

COMMONWEALTH OF PENNSYLVANIA



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RE: Response to Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 456, and 470

Dear Chairman Perry and Members of the Criminal Procedural Rules Committee:

Thank you for the opportunity to respond to the proposed rule amendments, as published in the January 20, 2018 issue of the Pa. Bulletin, pertaining to the issue of incarceration for indigent defendants. The treatment of indigent defendants is an important consideration for all members of the judiciary, however, Magisterial District Judges (MDJs) are perhaps most frequently challenged to accommodate the economic circumstances of the thousands of defendants who appear before us on a regular basis. Faced with issues of due process and equal protection, MDJs seek to balance fundamental fairness daily.

The proposed rule changes address many of these issues and represent a thoughtful and well-reasoned effort to address these concerns.

The primary purpose of this letter is to identify one area of great concern, not addressed in the proposed rules: the procedural aspect **following a determination of indigency**. The Committee's efforts to identify factors for consideration in determining a defendant's ability to pay are laudable. However, the Rules and Comments are notably silent on the treatment of cases once indigency has been established. Accordingly, this letter seeks an expansion of the Comments to Rules 409, 414, 424, 454 and 456, to provide some much needed consistency and guidance following a determination that a particular defendant is indigent.

By way of background, throughout the Commonwealth there does not exist a consistent method of treatment for cases involving indigent defendants. Some MDJs simply order a “case balance adjustment” which allows for a zero-balance due and permits the case to be closed. In other counties, MDJs are prohibited from closing cases in this manner. Rather, the cases must be transferred to the Court of Common Pleas and, presumably, the President Judge orders the case balance adjustment. A corollary issue involves the audits of MDJ offices as conducted by the Auditor General’s Office. Therein, the auditors recognize that a “court order” is required for these case closures, but question the authority of an MDJ to impose such an “order”.

As noted in the Committee’s Report, one suggestion from the ACLU recognized the “absence of an explicit mechanism for reducing or waiving fees and costs for those who cannot pay”. The Committee concluded that such a “mechanism” was most appropriately addressed by the Legislature.

However, the Committee’s Comment did not expressly articulate the existing authority that recognizes the discretion of an MDJ to effectuate this disposition on a case-by-case basis. See PaR.J.P. 1901. The interests of justice would be well-served by the Committee’s inclusion of Comment language that recognizes the discretion of MDJs to adjudicate a defendant guilty, recognize the defendant as indigent, and accordingly, close the case.

The authority of an MDJ may be found, generally at Title 42 Pa.C.S.:

§1513, Powers of Magisterial District Judges, states in part
“Every magisterial district judge shall have power to issue every lawful process to or to be served or enforced by system and related personnel and to make such lawful orders as his official business may require.”

§1515, Jurisdiction and Venue, “. . . magisterial district judges shall . . . have jurisdiction of all of the following matters: . . . (1) Summary Offenses. . .”

With respect to sentencing:

42 Pa.C.S. §9702, Definitions, states “As used in this chapter “court” and “judge” include (when exercising criminal or quasi-criminal jurisdiction pursuant to section 1515 (relating to jurisdiction and venue)) a magisterial district judge.

42 Pa.C.S. §9723, Determination of Guilt Without Further Penalty
If in the light of all the circumstances, probation would be appropriate under section 9722 (relating to order of probation), but it appears that probation is unnecessary, the court may impose a sentence of guilty without further penalty.

There exists statutory authority for MDJs to adjudicate summary matters and conduct a case by case determination of the defendant's ability to pay the fines and costs assessed. This is not a "mechanism" by which to conduct a wholesale closure of hundreds of cases, but rather a clearly defined judicial responsibility. As such, the Committee might formally recognize this important function, which does not constitute a usurpation of the responsibility of the legislative branch of government. Indeed, it is not within the Legislatures' province to regulate the adjudicative responsibilities of the judiciary, for that we look to the recommendations of this Committee.

It may be helpful to resolve this issue by more specifically defining the concepts involved. On one hand, the "mechanism" contemplated by the Committee would result in the "administrative closure" of certain *categories of cases*. On the other hand, an MDJ's determination that a defendant is indigent results in an "adjudicated closure" reflecting the process in which the *individual matter* is concluded.

As the statutory authority of the MDJ to find a defendant indigent is now established, we may proceed with a "plain language" assessment of the Committee's Comments regarding the factors to consider concerning a defendant's ability to pay. A reading of the Comment, as it appears in Rules 409, 414, 424, 454, and 456, may be viewed as a Hobson's Choice¹; we *must* determine whether the defendant has the financial means to pay, but must always conclude that [s]he does.

It would reflect both the statutory authority and our adjudicative responsibilities to simply recognize this authority in the Comment. In addition, it would acknowledge the Article V authority of the Supreme Court to administer the courts of inferior jurisdiction. Finally, it would clarify a process that has been interpreted in a patchwork manner throughout the state.

Pennsylvania boasts a "unified judiciary." As courts of initial jurisdiction, magisterial district judges are tasked with the jurisdiction to adjudicate summary matters. MDJs decide guilt, impose fines and may sentence defendants to a period of incarceration. In this panoply of judicial responsibility, it defies logic to

¹ *Hobson's Choice*: an apparently free choice when there is no real alternative. www.merriam-webster.com/dictionary

think that MDJs may do all of these things and yet lack the authority to determine if someone is poor. Appeals from such adjudications are *de novo*, at the Court of Common Pleas, where, presumably, the court may conclude the defendant is indigent.

Finally, one must consider the economic cost of this process. In the limited number of cases wherein the defendant is initially determined to be indigent there is no rule to address a requirement that we schedule periodic payment determination hearings to continue to monitor their financial circumstances. There is a direct cost benefit to the finality of our determination. Just as we see in civil process, a determination of *in forma pauperis*, is generally a settled decision. The concept of judicial economy and the allocation of limited staff resources necessitate the ability to exercise sound discretion. The majority of MDJs understand their communities; defendants who seek to abuse the system are typically identified and held accountable. The judicial system would be well-served if the Comments were to articulate that an MDJ may determine that a case is uncollectible due to the defendant's indigence and close the matter.

In sum, kindly consider the inclusion of language in the Comments that reflects the authority of MDJs to exercise discretion when determining a defendant's ability to pay fines and costs.

Please know that the Honorable Judge David H. Judy, of District 12-2-03, joins in the statements and sentiments expressed in this letter. A copy of his Statement of Agreement and Endorsement is attached hereto

Thank you for your kind consideration.

Respectfully Submitted,

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District 02-3-09