

## **Public Comments on Proposed Rules for Collection Activities of the Iowa Courts**

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Julie  
Devries/District8/JUDICIAL  
10/31/2012 11:06 AM

To rules.comments@iowacourts.gov,  
cc  
bcc  
Subject Court Collection Activities



Who	Date	Time	Subject
Julie Devries	10/31/2012	11:06 AM	Court Collection Activities

Rule 26.2(4) lines 24-25 and Rule 26.4(1) line 21-22

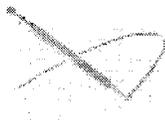
Does "amount of court debt" mean new debt for a specific case, or could it include debt on more than one case that may or may not be related?

Declining to offer a payment plan or community service for court debt less than \$300 may reduce clerk and/or judicial office workload. However, in the long run it may result in even more cases to process as a result of defendants having their license and registration suspended through CCU action. My experience in a poorer county is that Defendants are often unemployed, move frequently, may not know their privileges are suspended because they do not receive notice, and then are issued additional citations. This starts another cycle of debt that may be less than \$300.

Perhaps there is another purposes in determining that \$299.99 is not worthy of community service or payments that I have not considered.

Thanks for your service.

Julie De Vries  
Magistrate  
Appanoose County



Patricia  
McGivern/District1/JUDICIAL  
11/15/2012 10:52 AM

To Rules Comments/SCA/JUDICIAL@JUDICIAL,  
cc  
bcc

**FILED**  
NOV 15 2012  
CLERK SUPREME COURT

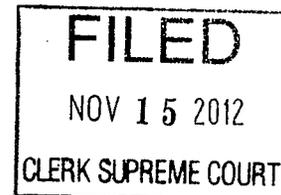
Subject Court Collection Activities

Who	Date	Time	Subject
Patricia McGivern	11/15/2012	10:52 AM	Court Collection Activities

Thank you for considering my comments.



- CommentsToProposedChapt26.docx



## Comments to Proposed new Chapter 26 Rules for Installment Payment Plans

I am a Black Hawk County Magistrate, and have reviewed the proposed new Chapter 26 and have the following comments:

**Rule 26.2(3)** Lines 17 and 18. In my county, we have a court room often overflowing with persons at 9 a.m. to plead guilty or not guilty to a traffic citation or simple misdemeanor, and the vast majority are personally present because they want to be sure to request and receive a payment plan. What is needed for a person to “establish that he or she does not have the financial means to pay the court debt in full within 30 days”? Do we take them at their word after a few questions? Require a financial affidavit? We can’t allocate much time to this issue.

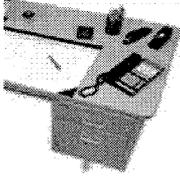
Line 20. Will CCU work with a person to set up a payment plan *before* their debt is delinquent?

**Rule 26.2(4)** Lines 24 and 25. I strongly believe it is unjust not to allow a payment plan for debts of under \$300.00. I believe that it makes our justice system appear uncaring and out of touch with the reality of poverty—especially considering the penalties imposed for nonpayment. We see many of the poorest of the poor in our courtroom. They inform that they are on SSI only, or unemployed and the unemployment has run out, or that their sole source of income is food stamps and FIP. It is one thing to tell them that I don’t have discretion to set up a payment plan of under \$50.00 per month, it is another to tell them that I have no discretion at all and they have to pay within 30 days. Many (most?) are in good faith in wanting to make payments and not be delinquent in a legal obligation. Also, consider the fact that if I want to give a person a \$100 fine for a minor crime, then the total due is \$195 and they can’t have a payment plan. If I want to give them \$200 fine, the total will be \$330 and they can have a payment plan, with a better chance of avoiding collection procedures. Are we to consider this in sentencing?

Also, these lines 24 and 25 refer to total court debt. We magistrates are provided no information regarding prior total court debt due when a person comes in to plead guilty or not guilty, and whether the person is current on that other court debt. Are we to consider the other fines that may be outstanding if the ticket in front of us is under \$300? Does that prior outstanding debt make a person eligible for a payment plan on the new lesser citation? We don’t have time to look everything up while the stuffed court room waits.

**Rule 26.4.** Lines 16 and 17. How do we determine that community service will be “prudent and effective”? Again, can we simply rely on a question to the defendant?

**Rule 26.4(1)** Lines 21 and 22. I believe it is unfair to simply deny all community service to a defendant if the debt is less than \$300. Again, if a person on SSI or a parent on FIP is able to do community service, why should that not be allowed?



Kimberley  
Johnson/District4/JUDICIAL  
11/27/2012 01:59 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL,  
cc  
bcc  
Subject Court Collection Activities

**FILED**  
NOV 27 2012  
CLERK SUPREME COURT

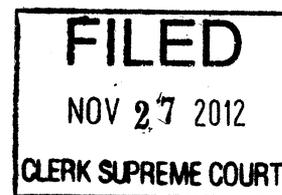
Who	Date	Time	Subject
Kimberley Johnson	11/27/2012	01:59 PM	 Court Collection Activities



Comments Regarding Court Collections Activities.docx

Kim Johnson  
Audubon County Clerk of Court  
712/563-4275  
Kimberley.Johnson@iowacourts.gov

Comments Regarding Court Collections Activities



I have no problem with the new proposed rule, except the following:

26.2(12)(b). Multiple cases eligible.

