



December 5, 2022

Daniel A. Durst, Chief Counsel, Rules Committees
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
P.O. Box 62635
Harrisburg, PA 17106-2635

Re: Proposed Rule Changes Regarding Waiver of Fees and Costs on Indigent Parties

Dear Mr. Durst and Committee Members:

As President of the Pennsylvania Bar Association (“PBA”), I wrote on June 28, 2022, expressing our appreciation for the work on the proposed rules for waiving filing fees and other costs for the neediest among us. I write now to make sure you are aware of a recent change in the law, and to request that the Committees propose a court rule, uniform in all courts, implementing the new law that will eliminate needless effort and ensure that the new law will benefit all people that it is intended to benefit.

The new law is Act 163 of 2022 (originally S.B. 1208), which was signed on November 3, 2022. It amends 42 Pa.C.S. § 9730 (“Payment of court costs, restitution and fines”) and provides as follows (with the new language in bold):

If the issuing authority, senior judge or senior magisterial district judge determines that the defendant is without the financial means to pay the costs, restitution or fines immediately or in a single remittance, the issuing authority, senior judge or senior magisterial district judge may provide for payment in installments **or, in the case of costs or fines, reduce or waive the costs or fines except costs imposed under section 1101 of the Act of November 24, 1998 (P.L.882, NO.111), known as the Crime Victims Act.** In determining the appropriate installments, reduction or waiver, the issuing authority, senior judge or senior magisterial district judge shall consider the defendant's financial resources, the defendant's ability to make restitution and reparations and the nature of the burden the payment will impose on the defendant.

This new law authorizes courts to waive costs or fines (but not restitution) in their entirety and confirms that a motion for waiver does not have to be presented to the sentencing judge but can be granted by the senior judge of the sentencing court at any time after sentencing.¹

¹ The Rules Committees had been hesitant to address the waiver of costs and fines in the proposed IFP Rules because the Supreme Court was still considering the appeal in *Commonwealth v. Lopez*, in which sentencing procedures were at issue. The Committees issued their revised IFP recommendations in May, and the Supreme Court issued its decision in *Lopez* in August. The Court held that current Rules of Criminal Procedure did not require an “ability to pay” hearing before the sentence was imposed. In so doing, the Supreme Court noted that the Superior Court “had emphasized its decision should not be construed to strip the trial court of the discretion to conduct an ability-to-pay hearing at sentencing.” 280 A.3d 887.893 (Pa. 2022).

December 5, 2022

Page Two

The law also specifies the factors that must be considered in determining indigency. These are well-known to the bench and the bar because they are used to determine eligibility for representation in criminal proceedings by the public defender and by court-appointed counsel. In civil proceedings, the same criteria are utilized when a pro bono attorney files a praecipe with the court certifying that (in the words of Rule 240(d)) “he or she is providing free legal service to the party and believes the party is unable to pay the costs.”

Because these three mechanisms are already being used to determine indigency, I write on behalf of our Association to suggest that courts do not have to make yet another determination of indigency in order to waive costs and fines, but that the first such determination, made at the outset, result automatically in the waiver of fines and costs (excepting only those under the Crime Victims Act) throughout the proceeding.

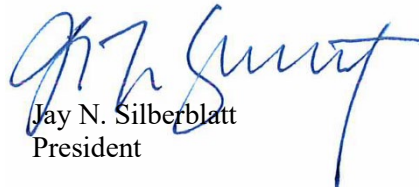
While Act 163 applies by its terms only to payments that are “in default,” that is, post-imposition, there is no reason to limit waiver determinations to that point in the proceedings. The Act specifies that the determination is whether the individual has the ability to pay the costs and fines “immediately or in a single remittance.” For any individual being represented by a public defender, court-appointed counsel, or pro bono counsel, that test will be met at the beginning, middle and end of the prosecution. The determination to waive fees and costs for the indigent at the commencement of the proceedings, as is done in civil litigation, would be efficient, effective, and eliminate the potential for non-uniformity (e.g., if counsel were to fail to file the request or make the requisite motion). As is already the case, the court would retain the authority to reconsider the individual’s indigency at the time of sentencing; but that would be the exception not the rule.

The presumption we propose for adoption into the Rules is already in place in ten states, as reported in the study of **Fines and Fees** by the National Center for Access to Justice that was published this past Friday. <https://ncaj.org/state-rankings/justice-index/fines-and-fees>

If it is to mean anything, “equal access to justice” must mean that the indigent may not only enter the halls of justice without having to pay the costs of the proceedings, but also will not be billed for them on the way out.

Thank you again for your kind consideration of these suggestions and for the important work you are doing.

Sincerely,



Jay N. Silberblatt
President

c: Barry M. Simpson, Esq.
David Keller Trevaskis, Esq.