

# **TRIAL COURT COLLECTIONS POLICY GUIDELINES**

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## **INTRODUCTION**

The following guidelines are intended to assist courts in establishing collections policies. They are based on the Trial Court Collections Standards & Guidelines and similar procedures used by successful courts throughout the country. Written collections policies ensure that all participants have a clear understanding of their respective roles in the collections process and that collections activities are conducted consistently. These guidelines are intended to assist court managers in developing appropriate policies for their own courts that will improve the integrity and effectiveness of the collections process.

## **PAYMENT POLICIES**

### **Payment Due at Time of Assessment**

Pursuant to [MCR 1.110](#), the court will expect payment at the time of assessment, except when the court allows otherwise, for good cause shown. Anyone who has contact with litigants, including staff, judges, DOC personnel, attorneys, etc., should inform litigants that financial obligations are due on the day of assessment. Litigants who owe fines and assessments, and who indicate an inability to pay on the assessment date should have an opportunity to request additional time to pay.

The court should set guidelines for what constitutes good cause and what information is needed to justify granting a request for additional time to pay. The definition of good cause and the basis for determining need may be different depending on the type of case and debt. For instance, a litigant should be required to provide financial information to support the need for additional time to pay. Reimbursements for cost of care, however, are obligations that accrue over time. The court may require that the litigant (usually a parent) periodically confirm or update his or her financial information.

Payment policies should also outline how the litigant may make a request for time to pay, the type of information that must be provided, and the consequences for noncompliance. This may involve creating a payment agreement that specifies payment dates and amounts. The consequences for noncompliance should be defined in policy and provided in writing to the litigant.

### **Information to be Provided to the Court**

The court should specify what information must be provided by the litigant to the court when installment or deferred payment is requested, and under what circumstances. For instance, the court should request a social security number from the defendant who requests time to pay on a traffic case, but, in the case of larger debts, the court should request more complete information, such as a driver's license number, banking, and employment information. If the court requires completion of a financial statement, court policy should specify how and when this information is to be collected. This information should be maintained in a nonpublic file.

Some options to consider are:

- Inclusion of a financial profile in the pretrial screening process.
- Inclusion of a financial profile as part of the probation presentence process.
- Completion of a financial profile before court appearance for those persons who anticipate requesting additional time to pay.
- Maintenance of a nonpublic file if the full social security number is collected. If only the last four digits of the social security number are collected, the record can be maintained in the public file.

See SCAO-Approved form [MC 287](#), Financial Statement, that details a litigant's financial status.

### **Payment Types**

The court should identify the types of payment allowed (cash, personal check, credit card) for various types of assessments. Policy should identify the circumstances in which third-party payments may be made. If the court allows special procedures for litigants with previous payment problems (e.g., NSF checks, late payments), these procedures should be included in the policy.

### **Minimum Payment, Number of Payments, Maximum Period**

The court should establish a policy that defines the minimum payment amount accepted, the payment periods (weeks, months), and the maximum period allowed. These policies may vary according to the total owed or the type of case. For instance, the court may adopt a policy that prohibits multiple payments for civil infractions or for assessments that are less than a certain amount.

### **Provide Written Notification of Amounts Due and Due Dates to the Litigant**

The most effective agreements contain specific payment amounts and dates. The court's policy may indicate how many days in advance the court is to be notified when the litigant will miss a payment. The litigant may be required to appear in court, or at another location such as the clerk's office, or financial division office when requesting an extension, and if necessary, update his or her financial information. These requirements should be in writing and included in the payment plan information provided to the litigant. The phone number or person to contact regarding nonpayment should also be included. The court should consider establishing a show cause docket that deals specifically with payment issues.

### **Payment Agreement**

The court should provide the litigant with a copy of the payment agreement. The payment agreement should set forth all requirements expected of the litigant. It should also provide procedures to follow when a litigant is unable to make a payment and what to do when a litigant has changes in personal or financial information. The policy should address how and when staff will provide this information.

### **Under/Over Payment**

On occasion, the court will receive payments that are different than the amount due. If an overpayment is received, the policy should address:

- Whether the overpayment can be applied to other debts, or debts that are not yet due.
- The minimum amount at which the court will refund the overpayment.
- Procedures for notification to the litigant.
- If payment is made by check, the period of time the court should wait for the check to clear before issuing a refund.

See the [Court Administration Reference Guide](#), section 6-05(F)(4)(m), for additional information on overpayments.

The court also should determine under what circumstances enforcement action will be taken when an underpayment is received. This may depend on the amount of the underpayment. For instance, for small amounts it may be more economical for the court to send a notice only, or to wait until the next payment period passes before taking full enforcement action.