I find this section impossible to implement because ICIS Payment Plan does not accommodate this change. ICIS Payment Plan would need to be changed and this is a change that the Clerks have asked for in the past but the change has never occurred. The way Single Payment Plans on multiple traffic tickets work now In ICIS is a nightmare for Clerks as they entail several steps that have to be taken to accomplish the task, and then the Clerk has to manually monitor them. Most Clerks are too busy for this task alone, and now we will be asked to perform additional, time-consuming duties.

I would like to stress the fact that this change needs to be done before this rule goes into effect.

**FILED**  
NOV 28 2012  
CLERK SUPREME COURT

Re: 102512 Ord Req Pub Comm re Collection Activities of the Iowa Courts

Gary Strausser to: Kathy Anthofer, Bobbi M Alpers, Christine Dalton, Phillip Tabor

11/28/2012 04:16 PM

This letter is in response to the proposed rules concerning collection of debt. I have been a District Associate Judge for 7 years. During this time I have been assigned primarily in Muscatine County. In addition, I have been assigned to Scott County for significant periods of time over the last several years where my duties included collection of court debt.

My sentencing orders routinely require a defendant to appear in Court 4 to 6 months after sentencing to show proof of compliance with the terms of probation, including payment. In Muscatine these hearings are held every Friday afternoon and involve considerable time spent by the clerk staff and the judge. (Scott County and Clinton County follow a similar procedure)

Proposed Court rule 26.2(7) that would not allow a judicial officer to order an installment plan for any court debt that is already deemed delinquent is not a good rule for the judicial branch and needs modified for multiple reasons. For example, I see many defendant's ordered to pay \$50 per month who make no payments until they appear for the review hearing. These individuals then make the required lump sum payment to bring them current. Under the proposed rule I would no longer be permitted to order continued payment by installment plan since the defendant was deemed delinquent.

The Muscatine County Attorney's office has a collection officer. This officer now routinely reviews the cases within the week before the review hearing and files a notice of intent to collect within the days before the review hearing for all those cases involving a delinquency. Thus, we are left with a situation where when the defendant appears before the judge and is now current, the clerk has to send the appropriate percentage of money to the County who has done nothing but file a notice, and the Judge can no longer order an installment plan. Further, the Court cannot set aside the notice of intent to collect due to proposed rule 26.3 which appears to not allow the judge to rescind . . . or stay . . . any procedure initiated by the county attorney. Finally, the defendant for the remainder of the life of the case may stay current and the clerk will be required to continue to send a percentage of the money to the county which never did anything during the life of the case, but for file a notice of intent to collect. The judicial branch is continually encouraged by the legislature to collect debt and when we attempt aggressive efforts with consistent review hearings these rules hinder those efforts to work with people who are always on the fringe of delinquency. I see many, many people who may fluctuate between current and slightly delinquent. The lack of flexibility in the rule will not allow the Court to put these individuals on a payment plan.

Proposed Rule 26.2(7) also needs modified to accommodate defendant's who will be incarcerated without work release for more than 30 days after sentencing. Almost all of these individuals will become delinquent. The rule should be modified to

allow these individuals to begin payment within 30 days of release from jail.

Proposed Rule 26.4(6) does not allow the Court to order community service if deemed delinquent. Judges should be given flexibility to order community service for individuals deemed delinquent when there are no active collection efforts underway. Under either of the scenarios I mention above the Court could not order community service under this proposed rule. I have seen too many people lose a job and fall behind on payments. This rule will hinder those people trying to make a good faith effort to meet their responsibilities.

Proposed rule 26.4(1) would not permit community service when the amount owed is less than \$300. For many of the people that appear before me \$300 might as well be \$3000. People who are unemployed or whose only income is some form of disability cannot afford to pay any amount, but can perform community service. Further, proposed Rules 26.2(4) and 26.2(7) would not allow an installment plan when the amount owed is less than \$300.00. This will greatly increase the number of delinquencies. Again, many people can't pay \$300 in one month and would become delinquent. Without community service as alternative low income lowans are hit extra hard by the combination of these rules. The \$50 per month minimum payment plan does assist judges by setting a bright line standard. However, I know many people I sentence cannot pay this amount. To now tell them they have to pay any amounts under \$300 within 30 days and that community service is not an option is simply unrealistic and unfair to low income lowans.

Finally, we see a lot of people repeatedly for minor offenses. The proposed rules allow for non delinquent debt to be combined into one installment payment plan. However, since any debt under \$300 cannot be paid under an installment plan this debt could never be combined into an installment plan.

Thanks for your consideration. Willing to assist in any way I can.

Gary Strausser  
DAJ

Kathy Anthofer/SCA/JUDICIAL

**Kathy  
Anthofer/SCA/JUDICIAL**  
10/25/2012 02:51 PM

To Brent Appel/SCA/JUDICIAL@JUDICIAL, Bruce Zager/District1/JUDICIAL@JUDICIAL, Daryl L Hecht/District3/JUDICIAL@JUDICIAL, David Wiggins/SCA/JUDICIAL@JUDICIAL, Edward Mansfield/SCA/JUDICIAL@JUDICIAL, Mark S Cady/District2/JUDICIAL@JUDICIAL, Thomas Waterman/SCA/JUDICIAL@JUDICIAL, Gayle N Vogel/District5/JUDICIAL@JUDICIAL, Anuradha Vaitheswaran/SCA/JUDICIAL@JUDICIAL, Larry

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Tabor/SCA/JUDICIAL@JUDICIAL, Michael  
Mullins/District8/JUDICIAL@JUDICIAL, Thomas N  
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cc

Subject 102512 Ord Req Pub Comm re Collection Activities of the  
Iowa Courts

The Chief Justice has signed an order requesting public comment regarding collection activities of the Iowa courts. The deadline for submitting comments is 4:30 p.m., December 22, 2012.



