

From: [REDACTED]
Sent: Tuesday, February 13, 2018 9:44 AM
To: 'criminalrules@pacourts.us'
Subject: Rules Comments

Hello,

My name is Michael Defino Jr. and I am a Magisterial District Judge in Fayette County. I have read your proposed rule changes and wanted to take this opportunity to voice a comment.

It is clear that the Rules Committee has undertaken a comprehensive effort to refine the rules related to summary matters before district courts, as well as the procedures when there is a default. And while the committee can be commended for its attention to detail regarding the suggested changes, it has not discussed a very important aspect of the process: Under Rule 456 (D)(2), when a Magisterial District Judge (MDJ) makes a determination at a payment determination hearing that the defendant is indigent and unable to pay, the MDJ can do nothing with the case. There is no provision in the rules to allow an MDJ discretion to adjust the case(s) balance to zero. An MDJ that determines that a defendant that is able to pay and elects not to can sentence said defendant to imprisonment, but that same MDJ cannot absolve a defendant who is unable to pay from their fines and costs for being unable to meet them.

This oversight causes many "snowball" problems, not only for the defendant, but for the courts, municipalities, counties, and the state.

As an example, a defendant, determined by the MDJ to be indigent and whose case cannot be discharged, is released and put on a payment plan that they obviously cannot afford, which results in a default and more warrants being generated. The defendant is then arrested again and again, resulting in the accrual of additional constable fees and related costs added on to the balance that the defendant is already unable to pay. It is not unusual to see a case that started with a balance of \$100-\$200 turn into \$200-\$500 depending on the number of times the defendant defaults on the payment schedule and is picked up on a warrant.

Moreover, this causes unnecessary additional work for court staff processing the multiple payment plans and warrants. It drains the county budgets, as they foot the bill for staff computer processing time, filing, paper and toner, as well as the aforementioned constable costs that get forwarded to them for payment within thirty days of the constable performing the service.

Occasionally an MDJ is successful in getting a defendant to perform community service to work off their fines and costs, but it is obvious that indigent defendants do not have the resources (transportation being the biggest factor) to comply with community service requirements, especially in poor and/or rural counties like Fayette that lack public transportation options.

Some counties already have local rules that give the MDJs this administrative authority, but the validity and legality of said local rules has been questioned by auditors from both the state and county. It is well past time that the state corrects this oversight in the rules to allow all of the District Courts the ability to function properly under the appropriate federal, state, and local laws.

Thank you for the opportunity to present my comments. If you have any questions please feel free to contact me.

Michael Defino Jr.
[REDACTED]