

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

THE PHILADELPHIA
COMMUNITY BAIL FUND, *et.*
al.,

Petitioners

v.

No. 21 EM 2019

ARRAIGNMENT COURT
MAGISTRATES of the FIRST
JUDICIAL DISTRICT of the
COMMONWEALTH OF
PENNSYLVANIA,

Respondents

**Response of the Philadelphia Municipal Court
to the Report of the Special Master**

Per this Court’s July 8, 2019, Order, the Philadelphia Municipal Court (“Municipal Court”) submits its Response to the Report of the Special Master.¹

¹ As set forth in the Petition for Review that initiated this proceeding, the Arraignment Court Magistrates (“ACMs”) of the First Judicial District are the named respondents, and they were sued solely in their official capacities. ACMs are statutory officers of Municipal Court who are appointed by, and serve at the pleasure of, the court. *See* 42 Pa.C.S. § 1123(a)(5). Thus, Municipal Court is the true party-respondent in interest, and this Response is filed on behalf of Municipal Court.

I. Introduction

Arrestment Court Magistrates (“ACMs”) are tasked with the important judicial responsibility to make bail determinations in Philadelphia criminal cases, and Municipal Court appreciates the gravity and impact that its ACMs’ determinations carry. The ACMs endeavor to make bail determinations that comport with the applicable Rules of Criminal Procedure and case law, factor in all relevant considerations, including the purposes of bail, and make a just judicial determination.

Municipal Court agrees with the Special Master’s conclusion that Philadelphia’s preliminary arrestment system is “fundamentally sound.” (Report at 2.) As the Report notes, the First Judicial District is committed to “modernize the processes and adjust and adapt” in how arrestments are conducted and bail determinations are made. (Report at 26.)

Municipal Court appreciates the Special Master’s efforts in examining its arrestment process and system. The Court participated fully and cooperatively in meetings with the Special Master, Petitioners’

counsel, and representatives from the District Attorney's Office and the Defender's Association in order to discuss ways to enhance the system.

Municipal Court believes that the Report accurately summarizes the agreements and disagreements between the parties and participants, as well as where Municipal Court's position may have conflicted with the Special Master's subsequent recommendations. Municipal Court submits this Response to clarify its position on certain issues, and to address logistical concerns that the Special Master's Report does not fully capture.

As noted in the Report, implementation issues exist that involve other entities, such as the City of Philadelphia, the Philadelphia Police Department, and the Administrative Office of Pennsylvania Courts, which preclude Municipal Court from taking unilateral action. Some of Municipal Court's disagreements with the other participants' suggestions arose because the suggestions delved into implementation issues, which the Special Master stated were outside the scope of the participants' discussions in reaching agreements.

II. Analysis

A. Evidentiary standards.

During the participants' meetings, the parties discussed whether they could agree on particular evidentiary standards and burdens of proof. As the Report notes, Municipal Court did not agree to be bound by the other participants' proposed evidentiary standards or burdens of proof. These include what standard is necessary to detain a defendant without bail, and whether the bail imposed should be the "least restrictive condition."

Municipal Court does not necessarily object to the proposals discussed, but instead could not agree because it is not appropriate to administratively establish standards or burdens, particularly when the Rules of Criminal Procedure are silent and case law is not uniform. The ACMs and other judicial officers in Municipal Court apply binding case law – including evidentiary standards and burdens of proof – where appropriate in their judicial capacities. Should this Court or other authority establish binding standards and burdens, Municipal Court would follow those directives as appropriate.

B. Disagreement 4 and Suggestion 2 – A robust ability-to-pay hearing, an *In Forma Pauperis* analysis, and enhanced information gathering.

The Report notes that the parties disagree on whether “the ACMs should conduct a robust ability-to-pay hearing carefully considering a defendant’s entire financial picture, including income and expenses as well as life circumstances.” (Report at 14.) The Report also contains suggestions about how more information could be gathered prior to the arraignment. (Report at 15-17.)

Municipal Court agrees that more information about a defendant’s financial picture benefits ACMs by allowing them to make a more informed decision. The divergence on this point arose from Petitioners’ suggestion that the ACMs be required to conduct an *in forma pauperis* analysis to determine each defendant’s ability to pay, when neither the Rules nor case law establish that an *in forma pauperis* standard is required under these circumstances. Even more so, what information should be gathered and how are implementation issues.