102512\_Ord\_Req\_Pub\_Comm\_re\_Collections.pdf Chap\_26\_Proposed\_\_New\_Rules.pdf

Kathy Anthofer  
Iowa Supreme Court  
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(515) 281-5174



"Thomas G. Kunstle"  
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 >  
 12/13/2012 01:32 PM

To "rules.comments@iowacourts.gov"  
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 cc  
 bcc

**FILED**  
 DEC 13 2012  
 CLERK SUPREME COURT

Subject Court Collection Activities

Who	Date	Time	Subject
→ Thomas G. Kunstle	12/13/2012	01:32 PM	Court Collection Activities

2 attachments



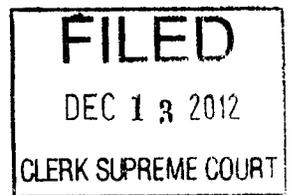
Final Comments to Fines Collections.docx 2012.10.29 - Proposed Ch 26 Rule.pdf

To the Supreme Court of Iowa:

Attached please find comments submitted by the Story County Attorney Office in regard to proposed Chapter 26 Rules for Installment Payment Plans and Other Court Collection Activities. Also attached are the proposed rules to which our comments refer.

Thank you for your consideration.

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-Juvenile, Commitment  
Tiffany Meredith  
Tom Kunstle  
-Simple Misdemeanor  
Joseph Danielson  
-Civil  
Jessica Reynolds

December 12, 2012

To: The Iowa Supreme Court

From: Thomas G. Kunstle, Assistant Story County Attorney

Re: Comments to Proposed New Rule 26 regarding Installment Payment Plans and Other Court Collection Activities

**The proposed rules have removed key references to county attorney debt collections that must be reincorporated to comply with the Iowa Code.**

Before a county attorney can begin to collect delinquent debt, three things must first occur. Court debt must be delinquent for 60 days, no CCU established payment plan exists, and a county attorney must file with the clerk for full commitment. Iowa Code 602.8107(3). If all three occur, then a county attorney may collect delinquent court debt. Iowa Code 602.8107(3) ("court debt in a case shall be assigned...to the county attorney"); Iowa Code 602.8107(4) ("The county attorney...may collect court debt sixty days after the court debt is deemed delinquent...").

In obedience with the Iowa Code, the interim rules describe both the CCU and county attorney collection alternatives. See Interim Rule (A)(5) ("If a person fails to make an installment payment within thirty days of the date it was due, the judicial branch will immediately assign the debt to either the central collection unit or a county attorney for additional collection procedures").

Proposed Rule 26.2(9) neglects county attorney collections by deleting all references thereto. Under Proposed Rule 26.2(9), when debt becomes delinquent, "the judicial branch will immediately assign the entire remaining debt to the CCU for additional collection procedures." The proposed rule has discarded the language of the interim rule, which accurately described the county attorney collections alternative.

The proposed rule omits the Iowa Code's requirement that county attorneys "may collect court debt" and "shall be assigned" delinquent court debt after meeting specified prerequisites. Iowa Code sections 602.8107(3)-(4).

Proposed Rule 26.2(9) is misleading by only addressing CCU collections, especially when the Iowa Code provides for an alternative county attorney collection procedure. To completely and accurately describe collection procedures under Iowa Code 602.8107(3)-(4), both the CCU and county attorney alternatives must be fully explained. Thus, Proposed Rule 26.2(9) should be supplemented to reflect the Iowa Code's description of CCU and county attorney debt collections.

Recommended changes:

Page 2, Proposed Rule 26.2(9), line 15, add underlined language so Proposed Rule 26.2(9) reads:

If a person fails to make an installment payment within 30 days after the due date, the entire remaining debt shall be deemed delinquent and the judicial branch will immediately assign the entire remaining debt to the CCU for additional collection procedures. If a person fails to make an installment payment within 60 days after the due date, and the CCU has not established a payment plan, and a county attorney has filed with the clerk a full commitment, then court debt shall be assigned to the county attorney.

Not only do the proposed rules omit Iowa Code provisions, but they also disregard county attorneys' as an alternative in delinquent debt collections by removing language that instructed courts to consider this as an alternative payment plan method.

The interim rules requested courts consider county attorney payment plans. See Interim Rule (A)(2) ("When deciding whether to enter a court-ordered installment payment plan, the court shall consider other options available to a person who desires to pay court debt through an installment payment plan, including a plan arranged by the [CCU]...or a plan arranged through a county attorney who is collecting debt pursuant to Iowa Code 602.8107(4)").

But this recognition of county attorneys has now been eliminated from the proposed rules. Nowhere in the proposed rules is there any indication that county attorneys could be considered as an alternative to the CCU in arranging a payment plan. There is simply no reason why county attorneys should no longer be considered; and the Iowa Code has not changed since the adoption of the Interim Rules.

Without the county attorney collection description, the proposed rules remain misleading by emphasizing CCU collection procedures without mentioning the alternative county attorney collections. Thus, the language requesting courts consider alternative county attorney payment plans should be reincorporated into the proposed rules.

Recommended changes:

Page 1, Proposed Rule 26.2(3), line 24, reincorporate the underlined language:

When deciding whether to enter a court-ordered installment payment plan, the court shall consider other options available to a person who desires to pay court debt through an installment payment plan, including a plan arranged by the central collection unit of the department of revenue or a plan arranged through a county attorney who is collecting debt pursuant to Iowa Code 602.8107(4). Interim Rule (A)(2).

