



TEXAS JUDICIAL COUNCIL

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To Members of the Texas Judicial Council:

At its June 3, 2016, meeting, the Texas Judicial Council (Council) approved amending the rules that govern the implementation and operation of programs operated by counties and municipalities to improve the collections of court costs, fees, and fines (Title 1, Chapter 175, Texas Administrative Code). The proposed revisions to Chapter 175 were published for comment in the Texas Register on July 1, 2016.

The Council received 143 comments from judges, local programs, community supervision and corrections departments, and other interested stakeholders. In an effort to ease your review of the comments that have been received, this memo categorizes them into 5 general areas and provides responses/recommendations for each area. As you will see below, it appears that the Council can make revisions to satisfy almost all of the concerns raised in the public comment period. Several commenters objected to any change to the current rules arguing that change was unnecessary. These commenters did not provide any recommendations or suggested changes to the proposed rules.

Workload Increase and Associated Costs

Issue: Many commenters expressed concern that the proposed rules could result in a workload increase for the courts and for local programs that will ultimately require adding staff. These concerns appear to be based on the misunderstanding that the proposed Sec. 175.e(a)(6)(A) requirement that local program staff refer a case back to the court if the payment ability information they collect demonstrates that a defendant is unable to pay any portion of the court costs, fees, and fines without undue hardship to the defendant or the defendant's dependents. This section was intended to codify the local program staff's ability to flag cases when it is evident from the payment ability information defendant has submitted that the defendant cannot pay any part of the court costs, fees, and fines, or that the defendant can pay some of the costs but perhaps not all of them within a reasonable time. This would allow the court the opportunity to consider whether alternative enforcement options are available or whether the amounts should

be reduced. In most cases, it would only require the court's review of a proposed plan or approval of suggested alternative enforcement options. Some programs have indicated that they already have this practice. This provision would codify it. In some instances, the defendant may in fact have to appear in court, but in most cases that would not be necessary. Whether a defendant must return to court is a decision to be made by the judge.

Response: OCA recommends that the proposed provision clarify that the defendant is not required to appear.

Issue: Many commenters also objected to the new requirement that staff obtain a statement from defendants who have judge set payment plans stating that the defendant has the ability to pay the court costs, fees, and fines under the payment plan terms ordered by the judge without undue hardship to defendant or defendant's dependents. If the defendant is unable to make the statement, staff must obtain payment ability information and determine whether the defendant's information needs to be reviewed by the judge. Under the current rules, local program staff are only required to obtain contact information from the defendants who have payment plans set by the judge.

Response: Based on the assumption that a court will have considered a defendant's payment ability information prior to referring the defendant to the local program, OCA recommends that this proposed provision be eliminated and the current rule provisions for these types of payment plans remain in place.

Presumption of Inability to Pay/Waiver of Court Costs, Fines and Fees

Issue: Several commenters objected to Sec. 175.3(a)(6)(B) which lists instances in which a defendant is presumed to be unable to pay the court costs, fees, and fines without undue hardship to defendant or defendant's dependents. Examples of those instances are if a defendant household income does not exceed 125% of the federal poverty guideline or if the defendant receives certain assistance under certain federal programs. Based on the comments, it appears that the commenters believe that this is an irrebuttable presumption when in fact it is only intended to be a trigger for the purpose of determining whether the judge needs to be made aware of the defendant's payment ability information. It is not an irrebuttable presumption nor is it mandatory that the court find that the defendant is unable to pay because the defendant meets the criteria. Whether a defendant is in fact unable to pay is a decision to be made by the judge.

Response: OCA recommends that the proposed rule be clarified to state that the criteria are intended to assist local program staff in identifying which cases require additional

judicial review and do not establish an irrebutable presumption regarding a defendant's ability to pay.

Issue: Several commenters also interpreted Sec. 175.3(a)(6)(B) to mean that when a person falls under one of the categories that raises the presumption that the defendant is unable to pay court costs, fees, and fines without undue hardship to the defendant or defendant's dependents that this would result in the waiver of all court costs. This is not what the proposed rule states nor is it the intent behind the proposed provision. The rule only requires that the defendant's case be brought to the attention of the judge so that the judge can determine if a waiver of financial obligations, or the reduction or conversion of them to a non-monetary option is appropriate.

Response: OCA recommends that the proposed rule be revised to clarify that the fact that a person meets the criteria requiring the local program staff to provide the judge information regarding the defendant's ability to pay does not mean that the defendant's court costs, fees, and fines are automatically waived or that they must be waived.

Definition of Discretionary Income and Household Income

Issue: Several commenters objected to the new definition of discretionary income and the provision in the rule that monthly payments generally should not exceed 20% of a defendant's income.

Response: This provision was added to provide guidance regarding best practices and was not intended to be mandatory. However, in order to avoid confusion, OCA recommends that the suggestion that monthly payments not exceed 20% of a defendant's discretionary income be deleted. Without the provision in the rule, the definition of discretionary income is no longer necessary and will also be deleted.

Issue: Several commenters also objected to the definition of household income. The proposed definition includes the defendant's income and the defendant's spouse's income. Commenters want the rules to also include income from any other person living in a household as part of the household's income.

Response: Persons other than a spouse who reside in a household are not legally obligated to pay a defendant's courts costs, fines and fees. Even if one were to assume another member of the defendant's household is liable for the defendant's court costs, fines, and fees, local program staff would then be required to ask about all of those individuals' payment ability information including their debt, monthly expenses, etc. OCA recommends leaving the proposed definition unchanged.

Applicability of Rule

Issue: Several commenters expressed concern that the programs in which they work are too small to be covered by the expansion of the rules. Others stated that the rules should apply to every jurisdiction, not only the ones required to participate under Art. 103.0033 of the Code of Criminal Procedure.

Response: OCA recommends adding language to the rule to clarify that the revisions to the rule are not intended to expand the program to entities not already covered under the rules. The Judicial Council cannot expand the coverage of the rules to all entities as suggested by some of the commenters. This would require a change in the Art. 103.0033 of the Code of Criminal Procedure. Such a change is solely within the authority of the Texas Legislature.

Issue: Several commenters expressed concern that they thought that the rules would apply to the collection of community supervision (probation) fees assessed when a defendant is placed on community supervision.

Response: The current rules do not apply to probation fees, nor were the proposed revisions intended to apply to probation fees. OCA recommends clarifying that the rules do not apply to probation fees.

Reduction in Revenue Collected

Issue: Several commenters expressed concern that the new rules would result in a revenue reduction for the jurisdictions that are subject to the rule.

Response: Some of the reason for these comments was the understanding that the proposed rules required waiver of costs, fines and fees when a defendant met the presumption of inability to pay. The general limitation of 20% of the defendant's discretionary income provision also contributed to this perception. The recommended removal of the 20% limitation and the clarification of the presumption of inability to pay provisions should alleviate these concerns. OCA does not believe that the provisions in the proposed rule will result in decrease revenue.