

April 13, 2020

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Dear Members of the Judicial Conduct Board:

Magisterial District Judge (“MDJ”) Alvin Robinson summarily jailed my client Roberto Vega-Torres without a hearing or other process for nine days when Mr. Vega-Torres came to court to make new payment arrangements for his traffic fines and costs, after he lost his job. Judge Robinson then appears to have falsified court records to justify the imprisonment. Had undersigned *pro bono* counsel from the ACLU of Pennsylvania not learned of his case and convinced a common pleas judge to order his release, Mr. Vega-Torres would have spent an additional five days in jail solely because of his poverty.

Judge Robinson’s actions violated at least three of the Rules Governing Standards of Conduct (“Conduct Rules”), multiple Pennsylvania Rules of Criminal Procedure, state statutes, and numerous Pennsylvania appellate decisions interpreting these provisions and the U.S. Constitution. To compound matters, what happened to Mr. Vega-Torres was not an isolated incident.

In Mr. Vega-Torres’s case, Judge Robinson:

- **Violated Conduct Rule 2.5’s requirements of “competence” and “due regard for the rights of parties” when he:**

- (1) jailed Mr. Vega-Torres for failure to pay without a hearing on his ability to pay;
- (2) jailed Mr. Vega-Torres without making any findings regarding his ability to pay;
- (3) jailed Mr. Vega-Torres without providing him counsel;
- (4) failed to provide Mr. Vega-Torres with an interpreter even though he does not speak or understand English;
- (5) jailed Mr. Vega-Torres without staying the imprisonment for 30 days;
- (6) failed to inform Mr. Vega-Torres of his right to appeal the order of incarceration;
- (7) billed Mr. Vega-Torres for constable server fees for warrants that the constables did not serve;

(8) billed Mr. Vega-Torres for constable fees despite Mr. Vega-Torres being indigent; and
(9) over-assessed Mr. Vega-Torres by more than \$4,000 in court costs.

- **Violated Conduct Rule 1.2’s requirement that an MDJ avoid both “actual” impropriety and the “appearance of impropriety” when he violated these multiple laws and rules, overcharged Mr. Vega-Torres while channeling multiple unearned payments to constables, and, additionally, falsified court records to cover up those improprieties.**
- **Violated Conduct Rule 2.6’s requirement that MDJs provide litigants the “right to be heard” when he jailed Mr. Vega-Torres without a hearing, without providing counsel, and without providing him with an interpreter.**

Judge Robinson’s handling of this case demonstrates a clear disregard for the law. Unfortunately, what happened here appears to be part of a broader pattern of Judge Robinson jailing indigent defendants who cannot afford fines and costs in clear disregard for Pennsylvania law and the Constitution. In the past year, he has illegally jailed *at least* fifteen individuals for nonpayment of fines and costs, according to court records. He has also over-assessed court costs for other defendants who receive multiple tickets from a single traffic stop. These actions are unlawful and violate the Conduct Rules.

Judge Robinson’s actions here—which he apparently admitted to Berks County Solicitor Christine Sadler when she conducted her own investigation—go well beyond a discretionary “legal error.” No judge has the discretion to summarily jail a person without a hearing or a lawyer. Nor does a judge have discretion to falsify court records to cover up such an illegal incarceration, or to significantly overbill defendants. His actions show a disregard for the law and contempt for the fundamental rights of those who appear before him. *See generally In re Davis*, 954 A.2d 118, 124 (Pa. Ct. Jud. Disc. 2007) (“We find that Respondent’s failure to hold hearings to determine defendants’ financial ability to pay fines and costs was a violation of ... the Rules Governing Standards of Conduct of Magisterial District Judges.”). His status as an MDJ should not protect him from the consequences of his misconduct. We urge the Board to investigate immediately these allegations to ensure that Judge Robinson does not continue to violate the Conduct Rules and defendants’ constitutional rights.

To aid the Board in its investigation, please find attached all of the relevant electronic docket sheets, a copy of the case file in case MJ-23105-TR-0000253-2018 (which is representative of the cases at issue), the Petition for a Writ of Habeas Corpus filed in the Berks County Court of Common Pleas, the Order from the Hon. Judge Patrick Barrett granting the Petition and releasing Mr. Vega-Torres from jail, as well as news articles quoting the Berks County Solicitor and Berks County District Attorney regarding this incident.

I. Factual Background

The detailed history of Mr. Vega-Torres's interactions with the court set forth the scope and nature of errors committed by Judge Robinson in this case.

A. Initial Procedural History

Mr. Vega-Torres was before Judge Robinson because of multiple traffic tickets arising from a single incident.