The interim court rules have been working well for our county and we don't see a need to change them. We can understand the need for the court to implement court ordered payment plans in smaller counties where no county attorney collection programs have been set up. However, we want to caution the institution of court ordered payment plans in counties that are actively collecting. Further, we would suggest that the court consider allowing counties to consolidate collection programs/efforts so that larger counties with successful collection programs can help smaller counties without collection programs. This would strengthen collection efforts without adding pressure to an already over-burdened court system.

**Court action should be taken at sentencing or upon imposition of a fine.**

Proposed Rule 26.2(1) instructs debtors to pay debt "on the date of imposition of the court debt." This language should also be included in Proposed Rule 26.2(2) and 26.2(3).

This provides clarification as to when one must establish their inability to pay. Ambiguity in the language can leave the judicial officer to bear the brunt of continued requests for extensions of time to pay or belated payment plans. This will place an undue burden on the Court.

Recommended changes:

Page 1, Proposed Rule 26.2(2), line 13, add "At sentencing or upon imposition of a fine"

Page 1, Proposed Rule 26.2(3), line 17, add "At sentencing or upon imposition of a fine"

**Proposed Rule 26.2(6) requirements should only emerge "[w]hen ordering an installment payment plan."**

Proposed Rule 26.2(3) provides two methods to pay court debt: (1) payment to CCU and (2) establishing a payment plan. Proposed Rule 26.2(6) specifies requirements when the Court elects to establish a payment plan.

Proposed Rule 26.2(6) requirements only arise if the Court establishes a payment plan, and the interim rules state this succinctly. The interim rules noted that 26.2(6) payment plan

requirements only emerge “[w]hen ordering an installment payment plan.” Yet this language has been removed from the proposed permanent rules, potentially causing confusion as to when 26.2(6) requirements arise.

Recommended changes:

Page 1, Proposed Rule 26.2(6), line 28, reincorporate the underlined language:

26.2(6) When ordering an installment payment plan, [e]xcept in cases involving a restitution plan of payment pursuant to Iowa Code sections 907.8 or 910.7, a judicial officer shall:

**A consolidated payment plan needs a definitive start date.**

Proposed Rule 26.2(12)(b) allows consolidating multiple plans into a single plan. This is because all plans will be satisfied fully within two years. However, the proposed rule does not specify precisely which debt imposition date will be used to calculate two years. While all new cases may be incurred close-in-time, not all will necessarily be incurred on the same date.

Consolidated cases should use the date on which debt began, so if there are later dates on which debt is imposed, all will still be paid within two years. The underlined language change provides a definitive start date for the payment plan.

Recommended changes:

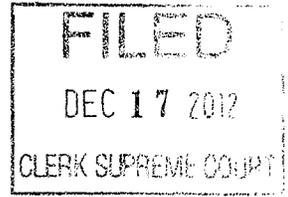
Page 3; lines 17-19; add “fully” and “of imposition of court debt of the oldest included case or ticket” so Rule 26.2(12)(b) reads:

Rule 26.2(12) permits inclusion of multiple new cases for the same defendant into one installment payment plan because all new cases would be satisfied fully within two years from the date of imposition of court debt of the oldest included case or ticket.



"Timothy Dille"  
 <timd@lisco.com>  
 12/17/2012 03:17 PM

To <rules.comments@iowacourts.gov>,  
 cc  
 bcc



Subject COURT COLLECTIONS ACTIVITIES

Who	Date	Time	Subject
Timothy Dille	12/17/2012	03:17 PM	COURT COLLECTIONS ACT

1 attachment



COMMENTS CONCERNING THE PROPOSED NEW RULES FOR INSTALLMENT PAYMENT PLANS AND OTHER COURT COLI

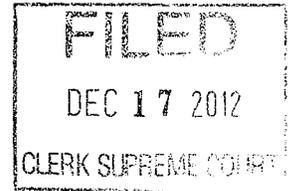
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“Success is not final, failure is not fatal: it is the courage to continue that counts.” - Winston Churchill

“Try and fail, but don't fail to try.” - Stephen Kaggwa

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**COMMENTS CONCERNING THE PROPOSED NEW RULES FOR INSTALLMENT PAYMENT PLANS  
AND OTHER COURT COLLECTION ACTIVITIES**



To the Honorable Justices of the Supreme Court of Iowa:

I have reviewed the Proposed New Rules for Installment Payment Plans and Other Court Collection Activities. I have some comments about these new proposed rules.

First of all, it appears to me that the point of these new proposed rules is to take the County Attorney's Collection programs that have started across the state "out of the collections loop". Several County Attorneys have started both collections and driver's license reinstatement plans. The latter has made it able for many people to once again become legal to drive and not further violate the laws of Iowa. Nowhere do I see a provision for that in the new rules.

It appears to me that the new rules make it so after 30 days a judicial officer will set up an installment payment plan. As you well know, if a person is on a court ordered payment plan, the County Attorney's collections plan cannot pick them up for collection. We can do so only after 90 days can we do so, and not if on a court ordered payment plan. If they are put on an installment plan by the judicial officer, which is sure to happen, then we will not be able to pick them up. We have been doing collections for 3-4 years now, and each year we reach our threshold limit in a shorter amount of time. The county attorney plans are working; it just takes some time to get them in place and going to show an impact.

