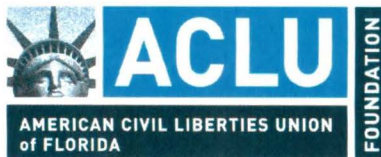


ACLU FOUNDATION OF FLA.
Northwest Region
Post Office Box 12723
Pensacola, FL 32591-2723
Main: 850.429.9128



BENJAMIN JAMES STEVENSON
Staff Attorney
bstevenson@aclufl.org
T: 786.363.2738
F: 786.363.1985

Marion County Clerk of Court
110 NW 1st Avenue
Ocala, FL 34475

May 22, 2014

VIA U.S. MAIL

Re: Procedures for Criminal Collections Division Payment Plans

Dear Hon. Ellspermann,

Pursuant to your current collections practice, the amount of any installments in a partial payment plan is determined by the amount of court costs and fines (legal financial obligations or “LFOs”) defendant owes. We request that you revise your policy so that the monthly installment amounts are determined by how much the defendant earns.

Your policy, *Civil Traffic & Criminal Collections Division Payment Plans/ Collections Contracts*, No. Admin 05/01/2014, attached, addresses enrolling defendants who owe LFOs in a partial payment plan as discussed in § 28.246(4), Fla. Stat. Pursuant to this Policy and your practice, the deputy clerk sets the duration of the payment plan based on the amount of the LFOs. See Policy, § 2.1.2. Once the duration of the payment plan is set, the deputy clerk determines the installment by dividing the total LFOs owed by the number of monthly payments. In this way, the installments are determined by amount owed. This appears to violate Florida law.

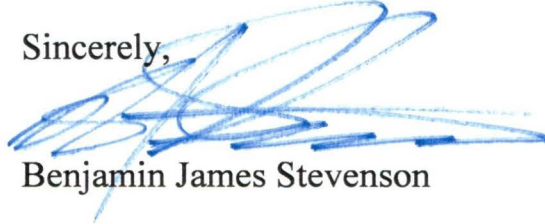
Section 28.246(4), Fla. Stat., explains that the amount of the combined monthly installments (for all payment plans) “is presumed to correspond to the person’s ability to pay if the amount does not exceed 2 percent of the person’s annual net income.” The spirit, if not the letter, of this law is that the installment amounts for any payment plan should be determined by a person’s income as opposed the LFOs owed.

We request that you revise your policy and direct deputy clerks to inquire into defendant’s income and set the combined, monthly installments for the payment plan(s) at no more than two percent of the defendant’s income. We encourage you to consider further that for a person who makes little, even a monthly installment of even two percent of his income may pose a significant hardship because his entire income goes to basic necessities. See *Hoey v. State*, 965 So. 2d 360, 361 (Fla. 4th DCA 2007) (ruling that “the state must provide the defendant [personally] has as the present ability to pay restitution before probation

can be revoked for a failure to pay” and \$1,467 in social security benefits does not provide any extra money to pay restitution). In those cases, a monthly installment that is less than two percent would be appropriate.


Please do not hesitate to contact me, if you have any questions, would like to discuss this issue, or need assistance drafting an appropriate policy.

Sincerely,



Benjamin James Stevenson

Encl. *Civil Traffic & Criminal Collections Division Payment Plans/
Collections Contracts, No. Admin 05/01/2014*

 Marion County Clerk of the Circuit Court and Comptroller	Work Instructions		Choose an item.
	Origination Date: 4/21/2014	Version Date: 4/21/2014	Page # 1 of 2

Approvals				
Title	Dept.	Name	Signature	Date
Originator	Admin	Staci Winston		4/21/14

Reference Documents	
Document Number	Document Title
Admin 05/01/14	Civil Traffic & Criminal Collections Division Payment Plan/Collections Contracts

Revision History			
Version	Description of Change	Author	Effective Date
1.0	Procedures for Civil Traffic & Criminal Collections Division Payment Plans & Collections Contracts	Staci Winston	5/1/14
2.0			

Purpose


This document sets forth the procedures for Payment Plans & Collections Contacts for the Civil Traffic & Criminal Collections Divisions, effective May 01, 2014.

Scope

These procedures are to be followed by all Clerk staff in relation to Clerk's Payment Plans & Collections Contacts

1.0 Civil Traffic Division Payment Plan Agreements: The Payment Plan Agreement form can be located on the Clerk's Website under Form > Traffic.

- 1.1 A Defendant may request a payment plan for a citation which has not reached the original 30 day due date.
 - 1.1.1 A \$25.00 payment plan fee, **per case**, is due upon acceptance of the signed payment agreement form.
 - 1.1.2 Upon acceptance of the signed payment agreement, the case must be paid in full within 60 days from the original due date of the citation.
 - 1.1.3 Staff will manually calculate this due date and enter the date in the due date table.
- 1.2 A Defendant may request a payment plan on a citation which is past due and the license has been suspended. **Cases that have gone to court are not eligible for a payment plan.**
 - 1.2.1 A \$25.00 payment plan fee, **per case**, outstanding D6 suspension fee and the first months payment is due upon acceptance of the signed payment agreement form.
 - 1.2.2 The first months payment will be calculated by the total divided by 2.
 - 1.2.3 Upon acceptance of the signed payment agreement, the case must be paid in full within 60 days of signing the payment plan agreement.
 - 1.2.4 Staff will manually calculate this due date and enter in the due date table.
- 1.3 Failure to comply with the conditions of the payment plan agreement will result in the suspension of the Defendant's drivers license and the case being turned over or reinstated with MSB. No overdue notices will be issued for Traffic Payment Plans.

 <p>Marion County Clerk of the Circuit Court and Comptroller</p>	<p>Work Instructions</p>		<p>Choose an item.</p>
<p>Title: Civil Traffic & Criminal Collections Division Payment Plans/Collections Contracts</p>	<p>Origination Date: 4/21/2014</p>	<p>Version Date: 4/21/2014</p>	<p>Page # 2 of 2</p>

2.0 Criminal Collections Division Payment Plan Agreements:

- 2.1 These procedures exclude cases where the Defendant is ordered to enter into a payment plan with the Clerk's Office as a condition of probation **OR** cases where non-monetary obligations are outstanding (ie: community service hours show proof of valid Drivers License, etc)
 - 2.1.1 A \$25.00 payment plan fee, applicable D6 fees & the first months payment **per case**, are due upon the acceptance of the signed payment agreement form. A payment plan will not be initiated without full payment of the \$25.00 fee. D6 fee and 1st months payment.
 - 2.1.2 \$1.00 - \$300.00 - 60 days
\$301.00 - \$600.00 - 90 days
\$601.00 - \$1200.00 - 120 days
\$1200.00 & up - 180 days
 - 2.1.3 Failure to comply with the conditions of the payment plan agreement will result in the suspension of the Defendant's drivers license. Once the payment plan has been terminated the Defendant is no longer eligible for a payment plan in that case. (ie: only one payment plan per case)
 - 2.1.4 No overdue notices will be issued for Criminal Payment Plans, as the payment agreement outlines the requirement to make a payment every thirty days. Once the agreement due date is reached, if they case is not paid in full the contract will be terminated, the license will be suspended and the case turned over or reinstated with MSB.