

February 23, 2018

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, the other attorneys who have co-signed below and I 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.

We are aware that this Criminal Procedural Rules Committee ("Committee") has released 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"). We anticipate that these rule changes will significantly impact individuals that we represent on a *pro bono* basis. Although we generally support these recommendations, we strongly urge the Committee to provide clearer, more specific, and binding instructions to the MDJs. Additional steps should be taken to effectively reduce the number of people incarcerated for failure to pay LFOs on the least serious offenses—summary violations.

We respectfully submit the below comments regarding the proposed amendments to the above-referenced rules:

I. The Rules Should Provide 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 Provide Clear Standards On Setting Affordable Payment Plans.

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 Should Provide A Much-Needed Mechanism To Administratively Close Old Cases That Are Uncollectible Due To The Defendant's Indigence.

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. Some courts have adopted explicit mechanisms to administratively close these inactive cases if the court determines the defendant will never be able to pay. The rules should provide a uniform and statewide policy to dispose of such cases.

IV. No License Should Be Suspended For Nonpayment Unless There Is First A Payment Determination Hearing That Finds The Defendant Is Able To Pay And Is Refusing To Do So.

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. Accordingly, we would argue that the suspension or revocation of their driving privileges for failure to pay, in the absence of a judicial determination that they are able to pay, is so detrimental as to implicate due process principles. We urge the Committee to consider implementing a requirement that a defendant's ability to pay be judicially determined before the suspension of a license for financial reasons.

Respectfully Submitted,



Alexandre N. Turner
The Law Offices of Alexandre Turner, LLC

Joined by:

/s/ Thomas Ivory

Thomas Ivory

Law Office of Thomas Ivory

Thomas@ivorylaw.com

/s/ Katie Beran

Katie R. Beran

Hausfeld LLP

325 Chestnut Street, Suite 900

Philadelphia, PA 19106

215-985-3270

kberan@hausfeld.com

/s/ Kaitlin M. Gurney

gurneyk@pepperlaw.com

/s/ Christen Tuttle

tuttlec@pepperlaw.com

Pepper Hamilton LLP

3000 Two Logan Square

Eighteenth and Arch Streets

Philadelphia, PA 19103-2799