



PACDL

Pennsylvania Association of
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April 29, 2019

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

Re: Proposed Pennsylvania Rules of Criminal Procedure Regarding the Incarceration of the Indigent for Failure to Pay in Summary Cases

Dear Mr. Wasileski:

The Pennsylvania Association of Criminal Defense Lawyers (PACDL) is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. As such, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and United States Constitutions, and work to achieve justice and dignity for defendants. PACDL's membership includes more than 875 private criminal defense practitioners and public defenders throughout the Commonwealth.

Overall, PACDL supports the goal of the proposed amendments -- to ensure that the enforcement of financial assessments on the poor in summary matters proceed in a constitutional manner. Namely, we want to ensure that defendants do not suffer adverse consequences for failing to pay court imposed financial assessments if they do not actually have the financial ability to pay the assessments. Considering this goal, and in the interest of clarifying the proposed amendments, PACDL has some suggestions:

Clarify that the Court has an Affirmative Obligation to Inquire into a Defendant's Ability to Pay

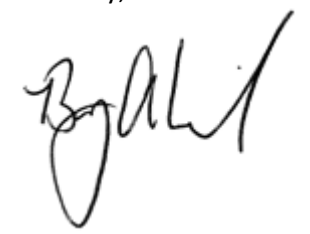
Rule 456 suggests that the court must make a finding that a sentence of imprisonment for failure to pay is only appropriate after the finding that the failure to play was willful. However, it should be made clear that indigency is not an affirmative defense that must be raised by defendant. The Superior Court reaffirmed this last year in the debtors' prison case of *Commonwealth v. Mauk*, 185 A.3d 406, 411 (Pa. Super. Ct. 2018), and it also explained in *Commonwealth v. Diaz*, 191 A.3d 850, 866 n.24 (Pa. Super. Ct. 2018) that a defendant who is indigent is not willfully failing to pay. To ensure consistency across the Commonwealth and clarity to the issuing authority, it should be made clear that there is an affirmative obligation to inquire into a defendant's reason for non-payment.

Creation of Clear Guidelines Regarding Presumptions of Indigence

We understand that many MDJ's are extremely busy and may not be familiar with Pennsylvania case law on this issue. Therefore, with the hope of providing clearer guidelines, we urge the Committee to include certain benchmarks for the presumption of indigence, with the understanding that those found to be indigent cannot be imprisoned for failing to pay fines and costs. As an example of more guidelines, the rule could include a presumption of indigence, which can then be reconsidered by the MDJ if appropriate, when a defendant already has the services of court-appointed counsel or if the defendant is receiving means-based public assistance (such as food stamps, Medicaid, or Supplemental Security Income). See, e.g., *Commonwealth v. Eggers*, 742 A.2d 174, 176 n.1 (noting that the fact the defendant received public assistance and was represented by the Allegheny County Public Defender's Office invited a presumption of indigence). In addition, the Rules could provide that a person who makes 150% of the federal poverty level or less is presumptively indigent and therefore cannot be imprisoned for failing to pay financial assessments. Such guidelines could also help determine appropriate payment plans and when such plan must be reduced or temporarily suspended.

In conclusion, PACDL supports the goal of the proposed amendments -- to prevent the punishment of indigent defendants for failing to pay fines and costs which they do not have the ability to pay. The above-suggestions further this goal and provide clearer guidance to MDJs, counsel and defendants. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley Winnick", enclosed in a thin black rectangular border.

Bradley Winnick
President