Many Counties have begun to rely on the amounts received from their collections programs in their County General Fund and the added amount in the County Attorney's budget once the threshold is met. To take that away at this point would cause great loss to both the county and the county attorneys who have invested a great amount of time, effort, equipment purchase, and even hired staff to handle the collections programs. These costs have become self-supporting through the money received from the program.

Another concern is that the local Clerk of Court's Offices will have to keep track of the installment plans and who is and is not paying, which is all done by County Attorney's staff at this time. It seems to me that we should work on restoring our Clerk's offices to being open full time before we begin giving them a new substantial workload, which, speaking from experience with the collections program, it would be. We must first make justice available to all Iowans on

a full time basis before we begin giving more work to the Clerk's office. To do so would seem to fly in the face of all the press that has been put out about insuring that all Iowans receive full time access to the court system. They are not doing that yet, and if this process were put into effect, would certainly curtail that from happening in the near future. Our priority should be access to the courts, and not the collections process.

My experience with the Centralized Collections Unit is that they are extremely ineffective. Many times we see cases come back from CCU and they have not accomplished anything or even done anything with the case.

Also, I would like to point out to the Court that when CCU takes a case, 10% of the amount is tacked on to the amount owed, making it harder for the individual to get the court debt paid in a reasonable amount of time within their ability. The private collection agency that is being used tacks on 25% of the amount owed, making it even harder for individuals to pay or become legal.

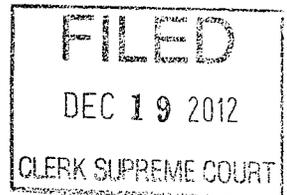
I believe that the system that is in place, with the County Attorneys being allowed to collect past due court debt is working. Each year it seems that more and more counties are beginning the collections process. To pull that rug out from under them now after all the infrastructure that has been invested would be inequitable and unfair to them.

I hope that when making a decision on these proposed new rules you will consider this very carefully and not change the status quo as it sits with the collections of past due court debt in the State of Iowa. Thank You.



**Fw: Iowa Legal Aid's comments on Chapter 26 debt collection rules**  
Molly Kottmeyer to: Kathy Anthofer

12/21/2012 01:44 PM



To include with the other comments.

----- Forwarded by Molly Kottmeyer/SCA/JUDICIAL on 12/21/2012 01:43 PM -----

From: Chris Luzzie <cluzzie@iowalaw.org>  
To: Molly.Kottmeyer@iowacourts.gov,  
Date: 12/19/2012 04:51 PM  
Subject: Iowa Legal Aid's comments on Chapter 26 debt collection rules

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Molly,

We just submitted comments on the proposed amendments to Chapter 26 regarding debt collection by the judicial branch. I am not sure to whom the comments now go, but thought you might be interested in our thoughts. This is an area where there have been some significant concerns. Hope the weather isn't looking too bad for you--we're expecting 6-12 inches of snow!

Chris

--

Christine M. Luzzie  
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1700 S. 1st Avenue, Suite 10  
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319 351 6570

**NOTICE:**

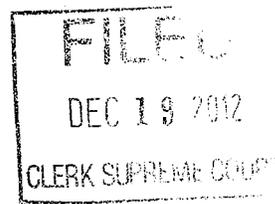
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Iowa Legal Aid Comment to Proposed Chapter 26.docx

**IOWA LEGAL AID'S COMMENTS  
TO PROPOSED CHAPTER 26  
OF THE IOWA COURT RULES**



**Introduction**

In response to severe judicial branch budget shortages, new legislation passed in 2010 made sweeping changes to Iowa's court debt collection regime. Among other things, this new legislation created a new mandatory collection procedure that required the referral of court debt over 30 days delinquent to the Central Collections Unit (CCU) of the Iowa Department of Revenue for collection, and further referral to county attorneys or a private contracted collection agency per additional statutory timelines. "Court debt" is acquired not only through criminal proceedings but also juvenile and civil actions, and includes many different types of charges from filing fees to compensation for indigent defense attorney fees.

The Iowa Judicial Branch supplemented these new statutory requirements with a supervisory order issued July 2<sup>nd</sup> 2010, which greatly reduced judicial discretion in setting and reviewing payment plans and set rigid monthly minimum payments. Since the new legislation and supervisory order have taken effect, court debt cases sent to the CCU have risen by over 286%. Referral of a court debt to the CCU results in an automatic 10% collection charge to the debtor. In 2012 alone, up to \$11,325,470 was assessed for these additional fees. However, as the amount of cases sent to the CCU have skyrocketed, the collection rate has plummeted by almost half.

The Judicial Branch now seeks to make many of the changes introduced in the supervisory order permanent, as well as impose additional restrictions. Proposed Chapter 26 has the potential to greatly affect the future ability of low-income Iowans to provide for basic necessities and lift themselves out of poverty. As written, it creates a two-tiered system whereby low-income Iowans are subject to additional penalties solely due to their indigence.

The intent of this comment is not to dilute personal responsibility for court debt, or to impede the adequate funding of the Court system. Iowa Legal Aid remains committed to equal access to the Courts for all, and a fully funded court system is fundamental to achieving that aim. However, the court debt collection system must be fair and equitable, as well as calculated to be an efficient and efficacious method of collecting court debt. In its current form, as reflected in this proposed rule, it does not meet these requirements. In addition, it is not only the low-income court debtor but also her dependents who suffer from policies imposing an impossible financial burden. To that effect, we urge the Court to adopt the recommendations contained at the end of this comment.

