

**Comments to the Criminal Procedural Rules Committee
Concerning Proposed Amendments to Rules Governing Assessment
Of Legal Financial Obligations in Summary Cases
Submitted by Community Legal Services, Inc.**

On behalf of our thousands of impacted clients, Community Legal Services, Inc. (“CLS”) writes to comment upon the proposed amendments of the rules governing the assessment of legal financial obligations (“LFOs”) in summary cases, which were published by the Criminal Procedural Rules Committee (“the Committee”) on January 9, 2018.

CLS provides free civil legal services to the low income population of Philadelphia. We submit these comments to provide context for how LFOs in Pennsylvania impact justice system involved people who live in poverty. Philadelphia has the highest poverty rate of the ten largest cities in the country, with more than 25% of our population living below the poverty line.

CLS supports the well-articulated and detailed comments submitted by the American Civil Liberties Union of Pennsylvania (“ACLU-PA”) on this important topic. We write here separately to emphasize three issues of particular importance to our clients that arise in our practice.

- 1) Ability to pay analysis should be applied to the assessment of all LFOs;
- 2) Standards for affordable payment plans should be established; and
- 3) The requirement that collateral be posted in order for a summary charge to be contested should be eliminated.

I. Commenter’s Interest: Millions of Low Income Pennsylvanians Are Burdened by Criminal Records and by LFOs Connected to Them

One in three American adults has a criminal record. This amounts to over 2.5 million persons in Pennsylvania and over 500,000 persons in Philadelphia. These criminal records operate as an intractable barrier to employment. Eighty-seven percent (87%) of employers conduct criminal background checking, meaning that job applicants are forced to confront their records repeatedly when looking for work.

Over the past twenty years, more than ten thousand Philadelphians with criminal records have sought representation by CLS’s Employment Unit. In 2017, 937 of 1,251 people who sought employment law assistance from CLS did so for help on their criminal records, 75% of all employment intakes. Simply put, criminal records are among the biggest barriers faced by our clients when they are looking for work, and thus are a driver of the widespread poverty in the City of Philadelphia.

From our work with this very large sample of clients with criminal records, CLS has come to the following conclusion: No record is too minor or too old to cause job loss. This principle includes summary cases, despite the fact that Pennsylvania law prohibits the consideration of summary offenses

by employers.¹ Cases of people rejected for summary offenses are common in our office, and are often absurd. For example, take the case of a woman who was fired from a good job because her background check revealed that she was convicted of the summary offense of “disorderly conduct – making a loud noise.” Many employers rigidly demand a “clean record,” notwithstanding that such a policy violates the law and, in cases like this, common sense.

The Pennsylvania General Assembly also understood that summary convictions were problematic for many Pennsylvanians. In 2008, it provided for the expungement of summary offenses after five years of being free of arrest or prosecution.² However, Pa.R.Crim.P. 490(A)(2)(h) requires a petition to expunge a summary offense to indicate whether fines, costs, and restitution have been paid, and the Administrative Office of Pennsylvania Courts will not allow a case to be expunged if LFOs are owed.

Moreover, LFOs are burdensome in their own right, whether or not they prevent a case from being expunged. In 2010, the First Judicial District (“the FJD”) of Philadelphia commenced an effort to collect \$1.5 billion in fines, costs, restitution, supervisory fees, and forfeited bail stretching back to the 1970s from more than 320,000 Philadelphians,³ about 21% of the City’s population. CLS represented many hundreds of clients with LFO collection problems. Most of our clients were very poor (exacerbated because of the employment barrier of having a criminal record) and could not pay more than a few dollars a month.⁴ Although the situation constituted the proverbial effort to get “blood from a stone,” our clients often felt extreme stress when they could not pay what the FJD was demanding of them. After all, the FJD was the entity that convicted them; they were not just some other creditor.

Because of these issues, CLS welcomes the Committee’s proposal to amend the rules governing LFOs for summary cases (and we hope that a similar effort will be undertaken for the rules applicable to felonies and misdemeanors). However, we wish to address several ways in which the proposal is a missed opportunity to resolve serious issues.

II. Ability to Pay Analysis Should Be Applied to the Assessment of All LFOs

LFOs in summary cases are often heavy. In fact, LFOs frequently are more onerous in summary cases than in felony cases. It is very common to see fines of many hundreds of dollars for offenses such as

1 Title 18 Pa.C.S.A. § 9125(b) provides:

(b) Use of information.--Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

This language is understood to mean that only felony and misdemeanor convictions may be considered.

2 18 Pa.C.S.A. §9122(b)(2).

3 The Reform Initiative: First Judicial District Criminal Courts, Commonwealth of Pennsylvania (Interim Report July 2011) (“Interim Report”) at 36.

4 Our experience was consistent with the finding in the Interim Report that 70% of the persons from whom collections were sought were elderly, disabled, receiving public assistance, unemployed, or otherwise have no source of cash income. *Id.* at 38.

disorderly conduct, harassment, loitering, and obstruction of highways. Excerpts of a few typical dockets are attached to these comments.

