

May 3, 2019

**Comments Regarding Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 456, and 470**

Dear Rules Committee Members:

My name is Alexandre Turner and I am an attorney. As part of my ethical obligation to provide *pro bono* services to those in need, I and the other attorneys who have co-signed below have for several years assisted the Federal Re-Entry Program of the Eastern District of Pennsylvania by representing participants facing legal obstacles to successful re-entry into productive society. One of the ways that we have been most helpful to Re-entry participants is with driver's license issues. We have found that the lack of a license, due to outstanding suspensions or fines, is a significant barrier to employment and successful re-entry. In our capacity representing these indigent clients *pro bono*, we have come to understand what a burden court fines and costs can be on individuals who are struggling to set their lives right and cannot otherwise afford our services.

Last February I wrote this Criminal Procedural Rules Committee ("Committee") on behalf of several attorneys providing *pro bono* representation to Re-entry participants in regards to the Committee's draft rules to address the problem of magisterial district judges ("MDJs") unlawfully incarcerating indigent defendants for failure to pay court fines, costs, and/or restitution (collectively "legal financial obligations," or "LFOs"). I wrote that we believed these rule changes will significantly impact individuals that we represented on a *pro bono* basis. Although our letter was generally in support of these recommendations, we strongly urged the Committee to provide clearer, more specific, and binding instructions to the MDJs, and we suggested additional steps to effectively reduce the number of people incarcerated for failure to pay LFOs on the least serious offenses—summary violations.

We continue to have concerns regarding the revised proposed amendments to the above-referenced rules and respectfully submit the below comments for the Committee's consideration:

**I. The Rules Still Lack Clear—And Mandatory—Guidance To MDJs Whenever Evaluating A Defendant's Ability To Pay**

The rules should reflect and build upon the presumptions that receiving the services of the public defender or means-based public assistance (e.g. Medicaid, food stamps, Supplemental Security Income) creates a presumption of indigence, and a court cannot compel a defendant to pay if that defendant would suffer hardship. The appropriate way to determine hardship is to look at whether a defendant can afford to meet his or her basic life needs. We encourage the Committee to consider clear presumptions based on the federal poverty level—a person who makes 125% of the federal poverty level generally cannot afford to make ends meet. Although, as with every presumption, a court could overcome it by making findings on the record based on the evidence before it.

## **II. The Rules Should Additionally Provide Clear And Binding Guidance To MDJs On Setting Affordable Payment Plans**

Although the rules will now require that payment plans be based on the defendant's finances, they do not provide binding guidance to MDJs to determine ability to pay. We have, in our capacity as *pro bono* counsel to indigent Re-entry participants, seen courts that have default payment plans of \$50 or \$100 per month and judges that are reticent to go below \$25 under any circumstances. We have encountered some courts that seem to require down payments in order to get on a payment plan. Such practices are illegal when they interfere with a defendant's right to an affordable payment plan. To change these practices, the rules should tie a defendant's income level to a maximum monthly payment amount. Linking payments to a multiple of the local minimum wage is one straightforward way to accomplish this. As with the presumptions of an inability to pay, courts would be able to overcome a presumption if the evidence on the record supports such a finding.

## **III. The Rules Still Lack A Much-Needed Mechanism To Administratively Close Old Cases That Are Uncollectible Due To The Defendant's Indigence**

Although the revised rules provide for an "administrative hold" procedure where cases are uncollectable due to indigency, this remains a half-measure for addressing a significant concern. We have in our capacity as *pro bono* counsel to indigent Re-Entry participants encountered defendants who owe balances dating back decades, balances that they will never completely pay off, even with successful job placement. These individuals are still fortunate—many indigent defendants will never be gainfully employed and will never be able to make any payments. The only option in these cases is to keep hauling such defendants into court, wasting the resources of the court and law enforcement. Administrative holds are a step in the right direction, but we remain convinced that administrative closure for defendants that will never have an ability to pay is the better approach.

## **IV. The Proposed Rules Purport To Protect Defendants From Unconstitutional Driver's License Suspensions, But They Offer Little Or No Practical Protection To Indigent Defendants**

Although we recognize the detrimental impact of incarcerating defendants who have no ability to pay, and applaud these efforts to address that issue, we also want to take this opportunity to acknowledge the impact of license suspension on our Re-entry program clients. Our continuing support for these *pro bono* clients has impressed upon us how crucial a driver's license is to successful re-entry. Driving remains a privilege, not a right, but it is a privilege so instrumental in the lives of our clients and their ability to find and maintain gainful employment that our efforts to address their license can have a significant impact on their success.

The revised rules seek to address this concern, but the proposed change offers no improvement over the current system. Indeed, it provides *less* time for a defendant to respond to a notice of suspension due to non-payment (fifteen days as opposed to twenty-five days). Under the Proposed Rules, if the defendant does not respond within 15 days, the defendant's driver's license would still be suspended without a hearing or a determination of ability to pay. We continue to have concerns that this procedure fails to offer indigent defendants the Constitutional due process to which they are entitled.

Respectfully Submitted,



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