**I. Payment plans should be based on reasonable ability to pay**

To be equitable, efficient, and efficacious, payment plans must be based upon a reasonable ability to pay. As a rule, the courts should not "impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor." *State v. Sluyter*, 763 N.W.2d 575, 584 (Iowa 2009), quoting *James v. Strange*, 407 U.S. 128, 138 (1972). Payment plans based on ability to pay rather than arbitrary limits are necessarily more equitable and just in their application. The proposed rule as written is not

equitable, as it burdens those least able to pay with a minimum 10% penalty that their higher income counterparts who are able to pay their debts promptly do not incur. Also, basing payment plans on reasonable ability to pay should improve the rates of voluntary compliance. Voluntary compliance reduces collection costs and enhances the efficiency of the collection system. Finally, the efficacy of installment plans with arbitrarily high minimum payment amounts will surely be quite low, which actively hampers the ability of the courts to collect on outstanding debt.

#### **A. The Two Year Rule**

Perhaps the most troubling aspect of proposed Chapter 26 is the "two year rule." Proposed Rule 26.2(6)(d). This rule requires that any payment plan be structured so that the entire court debt is paid off within two years. A version of the two year rule is currently in place through the Court's July 2010 supervisory order. Prior to July 2010, a District Court could order a payment plan of the length appropriate to meet the debtor's situation with no maximum length or minimum amount.

It is important to note that the two year rule is not a statutory requirement, but rather an additional requirement that is created by the proposed rule. Court debt plans referred to the CCU, county attorney, or a private debt collector have no minimum payment or length of time for installments. Plans of restitution established as a condition of probation by the Department of Corrections "shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances." Iowa Code 910.5(1)(d)(1) (2011). In those contexts, as with the judicial branch prior to July 2010, payment plans can be (and in the case of restitution plans must be) based on a court debtor's individual circumstances.

The two year rule produces inherently unfair results and creates two classes of court debtors based solely on indigency. A particularly troubling example of how the two year rule produces inequitable results concerns those who rely on disability benefits due to an inability to work. Many disabled Iowans receive federal Supplemental Security Income (SSI) as their only source of income. SSI is distributed at a fixed monthly amount, currently no greater than \$698 (increasing to \$710 in January 2013). If such a person were to acquire \$2400 in court debt, under the two year rule in proposed Chapter 26 that person's minimum monthly payment would be \$100. This would be 14% of an extremely meager monthly income, leaving only \$598 to pay for necessities for that month.

The higher the court debt amount, the more burdensome the two year rule becomes. For a person who is already attempting to survive on \$698 per month, the installments quickly become impossible to pay, requiring the payor to forgo food, medicine, or other basic necessities of life for themselves or their families in order to comply. Other low-income Iowans and their families face substantially the same impossible choices when faced with the two year rule. The inevitable result is that low-income debtors will automatically become delinquent when forced to choose between paying their court debt or food, shelter, clothing and medicine.

The costs of automatic delinquency forced by the two year rule are high. When a low-income court debtor inevitably fails to comply with an impossible payment plan set by the courts, the debt is deemed delinquent by statute. Once the debt becomes delinquent, statute requires its referral to the CCU. This referral automatically adds a 10% collection surcharge to the debt. Therefore, by requiring impossible payment plans at the initial judicial level, the two year rule essentially ensures that disabled and other low-income Iowans automatically pay 10% more than do their higher income counterparts.

The 1972 Iowa Supreme Court case of *State v. Snyder* dealt with a statute requiring indigent defendants to serve additional jail time when they were incapable of paying their fines. The *Snyder* Court found that this statute violated the Equal Protection clause as it “create[d] two classes of convicted defendants indistinguishable from each other except that one is able to pay the fine and can avoid imprisonment, and the second cannot satisfy the fine and therefore cannot escape imprisonment.” *State v. Snyder*, 203 N.W.2d 280 (Iowa 1972); see also *Griffin v. Illinois*, 351 U.S. 12 (1970). The same problem is inherent in the two year rule, which establishes two classes of court debtors indistinguishable from one another except that one is able to pay the court debt as assessed, and the second cannot meet the demands of the two year rule payment plan and is thus forced to pay what amounts to a 10% indigency tax.

In addition, while the two year rule may seem at first blush to be an efficient method due to its simplicity of application, it is on its face an extremely inefficient way of collecting court debt. Since voluntary compliance is the cheapest way of collecting any debt, setting impossible payment amounts automatically relegates a large amount of debts to less efficient and more costly involuntary collection methods that certainly cost the state money. Also, on an even more basic level, ordering a payment plan that has little chance of success due to the debtor’s indigency is an empty exercise and a waste of judicial resources. The rule as written will not result in higher collection of court debt.

As the two year rule arbitrarily imposes a heavier burden and higher costs on low-income Iowans without any foreseeable gain, it is recommended that the two year rule be replaced with a rule requiring payment plans to be based on a reasonable ability to pay.

#### **B. Minimum payments of \$50**

A \$50 minimum is an arbitrary amount, and does not take into account reasonable ability to pay. To again utilize the example of a person on SSI, a \$50 minimum payment is a substantial portion of a meager fixed income. Such a payment may drastically cut into funds needed for necessities. None of the other entities collecting court debt are bound to such an absolute and arbitrary limit.

The best possible scenario is for the courts to be allowed full discretion in setting up payments based solely on what the court debtor has the ability to pay. Therefore, the primary recommendation is for the Rule to provide for minimum payment amounts to be determined by a finding of what the debtor has a reasonable ability to pay while still maintaining the basic necessities of life.