### **Civil and Probate Filing Fees**

If a party requests a waiver of filing fees, court policy should provide guidance for litigants and staff regarding the financial information that must be furnished to the court to support the request for waiver.

## **ENFORCEMENT**

### **Progressive Sanctions for Noncompliance**

Experience has demonstrated that a prompt and graduated response to noncompliance is the most cost-effective approach. The court should establish enforcement timelines that specify the progressive sanctions that will be taken for failure of the litigant to pay various types of assessments. The timeline should specify the actions to be taken, when they will be taken, and any additional assessments that will be imposed at each step.

The following table is provided as an example of an enforcement timeline. In this case, the court has established separate timelines for each case type, as well as a distinction between misdemeanor cases with balances due under \$50 versus those with an outstanding debt of \$50 or more. The timeline table specifies the number of days past the due date that action is taken and the additional penalties assessed at each step. If the court uses an outside collection agency, this information should be included in the timeline.

**Table 1: *Sample Enforcement Timeline***

Type of Assessment	Default Judgment		Late Notice	FAC/FCJ	Show Cause	Bench Warrant		Tax Intercept		Collection Agency
	Days	\$	Days	Days	Days	Days	Days	%	Days	
Traffic CI	+1	\$10	+28	+14				+56	20%	
Traffic Misd.			+28	+14	n/a			+56	20%	
Misd. < \$50			+7		+21	FTA/	FCJ			180
Misd. \$50+			+7		+21	FTA/	FCJ	+56	20%	

### **Financial Penalties as Condition of Probation, Responsibility of Probation Department**

When a defendant is placed on probation and assessed fines, costs, or restitution, the role of the probation department should be clearly defined. The probation officers, the clerk's office, or the financial division office should monitor payments and provide information to the probation department. The policy should define under what circumstances the probation department will request a show cause or violation of probation warrant when a payment is missed, and how often this will occur. Probation officers should check and verify payment status at the beginning of each meeting so that enforcement action can be taken.

### **NSF Policy**

Court policy for nonsufficient funds checks should include:

- Reinstatement of the action to the prepayment status.
- Assessment of NSF fee.
- Notice to the litigant.
- Enforcement through the prosecutor.

See the [Court Administration Reference Guide](#), section 6-05(E)(5), for additional information on NSF checks.

### **Application of Bond**

Policies for application of an outstanding bond should be stated, including application to financial obligations, disposition of third-party bonds, and forfeiture procedures. The court may also adopt policies that include setting bond amounts on bench warrants that are equal to the total outstanding debt.

## **ADMINISTRATION**

### **Entry of Assessment and Payment Information**

Assessment and payment information must be entered into the accounting system promptly. The court should specify procedures for staff to follow when entering assessment and payment information, including:

- Collecting, recording, and updating financial history information.
- Correcting inaccurate balances.
- Maintaining records.
- Processing mail payments and mail logs.
- Processing payments received that are either over or under the amount due.

### **Application of Payments to Multiple Debts**

The court should be prepared to accept payments for multiple debts, and should establish a policy for the application of payments that defines the priority for application of payments. Statutory requirements for application of payments should be followed. See the [Trial Court Collections Standards and Guidelines](#), section 1.4(5), for additional information on application of

payment for an individual owing multiple debts to a court. Local courts are encouraged to collaborate on collections and to develop procedures and/or systems for sharing litigant and account information.

### **Monitoring Payment Plans/Account Review**

The court should establish time frames within which to monitor accounts and review delinquent accounts. In automated courts, the timelines may be built into the court financial system programs and reports. In manual systems, the policy should describe procedures for entering payment information, payment tracking systems, review of outstanding assessments, notification, and enforcement.

### **Duties of Staff**

The coordination of collections activities requires that staff clearly understand its responsibilities and the relationship of its work to the collections process as a whole. The court should specify in writing the various responsibilities of staff in the collections process to ensure consistency and compliance. The following are examples of responsibilities that may need to be addressed by specific staff:

#### **Probation**

- Monitor accounts.
- Recommend violation of probation for failure to pay.
- Perform financial screening and make payment recommendations as part of the presentence investigation report.
- Recommend early discharge from probation if all financial obligations are paid in full.

#### **Clerk**

- Complete wage assignment.
- Monitor accounts.
- Enter financial information promptly.
- Determine payment terms and grant extensions.

#### **Magistrates/Referee**

- Set payment terms in accordance with guidelines established by the chief judge.