On **February 15, 2018**, a police officer charged Mr. Vega-Torres with fifteen traffic violations arising from a single incident. This resulted in Judge Robinson's court opening the following cases:

MJ-23105-TR-0000250-2018, MJ-23105-TR-0000251-2018, MJ-23105-TR-0000252-2018, MJ-23105-TR-0000253-2018, MJ-23105-TR-0000254-2018, MJ-23105-TR-0000255-2018, MJ-23105-TR-0000256-2018, MJ-23105-TR-0000257-2018, MJ-23105-TR-0000258-2018, MJ-23105-TR-0000259-2018, MJ-23105-TR-0000260-2018, MJ-23105-TR-0000261-2018, MJ-23105-TR-0000262-2018, MJ-23105-TR-0000263-2018, MJ-23105-TR-0000264-2018

The court mailed out summonses for these cases, but Mr. Vega-Torres did not receive or respond to the summonses because they were sent to the wrong address.

On **April 4, 2019**, Mr. Vega-Torres was arrested on a warrant for failure to respond to the summonses and brought to court. He pled not guilty to the charges; it appears from the court records that he deposited approximately \$800 in collateral (which was later applied by the court to pay off the first three tickets). A trial date was set for May 29, 2019, but Mr. Vega-Torres did not appear for that date.

On **May 29, 2019**, Judge Robinson found Mr. Vega-Torres guilty in absentia on all fifteen cases. The court imposed a total of \$975 in fines. The court also imposed court costs *per case*, even though the citations all arose from the same incident; the court imposed a total of \$4,698 in costs.¹ Thus, although Judge Robinson should have charged Mr. Vega-Torres only \$150 in costs (in the lead case, MJ-23105-TR-0000250-2018), Judge Robinson actually overbilled Mr. Vega-Torres by more than \$4,000.

Among the orders signed by Judge Robinson on May 29 was a "Time Payment Order," which states that a "hearing was held on 5/29/2019 to determine the ability of the defendant to pay the sentence of fines, costs, and restitution imposed on 5/29/2019." The Order did not contain a payment schedule or set a monthly payment amount. No such hearing—and certainly no determination of his ability to pay—however, occurred on that date. Mr. Vega-Torres was not present, as is evidenced by the court records showing that he was not present for the summary

¹ This figure includes later-applied constable fees because those could not be disaggregated based on the docket information.

trial that day when he was found guilty in absentia. The Time Payment Order was signed by Judge Robinson, but the signature spot for Mr. Vega-Torres was left blank.

On **July 16, 2019**, Mr. Vega-Torres was arrested pursuant to a warrant for non-payment and taken to night court, where he was seen by a different MDJ (Mr. Vega-Torres does not recall the name of this judge, and the signature on the paperwork is unclear). The night court judge told Mr. Vega-Torres to report for a payment determination hearing with Judge Robinson on July 22, 2019.

On **July 22, 2019**, Mr. Vega-Torres appeared for his hearing with Judge Robinson, and the dockets reflect that Judge Robinson found him “unable to pay.” Judge Robinson put Mr. Vega-Torres on a \$25 per month payment plan. He made payments in July and September.

On **October 21, 2019**, Judge Robinson issued a bench warrant for nonpayment, and Mr. Vega-Torres was arrested on **October 28, 2019**. A “Time Payment Order” was printed and signed on October 28, but it states only that a hearing was held on “July 22,” not October 28, reducing payments to \$20 per month (an obvious inaccuracy in the case records). Nothing on the court’s electronic docket sheets reflects a hearing on October 28.

Mr. Vega-Torres’s last payment was in November 2019, around the time when he lost his job as a seasonal landscaper. Judge Robinson issued a bench warrant for nonpayment on December 23, 2019.

B. February 3, 2020 incarceration and aftermath

Mr. Vega-Torres was not arrested; instead, he voluntarily appeared at Judge Robinson’s court on February 3, 2020. His goal was to try to negotiate a new payment plan. After arriving at the court, Judge Robinson told Mr. Vega-Torres and his girlfriend to wait in the vestibule. Judge Robinson did not hold a hearing, he did not ask any questions of Mr. Vega-Torres, or give Mr. Vega-Torres an opportunity to address the court. While Mr. Vega-Torres waited, a constable approached him and told him that because he had fourteen outstanding warrants for nonpayment, Judge Robinson was jailing him for fourteen days. He handcuffed Mr. Vega-Torres and took him away to jail.