In the event that this recommendation is not adopted, we recommend that the proposed rule be amended to provide that neither the \$50 minimum nor the two year rule apply to those Iowans under 200% of the federal poverty guidelines. Instead, those individuals should be subject to a payment plan based on their reasonable ability to pay.

**C. \$300 Minimum for Payment Plans**

Similar to the two year rule, the \$300 minimum for payment plans in proposed Rule 26.2(4) is an arbitrary limit that will disproportionately affect low-income Iowans. Any person who would have trouble paying a \$50 or \$100 monthly installment and maintaining the necessities of life would have even more trouble paying \$299 in a lump sum. Just as with the two year rule or \$50 minimum, none of the other actors involved with the court debt collection process are subject to any minimum threshold for setting up a payment plan. Again, the effect of this provision will be to create a second class of debtors based solely on indigency, who will be forced to pay 10% more due to referral to the CCU. We therefore recommend that this provision be stricken from the proposed rule.

**D. Discretion to require a down payment**

Proposed Rule 26.2(5) gives the Courts the discretion to order that a debtor make a down payment on their court debt. As there appears to be no limit as to the amount that could be ordered as a down payment, some debtors may be effectively barred from payment plans due to the inability to timely make a down payment. Therefore, we recommend that this provision be removed. Alternatively, we recommend that the rule provide that any decision to require a court debtor to make a down payment be based on a finding of a reasonable ability to pay that down payment.

**II. Hearings for reasonable ability to repay court appointed attorney fees.**

A significant portion of court debt is derived from court appointed attorney fees that many Iowans will never be able to afford to pay back. Recently, the Iowa Supreme Court addressed this issue in *Iowa v. Dudley*, 766 N.W.2d 606 (Iowa 2009). In *Dudley*, the Court found that the statute requiring repayment of attorney fees without consideration of ability to pay was unconstitutional per the Sixth Amendment, as it could cause someone to forgo his right to counsel to avoid incurring a debt he could never pay. However, retroactive application of that right was limited to the time for a post-judgment motion in *Iowa v. Olsen*, 794 N.W.2d 285. The need for a hearing on a reasonable ability to pay was recently codified in Iowa Code §815.9.

These are promising developments, as they have advanced the principle that the inability to repay indigent defense fees should not interfere with the right to counsel. However, problems with implementation remain. One major problem appears to be the potential for a high degree of variability in procedure and criteria among both judicial districts and judges within a district. The Court has the opportunity to lay out an open list of specific criteria in proposed Rule 26.10, which would provide some guidance to courts in what should be considered. These criteria would be best added as an open list of things courts may consider, but with ample discretion allowed to consider the factors unique to each case.

In order to achieve a uniform and just application of this rule, we recommend that the rule set out a list of criteria to be employed by the Courts to determine reasonable ability to pay. These criteria may include:

- (1) Whether the court debtor is under 200% of federal poverty guidelines;
- (2) Whether the debtor is elderly or disabled;
- (3) The number of debtor's dependents;
- (4) The number and amounts of other pre-existing garnishment or child support withholding orders;
- (5) Any other equitable factors.

It also must be pointed out that proposed Rule 26.2(10)(c) states that the amount of indigent defense or public defender attorney fees that the court debtor must repay will be set out in a sentencing order. However, as contemplated by proposed Rule 26.2(10)(b), there are situations where there will be no sentencing order, either due to a criminal matter ending in something other than a plea or conviction or in noncriminal cases like a Child In Need of Assistance matter. We recommend that the proposed rule 26.2(10)(c) be amended to provide that the finding of the attorney fees the court debtor must repay be provided for in the final order of disposition rather than in a "sentencing order."

### **III. Maintain ability to reinstate licenses after referral to Linebarger**

Over the past three years, Iowa Legal Aid has received many calls for assistance with automobile registration sanctions due to delinquent court debt. For a time in late 2011, it was the opinion of counsel for the Judicial Branch that as a general rule (with some exceptions), once a court debt had been assigned to the third party debt collection agency, registration sanctions could not be lifted until the entire debt was paid in full. For indigent court debtors with a significant amount of debt, this may mean barring registration of vehicles for many months or even years. It was argued that this was due to a provision of the contract between the Judicial Branch and the debt collection firm with which it has a contract (Linebarger firm). This effectively made it impossible for many Iowans owing court debt to legally register their vehicles.

Since that time, the Judicial Branch has changed its position and has allowed temporary lifts of license sanctions even after referral to the Linebarger firm. Court debtors must make a minimum payment in order to get this temporary lift, and meet certain other criteria. However, this change in procedure currently exists only in the form of temporary memoranda to the various county clerks. It is therefore recommended that the new Chapter 26 officially and publicly memorialize this rule, so that the problem does not reoccur.

In the alternative, it is possible that the provisions limiting the ability to modify and otherwise affect payment plans contained in proposed Chapter 26 may be read so as to prevent the clerks from taking actions such as temporary one-time removal of registration holds. It is therefore recommended that the new Chapter 26 should at least make clear that such actions involving registration holds are allowed even if the debt has become delinquent and passed on to one of the other collection entities.

