



PHILADELPHIA BAR ASSOCIATION

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February 22, 2018

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

Brian W. Perry, Esquire
Perry Shore Weisenberger & Zemlock
2411 N. Front Street
Harrisburg, PA 17110-1160

Re: Proposed Amendments to Pennsylvania Rules of Criminal Procedure 403 *et seq.*

Dear Mr. Wasileski, Chair Perry and Members of the Criminal Procedural Rules Committee:

On behalf of the 12,000 members of the Philadelphia Bar Association, I am writing regarding the proposed amendments to the Rules of Criminal Procedure that will provide guidance to magisterial district courts when evaluating a defendant's ability to pay fines, fees and restitution.

The Philadelphia Bar Association supports the Criminal Procedural Rules Committee's goal of reducing unnecessary incarceration of indigent defendants in non-felony matters. The proposed rule changes are a major step in the right direction. We believe, however, that the proposed rule changes can be improved significantly through amendments that are set forth in the attached resolution passed by our Board of Governors on February 15, 2018.

Thank you for the opportunity to provide comments on the proposed amendments to Pennsylvania Rules of Criminal Procedure 403 *et seq.*

Respectfully,

Mary F. Platt
Chancellor, Philadelphia Bar Association

Enclosure

**PHILADELPHIA BAR ASSOCIATION RESOLUTION
REGARDING PROPOSED RULE CHANGES WITH RESPECT TO
INCARCERATION OF THE INDIGENT FOR FAILURE TO PAY IN
SUMMARY CASES**

WHEREAS, the Philadelphia Bar Association has a long-standing commitment to fairness and equality in the criminal justice system, and to ensuring that outcomes in that system do not depend on an individual's financial means;

WHEREAS, the report from the Interbranch Commission for Gender, Racial, and Ethnic Fairness entitled "[Ending Debtors' Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform](#)" explains that thousands of low-income individuals are jailed each year by magisterial district courts across Pennsylvania because those individuals are too poor to pay court fines, costs, and/or restitution (collectively "legal financial obligations");

WHEREAS, in light of the growing national attention on the problem of modern debtors' prisons, states across the country have reformed their court debt collection practices in criminal cases to protect defendants' constitutional rights;

WHEREAS, there are more than one million open cases before Pennsylvania magisterial district courts dating back to the 1970s in which defendants still owe legal financial obligations;

WHEREAS, Pennsylvania magisterial district courts issue over 500,000 bench warrants each year because defendants have defaulted on legal financial obligations;

WHEREAS, court records show that Pennsylvania magisterial district courts have jailed defendants for not paying legal financial obligations while acknowledging that defendants are homeless or unemployed, or otherwise unable to pay;

WHEREAS, Pennsylvania and United States Supreme Court case law is clear that a defendant cannot be incarcerated for nonpayment of legal financial obligations unless the court affirmatively inquires into the defendant's reasons for nonpayment and finds that the defendant is financially able to pay, is not indigent, and is willfully refusing to pay;¹

WHEREAS, the existing procedural standards in the Pennsylvania Rules of Criminal Procedure, which set forth the process by which the magisterial district courts are supposed to collect legal financial obligations, are too vague and do not instruct courts how to evaluate a defendant's ability to pay;

WHEREAS, the Supreme Court of Pennsylvania's Criminal Procedural Rules Committee has submitted for public comment a [set of proposed changes](#) to the Pennsylvania Rules of Criminal

¹ See, e.g., *Bearden v. Georgia*, 461 U.S. 660, 672 (1983); *Commonwealth ex. rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973); *Commonwealth v. Eggers*, 742 A.2d 174, 176 (Pa. Super. Ct. 1999); *Bacik v. Commonwealth*, 434 A.2d 860, 863 (Pa. Commw. Ct. 1981).

Procedure, along with a report titled “Incarceration of the Indigent for Failure to Pay in Summary Cases,” that attempts to address these unconstitutional debtors’ prison practices by changing the way that magisterial district courts and the Philadelphia Municipal Court (including the Traffic Division) operate by:

- Requiring that magisterial district courts, when incarcerating a defendant for nonpayment of legal financial obligations, put in writing findings demonstrating the defendant’s ability to pay the obligations and the reasons why the court has imposed incarceration for nonpayment; and
- Listing in the Comment to Rule 456 of the Pennsylvania Rules of Criminal Procedure generalized categories of financial information the court should consider when evaluating ability to pay;

WHEREAS, the proposal from the Pennsylvania Criminal Procedural Rules Committee could be further strengthened by:

- Specifying, as the United States Supreme Court has, that a court has an affirmative obligation to inquire into the defendant’s financial resources when considering ability to pay;
- Making clear, in line with Rule 706 of the Pennsylvania Rules of Criminal Procedure and Pennsylvania case law, that indigent defendants cannot be jailed for nonpayment of legal financial obligations;
- Listing specific mandatory financial factors that magisterial district courts must consider when evaluating ability to pay (including the defendant’s net income after deducting the defendant’s living expenses) to help ensure uniform and accurate evaluations;
- Providing a list of factors that indicate that a defendant is presumptively indigent and at least temporarily unable to pay any amount, including:
 - income below 125% of the federal poverty level,
 - receiving means-based public assistance,
 - receiving the services of the public defender,
 - recent release from jail,
 - and/or inability to meet basic life needs;
- Specifying that courts may set payment plans to help defendants pay their legal financial obligations, but cannot set defendants on payment plans that the evidence shows they cannot afford;
- Providing a specific schedule of presumed maximum monthly payments based on a defendant’s net income;
- Providing a uniform process to allow magisterial district courts to administratively close old cases that they determine are uncollectible due to the defendant’s indigence;
- Extending the time before a warrant may be issued after a defendant defaults on payments, and improving the notice required to be sent to defendants by explaining the defendants’ rights and obligations, to reduce the issuance of bench warrants for failure to pay;
- Removing the unconstitutional procedure in Rule 456 of the Pennsylvania Rules of Criminal Procedure that allows magisterial district courts to jail a defendant for up to 72 hours prior to an ability-to-pay hearing for “failure to post collateral” and instead

requiring that, unless the defendant is released on recognizance, such hearing must occur the same day the defendant is brought to court; and

- Extending the period of time between default on legal financial obligations in a traffic case and notice to the Pennsylvania Department of Transportation for that Department to suspend the defendant's license, to avoid interfering with defendants' right to file an appeal within 30 days and to allow the court more time to work with defendants who have missed payments;

NOW, THEREFORE, BE IT RESOLVED, that the Philadelphia Bar Association urges the Pennsylvania Criminal Procedural Rules Committee to protect the rights of indigent defendants who lack the ability to pay legal financial obligations in summary cases by incorporating improvements recommended in this resolution into proposed amendments to the Rules of Criminal Procedure that will provide guidance to magisterial district courts when evaluating a defendant's ability to pay;

BE IT FURTHER RESOLVED, that the Philadelphia Bar Association urges the Honorable Justices of the Supreme Court of Pennsylvania to adopt the proposed rules changes as amended consistent with this resolution; and

BE IT FURTHER RESOLVED, that the Chancellor and/or the Chancellor's designee(s) shall communicate the Philadelphia Bar Association's position on the proposed rules or any revised or similar proposal to the Supreme Court of Pennsylvania, the members of the Pennsylvania Criminal Procedural Rules Committee, the legal profession, the media, and the public, and to take such other action as necessary to effectuate this resolution.

PHILADELPHIA BAR ASSOCIATION

BOARD OF GOVERNORS

ADOPTED: February 15, 2018