In addition to not holding *any hearing whatsoever* or making any findings regarding Mr. Vega-Torres’s ability to pay, Judge Robinson also did not provide Mr. Vega-Torres with counsel or apprise him of his right to court-appointed counsel.² Judge Robinson did not stay the jail sentence for 30 days, nor did Mr. Vega-Torres waive his right to that 30-day stay.³ Judge Robinson did not inform Mr. Vega-Torres of his right to file an appeal. Finally, Mr. Vega-Torres speaks only Spanish, and Judge Robinson did not provide him with an interpreter or other language access services. The only reason Mr. Vega-Torres knew that he was receiving a fourteen day jail sentence was because the constable spoke Spanish and told him.

² No counsel is listed on the docket, nor is there any waiver of counsel in the case file.

³ No waiver of the stay of execution of sentence is present in the case file.

Although Judge Robinson held no hearing, the court dockets reflect—falsely—that a payment determination hearing was held on February 3 and that Judge Robinson found Mr. Vega-Torres “able to pay.” In addition, the constable collected multiple warrant fees (apparently one per docket) for arresting Mr. Vega-Torres at the court on Judge Robinson’s order; Judge Robinson authorized that payment the same day.

If Judge Robinson had inquired into Mr. Vega-Torres’s financial circumstances, he would have learned that Mr. Vega-Torres was not intentionally refusing to pay the court. Instead, he was indigent and unable to pay. Mr. Vega-Torres and his girlfriend care for three minor children. He receives food stamps through the Supplemental Nutrition Assistance Program and Medicaid because he cannot afford his food and medical needs without assistance. He was last employed in the fall as a landscaper, but when the seasons changed, he lost his job and had been unable to find new work over the winter.

Mr. Vega-Torres sat in jail—*solely* because of his poverty—from February 3, 2019 until February 12, 2019, at which point undersigned counsel filed an Emergency Petition for a Writ of Habeas Corpus with the Court of Common Pleas. The Honorable Judge Patrick Barrett released him the same day, finding that Judge Robinson had failed to hold a hearing and provide Mr. Vega-Torres with counsel. *See* CP-06-MD-0000242-2020.⁴

At the hearing before Judge Barrett, Berks County Solicitor Christine Sadler represented the County (the District Attorney took no position on the matter). Having investigated the matter and spoken with court staff, as well as *directly* with Judge Robinson, Ms. Sadler agreed that Judge Robinson had failed to hold a hearing and had violated Mr. Vega-Torres’s rights: “He didn’t have counsel nor was he told he had the right to counsel . . . I was also told that no determination hearing was held.”⁵

Ms. Sadler subsequently commented at a public Commissioner’s meeting that this “matter could have been totally avoided if we had just followed the law, stuck to the processing procedure and provided this defendant with the rights that he is certainly entitled to.”⁶ District Attorney John Adams described it as a “complete miscarriage of justice.”⁷

⁴ A request for the transcript is currently pending, and I will send a copy to the Board when it is available. However, it appears to be delayed due to the COVID-19-related reduction in court services.

⁵ https://www.readingeagle.com/news/crime/berks-county-sides-with-aclu-against-district-judge-s-jailing/article_e8e3964a-4db9-11ea-99f5-9321608d7189.html

⁶ https://www.readingeagle.com/news/crime/berks-county-da-commissioner-latest-to-criticize-district-judge-system/article_adf819ee-4e80-11ea-8bfe-7bcb33de69f2.html

⁷ *Id.*

II. Judge Robinson's Actions Violated the Conduct Rules

As is described above, Judge Robinson's actions in Mr. Vega-Torres's case violated several of the Rules Governing Standards of Conduct ("Conduct Rules").

A. Judge Robinson's unlawful behavior violated Rule 2.5

Judge Robinson violated Rule 2.5 when he:

- (1) jailed Mr. Vega-Torres for failure to pay without a hearing on his ability to pay;
- (2) jailed Mr. Vega-Torres without making any findings regarding his ability to pay;
- (3) jailed Mr. Vega-Torres without providing him counsel;
- (4) failed to provide Mr. Vega-Torres with an interpreter even though he does not speak or understand English
- (5) jailed Mr. Vega-Torres without staying the imprisonment for 30 days;
- (6) failed to inform Mr. Vega-Torres of his right to appeal the order of incarceration;
- (7) billed Mr. Vega-Torres for constable server fees for warrants that the constables did not serve
- (8) billed Mr. Vega-Torres for constable fees despite Mr. Vega-Torres being indigent; and
- (9) over-assessed Mr. Vega-Torres by more than \$4,000 in court costs.

Rule 2.5 governs Competence, Diligence and Cooperation, and provides in relevant part:

A magisterial district judge shall perform judicial and administrative duties **competently** and diligently.

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a magisterial district judge's responsibilities of judicial office.