The Special Master also suggests that the ACMs may benefit from information related to a defendant’s financial obligations such as rent, utilities, or loan payments, which Pretrial Services does not collect.

(Report at 16.) The Report further notes that additional information about family relationships, community ties, character, and reputation may help the ACMs more accurately assess an arrestee's risk of flight.

(Report at 16.)

Increasing the relevant information related to a risk of flight or failure to appear is vital, but how such information is collected presents logistical implementation issues. For instance, the First Judicial District's Pretrial Services office already has begun analyzing how it can gather more information, including income and expenses, and enhance the interview with the defendant prior to arraignment. Implementing these changes will require changes to the Preliminary Arraignment Reporting System ("PARS") and the Pretrial booklets containing relevant information that the ACMs and the parties receive prior to arraignment.

Separate Pretrial Unit

Further, the Report's suggestion that a separate Pretrial Services unit be created within Municipal Court runs counter to national standards for pretrial services agencies and presents significant implementation hurdles. Pretrial Services is an entity of the First

Judicial District and is within the supervisory jurisdiction of the Administrative Judge for the Trial Division of the Court of Common Pleas. Its functions include more than just conducting interviews prior to a preliminary arraignment.

In addition, Pretrial Services already has been factored into the First Judicial District's current budget negotiations and thus cannot be moved without major budgetary changes. In light of this, and in light of its view that operationally a change in Pretrial oversight is not necessary, Municipal Court respectfully disagrees with the Special Master's suggestion on this point.²

Increasing the amount of relevant information is important, and Municipal Court will continue to work with Pretrial Services and examine other methods to increase the relevant information that ACMs have prior to arraignment.

C. Suggestion 5 – Probation detainers.

The Special Master's Fifth Suggestion requires that Municipal Court "[d]evelop a process for an expedited determination about the

² On this point, Municipal Court speaks with the concurrence of the First Judicial District.

continuing necessity to enforce a detainer. An expedited process available 24/7/365 should be created to determine whether the detainer is current, active, or continues to be necessary in the view of the authority who issued it.” (Report at 19.) While this suggestion is laudable, there are implementation issues that involve the Adult Probation and Parole Department and the First Judicial District that are beyond Municipal Court’s control.

The First Judicial District already has been examining the detainer issue through its Prison Population Committee, in which all justice partners participate. Creating a 24/7/365 system presents a significant logistical burden for the Adult Probation Department, however. For instance, staffing and budgeting issues impact Probation’s ability to ensure that the ACMs have timely, relevant information at any time of day. Further, Probation staff would need access to the Common Pleas Case Management System (“CPCMS”), which it currently does not have. In addition, changes would need to be made to PARS in order so that Adult Probation and the ACMs could review detainer information prior to arraignment.

Detainers present an issue that is not unique to the First Judicial District, as this Court is aware.³ Moreover, authorizing ACMs to lift detainers would raise other concerns. For instance, Municipal Court judicial officers (including Municipal Court judges) do not have the authority to lift a Common Pleas Court detainer. Whether the ACMs should have this significant increase in authority – and in the short time period that they would have to make such a decision – raises significant questions.

Municipal Court agrees that the detainer issue warrants further examination and is eager to participate as needed with the statewide examination of this issue.

D. Suggestion 8 – “Plain Language” standards.

It is important that the paperwork that a defendant receives post-arraignment be clear and straightforward. Suggestion 8 to adopt “plain language” and use “simplified language” for all forms is beyond Municipal Court’s control, however. CPCMS forms are created by the

³ The Supreme Court recently referred issues related to county probation and parole detainers to the Criminal Procedural Rules Committee and the Minor Court Rules Committee in *Commonwealth v. Davis*, No. 68 EM 2019, 2019 Pa. LEXIS 6724 (Order of Nov. 27, 2019).

Administrative Office of Pennsylvania Courts and the Criminal Procedural Rules Committee.⁴ Municipal Court’s understanding is that the Rules of Criminal Procedure drive how bail forms are created, which is done in collaboration through the Rules Committee and AOPC attorneys. Thus, those entities would need to be involved in reviewing and approving any changes.