#### **Cashier**

- Apply payments to multiple debts.
- Process under or over payments.

#### **Collections Officer**

- Collect financial information.
- Monitor accounts.
- Grant extensions or installment payments.

The attachment entitled *Sample Policy Format* and the related flow chart is provided as an example of a policy format. This format specifies the procedures and persons responsible for the particular collection activity; in this case, fines are converted to community service.

### **Alternative Sanctions**

The court may establish a standard schedule for alternative sanctions when a litigant is deemed to be indigent. Policies should include criteria for determining indigence and specify any financial information that is to be provided to the court to support the claim. The court may further develop a chart for converting the outstanding debt to community service or other sanctions.

### **Reports and Evaluation**

All relevant reports relating to collections should be documented, including directions for their use and how frequently they should be generated. Courts are encouraged to set collections goals and to develop appropriate reporting mechanisms for monitoring progress.

## **INACTIVATION AND DISCHARGE OF DEBT**

### **Inactivation Policy, Procedures**

An inactivation policy establishes criteria and procedures for designating uncollectible debts as “inactive.” Inactivation is an *administrative* procedure to remove a debt from the list of amounts the court can expect to collect. Courts are encouraged to adopt the [SCAO Model Debt Inactivation Policy](#).

### **Discharge of Debt**

In certain cases, circumstances may warrant partial or complete discharge of a debt, which is a *judicial* action to forgive a debt. Examples of situations when debt may be discharged include: the litigant is indigent, the litigant successfully disputes the validity of an assessment, or the litigant requests and is granted a waiver. The assigned judicial officer should order in writing or on the court record the discharge of debt. The court should establish procedures for litigants to follow when they petition the court for relief, which should include the information that is to be provided to the court to support their claim. Court policy should specify how the discharge of a debt is recorded in the court record and include audit controls to prevent unauthorized reduction of debt by court employees.

### **Incarceration, Deferral of Obligation, Release**

When a litigant is incarcerated and a financial penalty is imposed, or when the litigant is incarcerated for other reasons, the litigant’s debts may be moved to inactive status, and collections activities suspended until release. An exception is when funds can be collected from the litigant’s prisoner account. Court policy should specify how the litigant’s status will be monitored, the litigant’s obligation to inform the court of his or her release, and how long after release the obligation will be reactivated.

**Bankruptcy Proceedings – Stay of Obligation**

When the court is notified of bankruptcy proceedings against a litigant, procedures should specify when to place debts in inactive status pending the outcome of the proceedings.

## **CONVERSION OF FINANCIAL OBLIGATIONS TO COMMUNITY SERVICE**

### **PURPOSE OF POLICY:**

To establish procedures and guidelines for postsentence conversion of financial obligations to community service when granted by the court because of the defendant's indigence.

### **RESPONSIBILITY:**

- Court recorder or courtroom clerk.
- Deputy court clerk (criminal division).
- Division bookkeeper.

### **PROCEDURE:**

#### **Courtroom:**

1. Before calling the case, have the bailiff provide the defendant with a financial statement form and clipboard. Instruct the defendant to complete and sign the form. Once completed, insert the financial statement in the court file for the judge to review.
2. When the judge orders conversion of the defendant's outstanding financial obligations to community service, enter information on the signed judgment of sentence indicating the amount of the penalty waived and the hours or days of community service ordered. Be sure that a completion date is indicated for the community service. Provide a copy to the defendant and one to the transport officer if the defendant is in custody. Return the case file with the original judgment of sentence to the clerk's office or financial division of the court.

#### **Clerk's Office or Financial Division of the Court:**

1. Check the court file and the judgment of sentence form for completeness.
2. Verify that the defendant has received a copy of the judgment of sentence and understands the conditions and terms. Provide the defendant with the list of eligible volunteer agencies and activities. Retain the court copy of the judgment of sentence in the court file.
3. Enter the court action into the register of actions, indicating hours or days of community service and any special conditions. Indicate the amount of financial obligations waived. Post this information to the sentence screen.
4. In the financial system, suspend the balance of financial obligations for the case as ordered by the judge. Use the action code for "waiver due to indigence."
5. Return the file to the closed filing cabinet.

**Bookkeeper's Desk:**

1. At month end, verify all entries appearing on the negative adjustments report to verify that the proper adjustment was made to the receivable record by verifying the adjustment against the original court order.

**\*\*\*SAMPLE COLLECTIONS PROCESS FLOWCHART\*\*\***

**PROCEDURE FOR CONVERSION OF FINANCIAL OBLIGATIONS TO COMMUNITY SERVICE**

