this injustice only begins with the individual being incarcerated. Just as the course of the individual's life is forever changed, so is that of their parents, children, loved ones, friends, etc. I find it outrageous that this too-common story could be significantly interrupted if we simply decided to change the Rules.

The fines and costs imposed by courts have a disproportionate effect on Black communities. Black people are stopped by police at disproportionately higher rates; they are arrested at disproportionately higher rates; they find themselves in courts at disproportionately higher rates; Black communities live in poverty at disproportionately higher rates; and the disparate rate at which Black individuals are incarcerated only exacerbates all of these problems. When individuals are incarcerated, they cannot develop a career or build financial independence. They face towering barriers in their efforts to support their families, parent their children maintain loving relationships, etc. Changing the Rules around the imposition of these court fines is not just an issue for the states, but a real civil rights issue.

For all of these reasons, I am writing to provide a comment in strong support of the changes to the rules that govern fines and fees that are being considered by the Criminal Procedural Rules Committee of the State Supreme Court. Likewise, I am writing to urge the Committee and the Supreme Court to provide clearer, more specific and binding instructions to the Magisterial District Court Judges (MDJs) on this issue.



There is desperate need for specific, binding instructions to courts on how to determine ability to pay. Last year, in the Commonwealth vs Smetana, the Superior Court explained that ability to pay is a question only of the defendant's finances, not whether the defendant can borrow money from friends or family—something my colleagues in the legal field tell me happens far too often. MDJs are unlikely to conduct the legal research necessary to find this point.

At the present moment with the present rules, I can only imagine that the decisions MDJs are required to make about the ability of any individual to pay a court fine are completely arbitrary. If I am correct, there are not presently any clear rules that reflect past precedent. This directly creates injustices that, again, too often irrevocably change the lives of individuals who cannot pay the fees. The Rules must incorporate the case law mentioned above, and should build on it, as other states have, to make clear presumptions of indigence and an inability to pay if:

1. The defendant's net income (after tax and other non-discretionary automatic deductions) is less than or equal to 125% of the federal poverty level.
2. The defendant receives income-based public assistance, including, but not limited to, Supplemental Nutrition Assistance Program (SNAP or food stamps), Medicaid, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state-based benefits;
3. The defendant is or has been within the past six months homeless, incarcerated, or residing in a mental health facility;
4. The defendant is on his or her own unable to meet basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and dependent care.

The Opportunity Fund also focuses its funding on tangible aid, direct assistance and public benefits. It is common practice for organizations working in world of social services, human services and provision of safety net resources to use standards like the ones listed above to determine what kind of benefits a person should get. Why would the courts not use the same rules when working with the same population? This is a commonsense approach that will make the lives better for defendants (and, I imagine, easier for the MDJs).

Likewise, when access to representation and justice is conditioned on a person's ability to pay fines, fees, and other costs to the courts, research shows that the disparities of class, race, and ethnicity are magnified and exacerbated.

Therefore, the Rules Committee should include within the text of the proposed new rules, specifically Rule 456, that a defendant has the right to counsel at any default hearing. The rule should also state that a sentence of imprisonment may not be imposed unless the defendant has had the opportunity to consult with counsel and was represented by counsel at the hearing. For those found financially unable to retain counsel, provisions should be made for the appointment of qualified counsel.

Thank you for your attention to these comments.

Sincerely,

Jake Goodman
Executive Director