E. Suggestion 9 - Performance evaluations.

Suggestion Nine states that “[d]eveloping and implementing a method to evaluate the job performance of each ACM and to assess the impact of implementing the Agreements and Suggestions adopted by the Court is essential to assuring that the bail system operates in conformity with the law and maintains public confidence.” (Report at 21.) The Report also states that while “evaluating the ‘performance’ of judicial officers can be a sensitive and controversial proposition..., standards based on objective criteria could be helpful in identifying possible problematic practices that require remedial attention.” (Report at 21 n.9.)

⁴ See Pa.R.Crim.P. 104.

Evaluating Arraignment Court’s systemic operations on a regular basis is essential; objective criteria is but one tool in doing so. Evaluating a judicial officer’s performance based on statistical data, however, raises concerns that go beyond simply appraising the ACMs. Judicial officers make individualized determinations based on numerous variables in every case. Using a statistical standard to decide whether a judicial officer made the “right” decision fails to account for each case’s unique circumstances. It risks creating an incentive to make bail determinations not based on the facts and particular circumstances, but instead on statistical goals. While objective criteria can be useful in the bail determination decision (through risk assessments, for example), tying a judicial officer’s “performance” to raw data is problematic.

To be sure, Municipal Court does not believe that the ACMs’ conduct should be unchecked. That is why, for instance, the President Judge of Municipal Court monitors the ACMs’ performance through audio recordings and addresses issues when necessary. Further, as the administrative head of Municipal Court, the President Judge is bound and committed to address and report instances of unprofessional or

inappropriate behavior if it arises. Municipal Court is also prepared to develop a more formalized process to receive and address any procedural or systemic concerns pertaining to the ACMs.

Continued training and education, which the Report highlights, is a vital tool in ensuring that the ACMs have the necessary understanding of the Rules of Criminal Procedure, the purposes of bail, and the factors that go into a bail determination, as well as understanding Municipal Court's expected compliance with procedures.

Municipal Court is committed to ensuring that the ACMs continue to receive effective education and training and in creating effective evaluation methods to continue to "modernize the processes," as the Special Master noted.

F. Impact on CPCMS

Municipal Court notes that certain proposed changes are beyond its purview and may affect CPCMS, which is maintained by AOPC. Once a case is past the preliminary arraignment, it is "transferred" from PARS to CPCMS. Thus, any suggested changes that occur after the preliminary arraignment stage would affect CPCMS. For example, Early Bail Review hearings are processed in CPCMS, and a bail

modification arising from a hearing would require the court to use CPCMS documents, including the bail bond form. Municipal Court does not have the authority to change CPCMS. Further, AOPC would have to evaluate whether any proposed changes to CPCMS would benefit the statewide system as a whole.

Municipal Court is ready to cooperate with AOPC if input is needed on any prospective changes to CPCMS.

III. Conclusion

As the Special Master notes, changes to the arraignment process involve multiple entities, considerations, and complexities. Nonetheless, Municipal Court is committed to implementing improvements where feasible and exploring alternatives internally and with its justice partners.

Regarding implementation and evaluation, Municipal Court agrees that its President Judge should oversee the implementing and evaluating of the parties' Agreements and the Report's Suggestions. Municipal Court (and the First Judicial District) already have begun reviewing many of the issues, as explained above. Keeping that

responsibility with Municipal Court's administrative head provides for a more effective and efficient process.

In sum, Municipal Court has and will continue to "modernize the processes and adjust and adapt" in how its arraignments are conducted and bail determinations are made in order to ensure that its proceedings are fair and just under the law.

Respectfully submitted,

s/Michael Daley, Esquire

Michael Daley, Esquire

Pa. I.D. No. 77212

Administrative Office of PA Courts

1515 Market Street, Suite 1414

Philadelphia, PA 19102

legaldepartment@pacourts.us

(215) 560-6326; Fax: (215)-560-5486

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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Certificate of Service

The undersigned certifies that on *January 30, 2020*, he served the foregoing *Response* by PACfile on counsel of record.

s/Michael Daley, Esquire
Michael Daley, Esquire

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