[4] In disposing of matters promptly and efficiently, a magisterial district judge must demonstrate **due regard for the rights of parties** to be heard and to have issues resolved without unnecessary cost or delay. A magisterial district judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

In short, Rule 2.5 requires that MDJs follow the law in a competent and diligent manner. Judge Robinson, however, showed a complete disregard for the law—including fundamental constitutional rights—in numerous ways. Under similar circumstances, the Court of Judicial Discipline explained in *In re Davis*, 954 A.2d 118 (Pa. Ct. Jud. Disc. 2007), that jailing defendants for nonpayment of fines and costs without a hearing and without making findings on the record constitutes an ethical violation. That reasoning applies equally here.

1. Judge Robinson jailed Mr. Vega-Torres without holding a hearing.

Judge Robinson did not hold a hearing when Mr. Vega-Torres appeared on February 3. He did not ask Mr. Vega-Torres any questions, did not take evidence, and did not make any findings of fact and law. Instead, he summarily ordered that Mr. Vega-Torres go to jail for fourteen days. At the subsequent hearing on a petition for a writ of habeas corpus before the Berks County Court of Common Pleas, the County Solicitor Christine Sadler agreed—based on her own, independent investigation—that no hearing had occurred. Without a hearing, there is no “due regard for the rights of parties to be heard,” as is required by Rule 2.5

Judge Robinson’s actions violated both the Constitution and Pennsylvania law. The United States and Pennsylvania Supreme Courts have explicitly held that defendants who have defaulted on their fines and costs “must be given the opportunity to establish that they are unable to pay the fine. Upon a showing of indigency, [they] should be allowed to make payments in reasonable installments.” *Com. ex. Rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (granting a writ of habeas corpus for four defendants who were jailed for failure to pay fines and costs). The right to due process prohibits imprisoning a defendant for failure to pay court fines, costs, or restitution without first “inquir[ing] into the reasons for the failure to pay.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

These constitutional protections require that courts affirmatively inquire “into the reasons surrounding the [defendant’s] failure to pay, followed by a determination of whether the [defendant] made a willful choice not to pay.” *Commonwealth v. Eggers*, 742 A.2d 174, 176 (Pa. Super. Ct. 1999). Pennsylvania statutes reflect these constitutional imperatives, prohibiting a criminal court from jailing a defendant unless, at a hearing, the court “determines that the defendant is financially able to pay the fine or costs.” 42 Pa.C.S. § 9730(b)(1). *See also* Pa.R.Crim.P. 456(D).

The Superior Court recently issued *three* published opinions invalidating unlawful court collections practices that jailed defendants without prior inquiry into ability to pay, in violation of the Constitution and Pennsylvania law. In *Commonwealth v. Mauk*, 185 A.3d 406, 411 (Pa. Super. 2018), the court explained that “[e]very time a defendant appears for failure to pay,” the court must “inquire into the reasons for” nonpayment. That is because the key question is whether the nonpayment was “willful.” Thus, “the finder of fact must examine the totality of the defendant’s life circumstances. If one’s effort to secure the funds owed was made in good faith, any nonpayment is excused.” *Id.* Similarly in *Commonwealth v. Diaz*, 191 A.3d 850, 866 (Pa. Super. 2018), and *Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. 2018), the Superior Court invalidated findings of contempt and jail sentences because “the trial court failed to make any findings of fact on Appellant’s ability to pay prior to imprisoning him.”

This constitutional baseline, the court rules, and statutes have all existed for decades. Yet Judge Robinson’s actions clearly violated them all. As the *Mauk* court explained, trial courts must consider the reasons for nonpayment *each and every time* that a defendant appears “because the person’s financial situations may have changed since the last time she or he was before the court.” *Mauk*, 185 A.3d at 411. By failing to hold any hearing and failing to consider Mr. Vega-Torres’s ability to pay, Judge Robinson disregarded clearly-established law and violated Mr.

Vega-Torres’s fundamental rights. Moreover, public court records (discussed below) show that Judge Robinson has engaged in similar unlawful actions when jailing more than a dozen other individuals in the past year alone.

2. Judge Robinson jailed Mr. Vega-Torres without making any findings regarding his ability to pay.

By not holding a hearing, Judge Robinson also failed to make any findings regarding Mr. Vega-Torres’s ability to pay—and whether that nonpayment stemmed from his indigence or an intentional refusal to not pay. County Solicitor Sadler’s investigation also confirmed that Judge Robinson made no such findings.