As noted, CLS's low income clients usually cannot pay these hefty LFOs. When they are unpaid, they generally are sent to collections, resulting in another 25% fee that makes them more unaffordable and prevents the underlying cases from being expunged. Because the cases cannot be expunged, the client has an employment barrier, making payment even less likely, creating a vicious circle. These fines are counterproductive even from the collection standpoint; our clients would be more likely to scrape together funds to pay something if their LFOs were at a reasonable level where they could actually be paid off.

We strongly support the recommendation by ACLU-PA that excessive LFOs should not be assessed at the front end, whether "discretionary" or "mandatory," given the applicable legal principles set out in their comments. The judge or magisterial district justice should be required to inquire into the defendant's ability to pay before the costs are assessed. Ability to pay analysis leading to fair and balanced LFOs will both satisfy the punitive function of the LFO and permit low-income people to move on from these minor offenses the same way higher-income people are able to.

III. Standards for Affordable Payment Plans Should Be Established

In the FJD, payment plans are usually established in "payment plan conferences" held by the Office of Court Compliance. The default payment assessed is \$35 per month. After advocacy by CLS, the FJD agreed to require a maximum of \$10 a month from persons receiving public benefits as their income, and a deferral can be provided if the person has no income. However, the FJD resisted our efforts to implement a graduated payment schedule based on income. The FJD has also arbitrarily increased the minimum payment requirement and refused to allow payment deferrals when individuals go unrepresented.

In our experience, the \$35 baseline payment is lower than the monthly payments demanded in other counties, but even it is unaffordable for many. And even the existing standards are not necessarily applied. Clients often walk away from payment plan conferences with a payment plan that they cannot realistically hope to comply with, based on their low incomes and regular expenses. Take for example a recent CLS client who came to us because she had been forced into a payment plan of \$1,012.00 per month. As a single mom making \$8.25 per hour for 25 hours of work per week, the amount she was being told to pay actually exceeded her monthly income.

Surely, there is some role for discretion in the assessment of LFOs and the determination of monthly payment amounts. But this should be discretion guided by principles established by court rules.

CLS advocated unsuccessfully with the FJD for the following monthly standards, which we urge this Committee to consider. LFOs should be assessed in one consolidated payment plan.⁵ The court staff who determine these payment plans could depart up or down as appropriate for special circumstances,

⁵ Note that the 2018 federal poverty guidelines are \$1012 for a family of one; \$1372 for a family of two; and \$1732 for a family of three.

such as burdensome expenses. However, they should be required to articulate their reasons in writing for any upward adjustment.

- No income – Deferral of payments, with review in 6 months
- Public benefits as income - \$10
- Income at \$600/mo or below - \$10 (this tracks the typical SSI payment)
- Income at \$601-\$800/mo - \$15
- Income at \$801-\$1000/mo - \$20
- Income at \$1001-\$1250/mo - \$25
- Income at \$1251-\$1600/mo - \$30
- Income over \$1600/mo - \$35

IV. The Requirement that Collateral Be Posted in Order for a Summary Charge to be Contested Should Be Eliminated

Fortunately, the FJD does not require collateral to be posted for a defendant to contest summary charges. But CLS’s clients do encounter this practice if they are charged with a summary in neighboring counties.

The case of JM is instructive. She is a single mother of four children, one of whom has cerebral palsy. She also provides care for her father. She supports her family by working as a private duty nurse when she can. One weekend, her sister and she went to a sports bar just over city limits to enjoy themselves. Unfortunately, a free-for-all broke out in the club, and JM found herself with two citations, for disorderly conduct and public drunkenness. She does not otherwise have a criminal record. She has been informed that she must send \$150 to contest these citations. This is not an easy ask of a currently unemployed mother who is scrambling to make ends meet. The result is that she has not been able to front the money, and bench warrants are pending for her, for alleged conduct that obviously was not even worth misdemeanor charges.

Contesting criminal charges should not require a defendant to pay up front. The proposed rule providing for a hardship exemption is a good change. But the devil is in the details. Will that exemption be made clear and easy to exercise? Will defendants be discouraged from using it? A better solution would be to remove Pennsylvania from the small minority of states that require the posting of collateral.

.....
Thank you for addressing these LFO issues, which burden low income persons in Philadelphia and around the state. CLS would be delighted to provide further information at your request.

