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Subject: public comment - proposed crim. proc. rulemaking
To: criminalrules@pacourts.us
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To:

Jeffrey M. Wasileski, Counsel

Supreme Court of Pennsylvania

Criminal Procedural Rules Committee

[601 Commonwealth Avenue, Suite 6200](#)

[Harrisburg, PA 17106-2635](#)

Submitted via e-mail to criminalrules@pacourts.us

Re: Public Comments to Notice of Proposed Rulemaking – Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454 and 470

Dear Mr. Wasileski:

In anticipation of the above proposed Rules revisions, I write as a serving Magisterial District Judge to briefly share my observations based on practical application of governing procedures in real-world scenarios related to failure to pay LFOs in traffic & non-traffic summary offense cases.

When conducting an initial or subsequent payment determination hearing on fines and costs, I believe it is incumbent upon the presiding judge to conduct a thorough colloquy to identify as many relevant factors as possible pertaining to: current employment status and wages/salary; all other sources of available income; assets (with focus on liquid portion); existing debts; regular anticipated expenses necessary for subsistence; number of dependents, *etc.* Even with all this information, the task of condensing the data into a “totality of the circumstances” in justly determining an affordable recurring payment amount is often daunting with many people in my district. An obvious challenge exists in assigning appropriate weight to the various factors in assessing whether a defendant can afford a set amount, or indeed any amount. Despite best efforts, the judge may nevertheless be left with an uneasy feeling that the resulting payment schedule ordered is subjective and unintentionally arbitrary (*i.e.*, at present, judges of good will could reach vastly different conclusions from the same set of financial circumstances). For these reasons, any additional guidance from the Rules would be of great value. At the very least, judges would benefit from uniform reliable standards in

determining that a defendant with outstanding legal financial obligations is rebuttably presumed to be *unable* to pay presently and for the foreseeable future. Such standards would guide the minor judiciary in more efficiently disposing of cases fully and finally where payment is not realistic without placing an unconscionable burden on the defendant. Simply put, despite its considerable authority a court cannot order “blood from a stone,” and thus should be afforded express discretion to absolve uncollectible debts without potential fear of an adverse auditor finding.

The judiciary would no doubt reduce or even prevent arbitrariness/unfairness in payment orders if the Rules and/or Comments create a rebuttable presumption that a defendant is deemed unable to pay *any* amount if certain conditions are identified and duly noted, such as income at or below a certain percentage (*e.g.*, 125%) of the current published federal poverty guidelines. Alternatively or additionally, presumptions of indigence could be tied to defendant’s reliance on means-based public assistance (SSI, food stamps, *etc.*) or a conclusion based on the judge’s own calculations that defendant is insolvent. Any such *objective* standards would likely save time, conserve judicial economy and improve overall fairness and equity. Perhaps most importantly, developing clear parameters would likely minimize the possibility of judges improperly committing defendants to incarceration when there is an objectively demonstrable inability to pay.

From an administrative standpoint, it cannot be desirable for courts to maintain a backlog of protracted open cases with unpaid balances when there is no evidence that defendants are financially capable to remit payments at present and their prospects for the future are not likely to improve. Under such circumstances, the availability of an explicitly recognized process for waiving the balance and closing the case would be sensible and much appreciated.

In closing, additional clarity and specificity with regard to baseline standards for ability-to-pay determinations, along with a formalized process to zero-out and close cases inactive due to indigency/insolvency, would directly and substantially benefit the courts, post-sentencing defendants and the communities we serve. Thank you for your consideration.

Respectfully submitted,

Hon. Bruce J. Boni

Magisterial District Judge

District Court 05-3-06

5th Judicial District, Commonwealth of Pennsylvania