Pa.R.Crim.P. 456 is clear on its face that the MDJ must make a “determination” about whether the defendant is financially able to pay before imposing any sanction for nonpayment. Interpreting similar language in Pa.R.Crim.P. 706, the Superior Court explained in *Diaz* and *Smetana* that a court violates both the Rules of Criminal Procedure and 42 Pa.C.S. § 9730 when it fails to “make any findings of fact on Appellant’s ability to pay prior to imprisoning him.” *Diaz*, 191 A.3d at 866. Judge Robinson’s decision to jail Mr. Vega-Torres without making any such findings regarding his financial circumstances violated the Rules and was, as described above, unconstitutional under *Mauk* and *Bearden*.⁸

3. Judge Robinson jailed Mr. Vega-Torres without affording him his right to court-appointed counsel.

Judge Robinson also violated both the Rules and Mr. Vega-Torres’s fundamental right to counsel by incarcerating him even while he was unrepresented—a fact that was also confirmed by County Solicitor Sadler. Incarceration without counsel violates both the Rules of Criminal Procedure and the Constitution. The Superior Court ruled more than three decades ago that Pa.R.Crim.P. 122 (then Rule 316) requires that an MDJ appoint counsel for defendants in summary cases prior to imprisonment for nonpayment of fines and costs. *See Commonwealth v. Farmer*, 466 A.2d 677, 678 (Pa. Super. Ct. 1983).

In 2018, the Superior Court confirmed that the Due Process clause of the Fourteenth Amendment separately protects the right to counsel in such hearings, ruling that when “there is a likelihood of imprisonment for contempt and that the defendant is indigent, the court must appoint counsel and permit counsel to confer with and advocate on behalf of the defendant at a subsequent hearing.” *Diaz*, 191 A.3d at 862. Thus, Judge Robinson committed additional fundamental violations of the Rules and Constitution by incarcerating Mr. Vega-Torres when he had no attorney.

⁸ It is worth noting, and is discussed in the next section in more detail, that Judge Robinson also falsified the court docket to falsely claim that he *did* hold a payment determination hearing and find Mr. Vega-Torres “able to pay.” This was itself a separate ethical violation.

4. Judge Robinson jailed Mr. Vega-Torres without providing him with interpretation services.

Having grown up in Puerto Rico, Mr. Vega-Torres speaks only Spanish. When he appeared at Judge Robinson’s court on February 3, he was not provided with an interpreter or other language access services. Nor was he informed of his right to an interpreter. As is required by Title VI of the Civil Rights Act of 1964 and Pennsylvania’s Interpreter Act, which are binding on all Pennsylvania courts and judges, courts must provide free interpreter services. On March 14, 2017, Court Administrator Thomas Darr signed a memorandum of understanding with the United States Department of Justice to settle complaints related to violations of Title VI for failure to provide court interpreters. As part of that settlement agreement, the Unified Judicial System of Pennsylvania pledged to create a binding policy providing for interpreter services. This Language Access Policy thus requires that courts must provide “for early identification of the need for language services, including, among other things, providing timely and effective notice to those in need of such services.”⁹ By failing to provide interpreter services to Mr. Vega-Torres on February 3, Judge Robinson not only violated the Language Access Policy, but also state and federal law and the settlement agreement between the UJS and DOJ.

5. Judge Robinson jailed Mr. Vega-Torres without delaying the sentence of incarceration for 30 days.

To protect a person’s right to appeal, guaranteed by Article V, section 9 of the Pennsylvania Constitution, Pa.Rs.Crim.P 456 and 461 specify that any order of incarceration in a summary case must be stayed for 30 days—otherwise the defendant would sit out a short jail sentence before his appeal is heard. Per Rule 461(A), in “all summary cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires.” This is reiterated in Rule 456(D)(3), which specifies that any order of imprisonment is automatically stayed for 30 days and that the MDJ must therefore give the defendant a date certain for the execution of his sentence. Judge Robinson, however, immediately incarcerated Mr. Vega-Torres without staying execution of his sentence, in violation of the law.

6. Judge Robinson jailed Mr. Vega-Torres without apprising him of his right to an appeal.

Pa.Rs.Crim.P. 456 and 460 explain that a defendant has a right to appeal from the results of a payment determination hearing. Rule 456 specifies that the MDJ must “advise the defendant of his right to appeal within 30 days for a hearing *de novo* in the court of common pleas” and that filing that appeal will stay execution of the sentence. Judge Robinson provided no such information or notice to Mr. Vega-Torres, who was entirely unaware of his right to appeal.

⁹ The Unified Judicial System of Pennsylvania Language Access Plan at 5, <http://www.pacourts.us/assets/files/setting-5486/file-5972.pdf?cb=11e5cd>.

7. Judge Robinson assessed Mr. Vega-Torres constable fees for service of warrants that the constables did not actually serve.

