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Criminal Procedural Rules Committee  
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**Re: Response to Proposed Amendment of Pa.Rs.Crim.P. 403, 407-409, 411-414, 422-424, 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 to the Rules of Criminal Procedure as they relate to the procedures in Summary Cases. Though I am newer to the bench being elected to serve my first term which started January 2018, I am cognizant of the economic inequality in our nation. It has become even more apparent in the district in which I sit where it appears that many of the individuals that come into my court are on welfare, social security, social security disability or without any means of income and therefore are homeless. Unfortunately, in my area homelessness does not discriminate when it comes to age. There are children that have been kicked out of their homes or chose to leave and are now bouncing from house to house. With that being said, I am for some of the changes that are being proposed. However, I think a few of the proposed amendments could go further in helping my constituents that don't have any financial means.

After reviewing the well-reasoned and thought out proposed rule amendments, there are two areas in which I would like to address. The first is the proposed change to the requirement of collateral when it comes to entering a plea of not guilty. The second concern is related to Payment Determination Hearings; and the need for more guidance for MDJs when evaluating a defendant's ability to pay and what options an MDJ has when it determines the defendant is indigent.

Starting with my first area of concern as it relates to collateral. I support the change and efforts to balance the fundamental fairness in rule 403 which will allow indigent defendant's to plea not guilty without posting collateral if they certify in writing that they do not have the means to pay the collateral. However, I think this amendment can go even further. I would like to see this requirement abolished.

Since I have sat on the bench, I have noticed that there are many individuals who fail to respond when they believe they are not guilty of a summary offense because they do not have the collateral to post. Unfortunately, these individuals end up on my warrant list. Those warrants are then given to a Constable to serve. This unfortunately adds to the cost of the Defendant since they are now responsible to pay the constable fees. My staff and I have fielded several calls

were the defendant calls in and is upset because they do not know what to do since they don't have the money for collateral but want to plea not guilty. When someone calls in distraught and uncertain on how to handle this situation, we explain that we will be willing to waive the collateral.

Thus, I understand the reasoning behind the proposed rule change. However, I believe it may still cause some confusion to a defendant who wants to plea not guilty. Not all individuals want to willingly admit that they do not have the financial means to post collateral; or they may be uncertain as to what we are considering financial means. For instance, senior citizens that are on a very limited income. Not all of them would admit that they do not have the financial means to pay the collateral and therefore will rather post the collateral instead of paying for much needed medication because of their pride. Many of my constituents that are senior citizens pride themselves in the fact that they are financially independent so will not admit that they do not have the financial means to post the collateral. By abolishing this requirement, it would allow more equality in our system by allowing those that truly believe they are not guilty to plea without posting money. Once they come to the court for their hearing, then if found guilty, an MDJ would be able to at that time determine if they can pay and set a payment plan accordingly.

My second concern relates to Payment Determination Hearings. The proposed rule provides some factors in which the Court should consider when determining the defendant's financial means to immediately pay fines, costs and restitution assessed to this individual. The factors are not all inclusive, but it does provide a long list of factors to be considered. I support this inclusion into the rules. However, the rule still falls short in that it does not provide guidance on how to weigh these factors.

As MDJs we all work hard. We all are diligent in our efforts to be firm while at the same time being fair. We all have those indigent defendants who repeatedly fail to pay and therefore get placed on pre-warrants and warrant lists which may add additional costs to what they owe the Court. When they are finally brought into the court on a warrant, many will state that they just did not have the means to even pay the installment payment already in place and did not know what else to do. This tells me that the installment payment that was set by the Court was either adequate at the time it was put in place but due to a change in the defendant's circumstances (decrease in income, increase in debt, change in family dynamics, etc.) is no longer feasible or the payment plan when it was entered into was still too high for the defendant to pay.

I would ask if the Committee could amend this rule even further by adding in some type of living wage calculation or poverty level calculation which will assist the court in determining the actual amount that a defendant should be able to pay. In addition, if the calculations show that the indigent defendant has absolutely no ability to pay even the smallest amount thereby making the account uncollectable then guidance on what the court should do. I am not suggesting making all accounts uncollectable since this would not hold the defendant accountable for the infraction. What I am suggesting is maybe staying the individual's payment plan for a few months and requiring the MDJ to reevaluate after a certain period by conducting another Payment Determination Hearing before the stay is lifted.

In closing, I do support the efforts made by the Committee and in the direction, it is heading by these proposed amendments. I would ask that we go a little further by providing more clear and specific guidelines and calculations that an MDJ would be required to follow in order to determine whether an individual has the ability to pay; and if it is determined they do not have the ability to pay the full amount assessed then guidance on what amount would be deemed appropriate based on this individuals finances. If it is determined they have absolutely no ability to pay even the minimum amount, then the fine should be stayed to a future date for reevaluation. Next, I would ask that we abolish the use of collateral when entering a plea of not guilty altogether.

Respectfully submitted,

Hon. Denise M. Buell, Esq.  
Magisterial District Judge  
District Court 06-2-04