

February 23, 2018

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635

Re: Comments to the Criminal Procedural Rules Committee
Regarding Proposed Amendments to the rules affecting
Legal Financial Obligations of Litigants in Summary Cases

Dear Mr. Wasileski:

Pennsylvania Legal Aid Network (PLAN) submits these comments to the proposed rules of the Criminal Procedural Rules Committee, published in the Pennsylvania Bulletin on January 8, 2018. PLAN is the umbrella organization, administering state funding and funding of the PA IOLTA Board to civil legal aid programs across the state. Together, these programs represent about 70,000 low income clients every year in an array of civil legal problems, including many types of consumer and debt problems, as well as family, and other matters. There are over 50 legal aid offices across the state, hosted by programs funded by PLAN, and over 250 lawyers. These lawyers and the paralegals of these offices represent clients in state and federal courts and before administrative agencies.

PLAN organizes training events for lawyers of the PLAN network; it implements a Martin Luther King, Jr. Internship and Fellowship program to help promote diversity in the staffing of PLAN programs, and it conducts the statewide reporting of cases, outcomes, and other required reporting, from the PLAN programs to funding sources. These comments are submitted with that background of experience and knowledge of the challenges low-income Pennsylvania residents face in their day to day lives, and how debt obligations can impact their lives.

Many Pennsylvanians living in poverty are constantly faced with the dilemma of whether to pay for food, rent, utilities, or other necessities of daily life, when their income is not adequate to cover all expenses. They are disabled, unable to obtain employment, or otherwise unable to obtain an income needed to meet their needs. Alone, a person working full time for the minimum wage of \$7.50 per hour would not be eligible for civil legal aid at the 125% of poverty standard. There would have to be at least one other person in the household for that household to be eligible.

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There are two comments we submit on these proposed rules. First is that Courts should not impose legal financial obligations on litigants without first considering whether the person is capable of actually making payments, and to what degree. Second is that Courts should be required to use the *in forma pauperis* standard to determine whether a person has the capacity to make payments on financial obligations.

I. Courts should not impose legal financial obligations on litigants without first considering whether the person is capable of actually making payments.

When a court imposes a payment obligation on a litigant without first determining whether the litigant is capable of paying, and to what extent, the litigant who is actually not capable of paying is then forced either to suffer the consequences of failing to make a scheduled payment, potentially resulting in contempt of court or other consequences, or of making the payment and suffering other real consequences, such as inability to pay rent, to have adequate food, or to pay utility expenses. This result is not contemplated under our Court procedures, but it is real, unless the rules squarely affirm the obligation of Courts to make a determination whether a person can pay. Anything more than a minimal obligation, such as \$10 per month, has and will continue to bring about these results.

II. Courts should be required to use the *in forma pauperis* standard to determine whether a person has the capacity to make payments on legal financial obligations.

The *in forma pauperis* standards established under the rules set forth clear standards and procedures for courts to determine whether a person has the ability to pay on court-related costs. It is frankly inconsistent for the court to have such a standard, which may result in a determination that a person does not have the ability to pay court-related costs, and then potentially still require the same person, under the same financial circumstances, to make payments on financial obligations. Regular reviews can be scheduled and that is not to say that the person is permanently unable to pay, but that person should not be considered capable of paying without such a review of the circumstances.

Thank you for the opportunity to submit these comments.

Sincerely,



Samuel W. Milkes
Executive Director