Judge Robinson assessed Mr. Vega-Torres constable server fees even when the constable did not actually serve a warrant. On February 3, Mr. Vega-Torres voluntarily appeared at Judge Robinson's court, and Judge Robinson ordered him sent to jail. Nevertheless, Judge Robinson approved the \$27.50 constable payment (*per docket*) to one Ryan Cooper for "Execute Warrant, Returns to Court" as if Mr. Cooper had actually arrested Mr. Vega-Torres and brought him to court. Judge Robinson further violated the law by authorizing that payment to Mr. Cooper.

8. Judge Robinson billed Mr. Vega-Torres for constable fees despite Mr. Vega-Torres being indigent.

Judge Robinson further added to the illegal costs in these cases by charging Mr. Vega-Torres for the constable costs associated with serving warrants despite Mr. Vega-Torres being indigent. The court imposed a total of \$2,375 in constable server fees on Mr. Vega-Torres. Many of those, of course, are unlawful under Pa.R.Crim.P. 454(B) because the court should only have charged one set of server fees. In addition, however, 44 Pa.C.S. § 7161(g)(16) prohibits imposing constable fees on any defendant who is "indigent."

Mr. Vega-Torres was, by any definition, indigent—he was unemployed, receiving food stamps and Medicaid, and unable to pay, which is why he fell behind on his payments. Moreover, Judge Robinson had already found him "unable to pay" at the July 22 hearing. Nevertheless, Judge Robinson imposed constable warrant fees on him on April 4, 2019, July 17, 2019, October 28, 2019, and February 3, 2020. Each time, the court imposed server fees in multiple dockets, rather than just one docket. Even if Mr. Vega-Torres were not indigent for part of that time period, he certainly was by February 3, 2020. By either failing to consider whether Mr. Vega-Torres was indigent, or by knowingly imposing server fees despite his indigence, Judge Robinson violated Pennsylvania law and burdened Mr. Vega-Torres with thousands of extra dollars in costs that he did not lawfully owe.

9. Judge Robinson over-assessed Mr. Vega-Torres more than \$4,000 in court costs.

Judge Robinson's unlawful actions and incompetent behavior go beyond his actions on February 3. Judge Robinson overbilled Mr. Vega-Torres by more than \$4,000 in court costs. All of these tickets arose from a single traffic stop—a single incident. Pa.R.Crim.P. 454(B) plainly specifies that when "more than one summary offense is alleged to have been committed by one person arising from the same incident, the matter shall proceed as a single case and the issuing authority shall receive **only one set of costs.**" (emphasis added).

Judge Robinson, however, imposed *fifteen* sets of court costs, one for each traffic ticket/case. Thus, instead of only charging Mr. Vega-Torres the approximately \$150 in MJ-23105-TR-0000250-2018, the Judge Robinson ultimately charged him \$4,673. This was in violation of the law, and (as is discussed below) appears to be part of a pattern of unlawfully charging defendants costs *per case* rather than *per incident*.

B. Judge Robinson's unlawful behavior violated Rule 1.2

Rule 1.2, entitled Promoting Confidence in the Judiciary, provides:

A magisterial district judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

[5] . . . Actual improprieties include violations of law, court rules or provisions of these Conduct Rules. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the magisterial district judge violated these Conduct Rules or engaged in other conduct that reflects adversely on the magisterial district judge's honesty, impartiality, temperament, or fitness to serve as a magisterial district judge.

Thus, when an MDJ violates the law and court rules, he violates Rule 1.2. As the Board notes, not every violation of the law rises to the level of an ethical violation requiring sanctions. But Judge Robinson's actions here were beyond the pale of any accepted practice. *See In re Davis*, 954 A.2d 118 (Pa. Ct. Jud. Disc. 2007). He jailed an obviously indigent defendant who did not understand English—whom he had found “unable to pay” during the last hearing—for fourteen days without holding any hearing or making any finding. Our Supreme Court ruled such a practice unconstitutional in 1973, and repeated appellate cases, not to mention the Rules of Criminal Procedure and statutes, reflect that basic and obvious principle.

That illegal action was combined in this case with numerous others, as described above. And as is set forth at the end of this document, Judge Robinson has been engaged in a pattern of illegal action for years that has resulted in jailing defendants in violation of the law and charging them far more in court costs than the law allows.

Finally, **Judge Robinson falsified court records** by stating on the electronic court dockets for each of Mr. Vega-Torres's cases: “02/03/2020 Payment Determination - Able to Pay.” No hearing was held, and no finding was made that Mr. Vega-Torres was “able to pay.” Falsifying a court record in a way that covers-up unlawful actions taken by the Judge Robinson certainly raises questions of his fitness to serve as a MDJ.

