



The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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October 5, 2020

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635

Re: Comments on Proposed Amendment of Pa.R.C.P. No. 240 and Adoption of Pa.R.J.A. No. 1990

Dear Ms. Shultz,

We are writing today in response to the August 8, 2020 request from the Civil Procedural Rules Committee ("Committee") for comments on its proposed amendment of Pa.R.C.P. No. 240 and the proposed adoption of Pa.R.J.A. No. 1990. The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness ("Interbranch Commission") commends the Committee for its work in helping to ensure that impoverished individuals will have access to the Pennsylvania courts, regardless of their ability to pay. While we support the Committee's proposals to provide guidance and clarity on the process for seeking *in forma pauperis* ("IFP") status, we would like to propose several modifications to the Committee's proposals which we believe will make the process more accessible to those who are in need of the IFP designation.

By way of background, the Interbranch Commission was established in 2005 to implement the recommendations from the Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System. After three years of study, the Supreme Court Committee produced the report, which consisted of 550 pages, covering fourteen individual topics and concluding with 173 recommendations for addressing the deficiencies discovered in the system. Over the past fifteen years, the Interbranch Commission has focused on promoting the equal application of the law for all Pennsylvanians, including those who lack the financial resources to access the courts.

Proposed Modifications

1. Restore in Proposed Rule 1990 the Procedure Provided in the Current Rule 240 Allowing for an Applicant's Attorney to File the Praeceptum Attesting to the Applicant's Lack of Ability to Pay.

Current Rule 240(d) permits legal aid or pro bono attorneys to obtain *in forma pauperis* status for their indigent clients by simply filing a praecipe attesting to their client's inability to pay court fees and litigation costs. The proposed rule eliminates this efficient practice, and instead, requires all litigants, even those receiving free legal representation and means-based public assistance, to complete the IFP form and provide documentation of their indigency. There is no evidence that the former process has been abused by individuals seeking IFP status. Indeed, individuals who receive representation from a legal aid office are already required to establish their indigency in order to receive such representation. The former rule also reflects a recognition of the urgent need of many indigent litigants for immediate representation to defend against the impending loss of their housing or critical services. Removing the efficient and reliable practice of enabling attorneys to manage the legal process of filing a formal application for IFP on behalf of their impoverished and often disabled clients, will resurrect an old system that had been scrapped because it hindered poor people's access to courts.

2. Remove from Proposed Rule 1990(c) the Requirement for Automatically Eligible Applicants to Provide Documentation to Support Their Sworn Statements.

Similar to our concerns regarding the removal of attorneys' ability to file a Praeceptum on behalf of their indigent clients, requiring individuals who are automatically eligible for IFP status to not only provide a sworn statement concerning their resources, but also provide documentation to support their statements is likely to result in many eligible individuals being unable to obtain access to the courts. Many impoverished individuals, especially those who are disabled, will find this requirement particularly burdensome, because it requires information they might not have, such as how to contact the government office from which they receive benefits, and even more challenging, how to actually secure paperwork from that office. It might take numerous trips to the benefits office to obtain the documents, which creates a significant financial and physical obstacle for indigent individuals to overcome. Additionally, even if they could determine how to obtain the required information, many public benefit offices provide such information only in electronic form. Individuals with limited means rarely have access to receipt of information electronically. A verification of the accuracy of the information under penalty of law (per 18 Pa.C.S. §4904) is all that is needed for most court filings, and as such, should be more than sufficient to support an application for IFP status.

3. Remove the Requirement in Proposed Rule 1990 (b)(2) and (d)(2) that a Court Hold a Hearing Before Granting IFP Status for All Individuals Who are Not Automatically Eligible.

Such a hearing should only be held when the Court determines that one is necessary. Otherwise, individuals seeking to secure IFP status will be required to incur all the costs associated with attending a court hearing in a routine, non-contested IFP case. For the same reasons highlighted above, many indigent litigants cannot afford such costs or are otherwise unable to attend a hearing, and consequently, will have their applications denied and will be forced to appear in their underlying court proceeding without counsel.

4. Include a Uniform Standard in Proposed Rule 1990 for Deciding Whether to Grant IFP Status to Applicants Who are Not Automatically Eligible.

For litigants who are not automatically eligible for IFP status, there must be a standard necessary for adequate appellate review. Such a standard has been established in case law, which entitles individuals who cannot meet their basic life needs, such as housing, food, medical care, transportation and dependent care, to proceed *in forma pauperis*. The standard should also provide that the financial resources of the applicant's friends or family are not relevant when determining an applicant's indigency.

5. Clarify in Proposed Rule 1990 the Scope of Fees to be Covered by a Waiver of Fees and Costs.

It is critically important for proposed Rule 1990(a) to cover not only costs in traditional civil cases but also in other court proceedings. Filing costs and other fees imposed in matters in Orphan's Court or in criminal cases can prevent an indigent litigant from probating a will, filing motions, seeking post-conviction relief, appealing summary convictions, or petitioning for criminal record expungements, pardons or writs of habeas corpus. Such a provision in the new rule will establish statewide uniformity and ensure that all individuals will have an accessible and simplified procedural means to exercise their right of access to the courts when they cannot pay.

6. Include a Requirement in Proposed Rule 1990 that All Court Filing Offices Prominently Display the Rule and Information Regarding the Application Process.

The new rule should include a requirement that the text of the rule and how to apply for IFP status be prominently displayed in court filing offices and other relevant places in the courthouse. Including this provision in the text of the rule will better inform litigants about the option to proceed with or respond to a complaint or criminal charge despite lacking sufficient funds

7. Include a Provision in Proposed Rule 1990 Prohibiting the Disclosure of Sensitive Financial Information of Applicants.

The new rule should also include a provision prohibiting the disclosure of the application for IFP status, and any personal financial information or supporting documents of individuals seeking IFP status.

8. Eliminate the Payment Plan Provision in Proposed Rule 1990(b)(2)(ii)(B).

Proposed Rule 1990(b)(2)(ii)(B) permits the court to place applicants who are granted only a partial waiver of costs on a payment plan. This is a very difficult provision for courts to implement fairly and uniformly. The proposed rule provides no guidelines for determining the amount a person should pay each month, the collection process, or the penalties for nonpayment. It also adds to the stress on indigent individuals who are unlikely to be able to repay such costs, and would bear the burden of possibly spending decades repaying the court, under threat of punishment for nonpayment of costs they cannot afford. Ultimately, the courts are not likely to recover these costs, and the administrative tasks involved in seeking payment of them are very burdensome and almost certain to be fruitless.

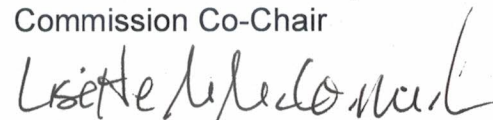
In closing, we thank you for your interest and hard work in helping to secure access to Pennsylvania's courts for impoverished individuals. We appreciate the opportunity to comment upon the Committee's proposals. If you have any questions concerning this matter, we would be happy to discuss them at your convenience.

Respectfully,



Rhonda Hill Wilson, Esq.

Commission Co-Chair



Lisette M. McCormick, Esq.

Executive Director



Leonard J. Rivers, Esq.

Commission Co-Chair



Kathleen Gomez, Esq.

Equal Opportunity and
Diversity Committee Chair

cc: Interbranch Commission Members

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