Prepared by Sharon M. Dietrich, Litigation Director, Community Legal Services, Inc., 1424 Chestnut St., Philadelphia, PA 19102; 215-981-3719; sdietrich@clsphila.org, and Jamie Gullen, Supervising Attorney; 215-981-3787; jgullen@clsphila.org. (2/23/2018)

Sample Case #1

DISPOSITION SENTENCING/PENALTIES				
<u>Disposition</u>				
<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>		
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u>	<u>Section</u>	
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>		
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>		
<u>Sentence Conditions</u>				
Guilty - Rule 1002				
Arraignment Status	05/04/2011	Final Disposition		
1 / Drinking Restricted	Guilty - Rule 1002	S	LO § 106042b	
Frazier-Lyde, Jacquelyn	05/04/2011			
2 / Public Urination	Guilty - Rule 1002	S	LO § 100609	
Frazier-Lyde, Jacquelyn	05/04/2011			
3 / Loitering	Guilty - Rule 1002	S	LO § 100603	
Frazier-Lyde, Jacquelyn	05/04/2011			

Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
State Court Costs (Act 204 of 1976)	\$7.90	\$0.00	\$0.00	\$0.00	\$7.90
Commonwealth Cost - HB627 (Act 167 of 1992)	\$7.90	\$0.00	\$0.00	\$0.00	\$7.90
County Court Cost (Act 204 of 1976)	\$29.20	\$0.00	\$0.00	\$0.00	\$29.20
CQS Fee Summary (Philadelphia)	\$25.00	-\$25.00	\$0.00	\$0.00	\$0.00
Judicial Computer Project	\$8.00	-\$8.00	\$0.00	\$0.00	\$0.00
ATJ	\$3.00	-\$3.00	\$0.00	\$0.00	\$0.00
CJES	\$2.25	-\$2.25	\$0.00	\$0.00	\$0.00
JCPS	\$10.25	-\$10.25	\$0.00	\$0.00	\$0.00
Collection Fee (Philadelphia)	\$66.23	\$0.00	-\$66.23	\$0.00	\$0.00
Costs/Fees Totals:	\$159.73	-\$48.50	-\$66.23	\$0.00	\$45.00
Fines					
Local Ordinance	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
Fines Totals:	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
Grand Totals:	\$459.73	-\$48.50	-\$66.23	\$0.00	\$345.00

Sample Case #2

Guilty - Rule 1002

Summary Trial

06/17/2011

Final Disposition

1 / Criminal Trespass/Simple Trespasser

Guilty - Rule 1002

S

18 § 3503 §§ B.111

Washington, Craig M.

06/17/2011

Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
State Court Costs (Act 204 of 1976)	\$7.90	\$0.00	\$0.00	\$0.00	\$7.90
Commonwealth Cost - HB627 (Act 167 of 1992)	\$7.90	\$0.00	\$0.00	\$0.00	\$7.90
County Court Cost (Act 204 of 1976)	\$29.20	\$0.00	\$0.00	\$0.00	\$29.20
Crime Victims Compensation (Act 96 of 1984)	\$35.00	-\$35.00	\$0.00	\$0.00	\$0.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
Victim Witness Service (Act 111 of 1998)	\$25.00	-\$25.00	\$0.00	\$0.00	\$0.00
CQS Fee Summary (Philadelphia)	\$25.00	-\$25.00	\$0.00	\$0.00	\$0.00
Judicial Computer Project	\$8.00	-\$8.00	\$0.00	\$0.00	\$0.00
ATJ	\$3.00	-\$3.00	\$0.00	\$0.00	\$0.00
CJES	\$2.25	-\$2.25	\$0.00	\$0.00	\$0.00
JCPS	\$10.25	-\$10.25	\$0.00	\$0.00	\$0.00
Collection Fee (Philadelphia)	\$78.01	\$0.00	-\$78.01	\$0.00	\$0.00
Costs/Fees Totals:	\$241.51	-\$108.50	-\$78.01	\$0.00	\$55.00
Fines					
Title 18 - Payable to Municipality	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
Fines Totals:	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
Grand Totals:	\$541.51	-\$108.50	-\$78.01	\$0.00	\$355.00

Sample Case #3

Guilty - Rule 1002

Summary Trial

08/08/2012

Final Disposition

1 / Disorderly Conduct Engage In Fighting

Guilty - Rule 1002

S

18 § 5503 §§ A1

Shields, T. Francis

08/08/2012

<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees				
State Court Costs (Act 204 of 1976)	\$8.00	\$0.00	\$0.00	\$8.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$8.00	\$0.00	\$0.00	\$8.00
County Court Cost (Act 204 of 1976)	\$29.50	\$0.00	\$0.00	\$29.50
Crime Victims Compensation (Act 96 of 1984)	\$35.00	\$0.00	\$0.00	\$35.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$10.00
Victim Witness Service (Act 111 of 1998)	\$25.00	\$0.00	\$0.00	\$25.00
CQS Fee Summary (Philadelphia)	\$25.00	-\$6.50	\$0.00	\$18.50
Judicial Computer Project	\$8.00	-\$8.00	\$0.00	\$0.00
ATJ	\$3.00	-\$3.00	\$0.00	\$0.00
CJES	\$2.25	-\$2.25	\$0.00	\$0.00
JCPS	\$10.25	-\$10.25	\$0.00	\$0.00
Costs/Fees Totals:	\$164.00	-\$30.00	\$0.00	\$134.00
Fines				
Title 18 - Payable to Municipality	\$300.00	\$0.00	\$0.00	\$300.00
Fines Totals:	\$300.00	\$0.00	\$0.00	\$300.00
Grand Totals:	\$464.00	-\$30.00	\$0.00	\$434.00