Indeed, that was not the only record that appears to be falsified. The May 29, 2019 “Time Payment Order” falsely states that Judge Robinson considered Mr. Vega-Torres's ability to pay on that date, as well (even though Mr. Vega-Torres was not present in court that day, when the court records show that he was convicted in absentia). In addition, an order created on February 3, 2020 purports to schedule a Payment Determination Hearing for the same day. None of these false records are accurate reflections of what actually occurred.

C. Judge Robinson's unlawful behavior violated Rule 2.6

Rule 2.6 ensures the Right to Be Heard and provides in relevant part:

(A) A magisterial district judge shall accord to every person or entity who has a legal interest in a proceeding, or that person or entity’s lawyer or authorized representative, the right to be heard according to law.

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

For many of the same reasons as the violation of Rule 1.2 and 2.5, Judge Robinson’s conduct also violated Rule 2.6. Judge Robinson did not have a hearing, did not give Mr. Vega-Torres an opportunity to be heard or to explain his financial circumstances, and did not provide Mr. Vega-Torres with interpretive services so that he could be understood *even if* Judge Robinson had held a hearing. The Fourteenth Amendment, as interpreted by cases such as *Parrish*, *Bearden*, and *Mauk* require that MDJs hold hearings and allow a defendant to be heard prior to depriving that person of his liberty. As does Pennsylvania law, in the form of Pa.R.Crim.P. 456 and 42 Pa.C.S. § 9730(b), which itself specifies that a court may “impose imprisonment for nonpayment” only *if* the MDJ “conduct[s] a hearing to determine whether the defendant is financially able to pay” and “determines that the defendant is financially able to pay.” By not holding a hearing and not providing an opportunity for Mr. Vega-Torres to “be heard” according to that law, Judge Robinson violated Rule 2.6.

III. Judge Robinson’s actions in this case are part of a pattern of unlawful and unethical behavior

What Judge Robinson did to Mr. Vega-Torres appears to be part of a larger pattern of incarcerating defendants without providing basic procedural protections and in violation of the law. Publicly-available records show that Judge Robinson has repeatedly jailed defendants for nonpayment of fines and costs without making the findings required by law. The data we have access to is specifically for a procedure called “failure to post collateral,” a procedure that is unique to the MDJs and requires brief explanation. This is *not* the procedure through which Judge Robinson jailed Mr. Vega-Torres. However, it shows a pattern of unlawful jailings by that judge, and it is also the only relevant data that requires that MDJs put the reasons for such jailings in writing.

Incarceration for “failure to post collateral” occurs under the following circumstances: When a defendant appears or is brought before the court for a Rule 456 payment determination hearing, the MDJ is required to hold that hearing “immediately.” If the MDJ cannot, then the court is supposed to release the defendant on recognizance. However, the MDJ may set “collateral”—conceptually a form of bail—if the MDJ has “reasonable grounds” to believe that the defendant will not appear. The amount of collateral *must* be limited to what the defendant has the present ability to pay, with the obvious intention being that a defendant should never be detained: he would, of course, pay the collateral and be released. More specifically, the MDJ must document: 1) the reasons why collateral is necessary to secure the defendant’s appearance (e.g. the defendant has a history of failing to appear); and 2) the facts supporting a finding that the defendant “has the ability to pay monetary collateral.” Rule 456(C)(2).

Notably, the requirement that the reasons for setting collateral and for incarceration must be in writing were added in 2015 specifically to stop MDJs from jailing people who could not pay. AOPC has repeatedly provided training and instruction to MDJs about this at their annual mandatory education course. Nevertheless, in numerous cases, Judge Robinson has jailed defendants without making either of the written findings required by Rule 456(C). The following examples are all from the past year:¹⁰

Docket	Reason why collateral is necessary to secure the defendant's appearance	Facts showing that the defendant has the ability to pay the collateral
MJ-23105-NT-0000247-2019	as Per Judge - 72 hour hold - risk for failure to appear	as Per Judge - 72 hour hold - risk for failure to appear ¹¹
MJ-23201-NT-0000353-2019	def cannot post monetary collateral	def cannot post monetary collateral
MJ-23201-TR-0001199-2018	72 Hour per Judge Robinson	72 Hour per Judge Robinson
MJ-23102-TR-0000325-2017 MJ-23102-TR-0000326-2017 MJ-23102-TR-0000328-2017	Old warrants 2017-Fails to pay	Employed ¹²
MJ-23105-NT-0000132-2019	def fails to maintain payment plan even though he has income	has income ¹³
MJ-23105-NT-0000901-2018	fails to appear to PDHG'S	unemployed
MJ-23105-NT-0001059-2018	-Repeat no show to hearings.	n/a

¹⁰ All typos are in the original data from the court. All of this information comes from data that the ACLU of Pennsylvania purchased from AOPC. According to that data, in each of these cases, Judge Robinson is listed as the judge who incarcerated the defendant.

