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May 3, 2019

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
e-mail: criminalrules@pacourts.us

Re: Proposed new Pennsylvania Rules of Criminal Procedure impacting the incarceration of indigents for failure to pay in summary cases – the right to counsel.

Dear Mr. Wasileski:

For over 45 years, the lawyers in our firm have been deeply involved in the fields of civil rights law and criminal defense. Through our litigation, we seek to protect the constitutional rights of all individuals, including the indigent. Our goals include preventing a person from being jailed simply for failure to pay court fines and costs without a judicial determination, through a hearing with counsel representing the defendant, that the failure to pay was deliberate and not due to the person's inability to pay.

In February 2018, we wrote to the Criminal Procedural Rules Committee urging that the Committee modify the text of Rule 456 to specifically include the right to counsel at default hearings.¹ We are gratified to see that the Rules Committee has modified Rule 456(D)(4) to specifically provide that a sentence of incarceration or probation is not permitted if a defendant was not afforded the right to counsel, including court-appointed counsel, at the default hearing. We applaud the Rules Committee's responsiveness to the concerns raised and its recognition of the importance of the right to counsel.

We also urge the Rules Committee to consider amending Rule 456(C)(3) to prohibit the 72-hour detention of individuals who are unable to pay collateral prior to the default hearing, unless those individuals had counsel at the proceeding in which the collateral was set. A recent news article in the Reading Eagle demonstrates how the collateral requirement under subsection

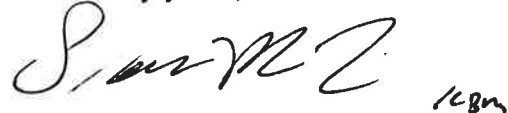
¹ A copy of our letter of February 23, 2018, is attached for reference.

(C)(3) can result in the detention of thousands of individuals, some of whom realistically are unable to afford the collateral set by the Magisterial District Justice. Ford Turner, *District judges in Berks County jail more people for lack of money than anywhere else in Pa.*, Reading Eagle, April 25, 2019, at <https://www.readingeagle.com/news/article/berks-district-judges-top-pa-list-of-lockups-over-collateral> (last visited May 1, 2019). According to the article, Berks County imprisoned individuals in 3,565 cases in 2017 to 2018 for failure to post collateral in anticipation of a default hearing. Berks County’s rate of incarceration for failure to post collateral was “twice the second-largest county total — York County with 1,648 — and more than 20 times the total in each of 47 other counties. Schuylkill County, for example, had only six cases, Montgomery, 14, and Lehigh, 36.” *Id.*

While we cannot definitively say that the Magisterial District Justices in each of those Berks County cases failed to properly determine whether the defendant had the financial ability to pay a monetary collateral, as required by subsection (C)(2), we note that providing the right to counsel at the proceeding in which collateral is set, similar to criminal bail hearings, can help ensure that the procedural standards provided in the rules are actually followed.

Thank you for your attention to these comments and for your efforts to ensure that no one in our Commonwealth is imprisoned simply for being poor.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Susan M. Lin", with a small "1/28m" written to the right.

David Rudovsky
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Susan M. Lin