¹¹ Judge Robinson appears to have routinely jailed defendants for 72 hours on the assertion, unsupported by any facts, that the defendant would not appear for a future hearing. If that were truly the reason for holding defendants, the times would vary, based on when the court could schedule a hearing. These holds appear to be punitive. In at least some cases, it also appears that the court never actually held the required payment determination hearing prior to releasing the defendant at the end of the 72 hours (or next business day, if it fell on a weekend)—although, again, the inaccuracy of some records makes that difficult to discern.

¹² As the Superior Court has repeatedly explained, simply knowing that a person is “employed” is insufficient evidence to show that a person is *able to pay*. *See, e.g., Commonwealth v. Ruiz*, 470 A.2d 1010, 1012 (Pa. Super. Ct. 1984) (mere knowledge that a defendant is employed “cannot alone provide a sufficient picture of appellant’s finances so that an intelligent finding as to his ability to pay the fines and costs imposed can be made”). Moreover, the fact that a defendant is employed is not itself sufficient information to determine whether the defendant has the present ability to post a specific amount of collateral.

¹³ See note 12.

MJ-23105-TR-0000306-2016	def fails to maintain payment plan even though he has income	has income ¹⁴
MJ-23105-TR-0000595-2012 MJ-23105-TR-0000596-2012	defendant fails to make payments	defendant fails to make payments
MJ-23105-TR-0004506-2015 MJ-23105-TR-0004890-2015 MJ-23105-TR-0005640-2015 MJ-23105-TR-0006357-2015	def fails to maintain payment plan even though he has income has income	def fails to maintain payment plan even though he has income has income ¹⁵
MJ-23106-NT-0000604-2016	Has Common Pleas Bench Warrant	Unknown
MJ-23106-TR-0004295-2017 MJ-23106-TR-0004295-2017 MJ-23106-TR-0004295-2017 MJ-23106-TR-0004296-2017 MJ-23106-TR-0004298-2017 ¹⁶	failed to appear per Judge Robinson, "failed to appear" See all case notes-Failed to appear four times. Judge requests payment in full.	failed to appear per Judge Robinson "failed to appear" Unemployed
MJ-23201-NT-0000295-2019	Defendant has mental health issues. SAM has been notified	Defendant has mental health issues. SAM has been notified
MJ-23202-TR-0000935-2016	Brought in on Common Pleas Bench Warrant-Judge committing on all scofflaws.	Unknown

In not one of those cases did Judge Robinson make a facially-valid finding that a person was able to afford the collateral. And many of those “facts” showing that the person could *afford* collateral instead show that the person could *not* afford it: “unemployed,” “def cannot post monetary collateral,” “failed to appear,” and “unknown” are facially unlawful grounds on which to say someone can afford collateral such that incarceration is warranted.

Of course, Mr. Vega-Torres’s case would not have appeared in this type of data because the Rules do not currently require that the reasons for incarceration following a “payment determination hearing” (or the lack thereof, as in this case) appear in writing.¹⁷ Thus, beyond the illegal jailings in Mr. Vega-Torres’s case and these “failure to post collateral” jailings, it is likely that Judge Robinson has illegally jailed even more indigent persons for nonpayment of fines and costs without the benefit of counsel and other legal protections.

¹⁴ See note 12.

¹⁵ See note 12

¹⁶ Although Judge Patton was assigned to these cases, data from AOPC shows that it was actually Judge Robinson who incarcerated this defendant.

¹⁷ As a reminder, the table only lists individuals jailed for “failure to post collateral.”

In addition, these cases highlight another pattern of wrongdoing on the part of Judge Robinson: imposing costs on multiple dockets arising out of the same incident, in violation of Pa.R.Crim.P. 453(B). Simply using as an example from the above table, the defendant in MJ-23105-TR-0000595-2012 and MJ-23105-TR-0000596-2012 was also overbilled by Judge Robinson when he received multiple citations from the same incident. As with Mr. Vega-Torres's case, this suggests an ongoing practice of unlawful activity that results in defendants being jailed over debt they should not lawfully owe.

IV. The Board should take action against Judge Robinson.

In Mr. Vega-Torres's case, as in others, Judge Robinson has shown that he has little regard for the law and for indigent defendants. This raises serious questions about his fitness to serve as an MDJ. Mr. Vega-Torres spent nine days in jail simply because he was poor, and Judge Robinson violated every relevant Rule, statute, and legal principle in sending him there. The Board should seriously consider whether Judge Robinson is fit to continue in that role.

Respectfully submitted,



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