### **IV. Instruction to contact the CCU**

Proposed Rule 26.2(3)(a) requires courts to tell a court debtor who cannot pay the amount in full to either set up an installment plan under the proposed rule or to contact the CCU to set up a payment plan. Due to the collection surcharge that will automatically result from transferring the debt to the CCU, it is recommended that this provision be removed. Alternatively, if this provision remains, we recommend that the proposed rule be amended to require that the court debtor be explicitly warned about the increased fee he will need to pay if the debt is transferred to the CCU.

#### **V. Rule 26.3 And The Elimination of the Courts' Ability to Review Payment Plans**

Proposed Rule 26.2(8), 26.2(12) and 26.3 severely limit the courts' ability to review or modify payment plans once established. This would be a self imposed restriction, one that goes far beyond what is required by statute.

In addition to not being in harmony with the other recommendations made in this comment allowing for judicial discretion in regard to a court debtor's ability to pay, the very restrictive language of the current rule may be read to prevent review of other actors in the court debt collection process. For example, the new rule as written would hamper the oversight of the actions of other entities such as the CCU, county attorneys, and private collection agencies responsible for collection once the debt is passed to them per statutory requirements. This is especially true for the county attorneys. As of July 2012, 48 Iowa county attorneys participate in the court debt collection system. Given the lack of oversight in the statute, each of these offices can and has promulgated its own collection policies; each office is thus theoretically capable of utilizing contempt actions, judicial garnishments, and other actions as they see fit. Some of these policies may violate federal wage protection and disability law. Proposed Rules 26.2(8), 26.2(12) and 26.3 completely remove from review any of these widely varying policies, creating a system whereby there is no oversight whatsoever over collection.

Since the interim rule was established in July 2010, Iowa Legal Aid has assisted many low-income Iowans who have had their basic ability to support themselves and their families threatened by the rapidly changing court debt collection system. These people ultimately depend on the courts to protect them. For example, "Steven" was a client of Iowa Legal Aid who was subject to both an administrative levy by the CCU as well as an offset of his federal and state tax refunds. Due to issues with coordinating the computer systems between the various state collection entities, the levy continued to extract 25% of Steven's earnings even after he had fully paid his court debt. Although the matter was ultimately settled, the new rule as written would have left Steven without any recourse to review these errors in a court of law.

For "Paula," it was necessary to actually seek the court's review of a payment plan issue. In Paula's case, a probation officer provided that an approximately \$20,000 restitution order from the 1980's be paid directly to the victim, not passing through the clerk of court. This order, due to its age, was destroyed per office protocol after Paula's probation was closed, even though Paula's debt was not even close to being paid off. The reason that it had not been paid off was due to Paula's disability, which forced her to rely on SSI as her only source of income. The victim had allowed monthly payments of \$20. Paula's case was automatically termed "delinquent" due to the lack of clerk's records of her payments, and in addition many payments were not in fact credited to her. It was necessary to go back into a decades old criminal case to

correct these errors, which Paula did with Iowa Legal Aid assistance. Although Paula's case involves restitution (which is not covered by the two year rule), it illustrates the kind of unique and troublesome fact patterns that will arise when decades old debt is subject to renewed aggressive collections. Paula's case also illustrates a major problem with the collection of court debt, i.e. the fact that a significant portion of this debt was acquired years or even decades ago. The older the underlying documentation, the more error-prone the collection of the court debt will become, necessitating the need for review.

Finally, there is the case of "David." David was subject to an administrative wage assignment for court debt set up by the CCU per Iowa Code 421.17B that left him with only 30% of his earnings from his minimum-wage job. That's about \$377 per month. The father of several children, David struggled mightily to support them under these conditions. Ultimately, Iowa Legal Aid filed a wrongful assignment action under Iowa Code 421.17B(8)(f), asking for the return of payments previously garnished in excess of amounts allowed under federal wage protection laws. Again, this case was ultimately settled. Proposed Rule 26.3 as written may make such efforts impossible, thus cutting off by rule statutory protections provided by the state and federal legislatures.

It is recommended that sections 26.2(8), 26.2(12) and 26.3 be stricken in their entirety from the proposed rule. Alternatively, it is recommended that the rule make it clear that legal challenges to the legality of payment plans based on applicable state and federal law are not barred under the rule, and that adjustments, modifications or cancellations in conformance with applicable law shall be permitted.

#### **VI. Understated Collection Surcharge on the Installment Plan Form**

As a general matter, it is recommended that the form for court ordered installment plans be amended to reflect the other recommendations in this comment. In addition, the proposed form itself contains at least one inaccuracy. The form states that, upon failure to make installment payments, "up to 25% may be added to the delinquent amount."

As previously stated, a referral of the debt to the CCU results in a 10% surcharge. A potential subsequent referral to a third party collection agency results in a further 25% surcharge of the entire amount outstanding, which includes the earlier 10% surcharge. Therefore, there is a maximum possible cumulative surcharge of 37.5%. The form should be corrected to accurately reflect this amount.

#### **VII. Recommendations**

- That the "two year rule" and \$50 minimum in proposed Rule 26.2(6) be replaced with a rule requiring payment plans to be based on a reasonable ability to pay;
- That the provision in Rule 26.2(5) setting a \$300 minimum for establishing a payment plan be stricken;

- That the provision in Rule 26.2(5) allowing the discretion of courts to require a down payment be removed or alternatively based on a finding of a reasonable ability to pay that down payment;
- That more specific guidance be issued to courts through Rule 26.10 as to what factors to consider when determining the reasonable ability to repay court appointed attorney fees;
- That provisions be made to allow for court debtors to lift license and registration holds by coming into compliance even after referral to a third party collection agency;
- That any requirement to inform court debtors that they may alternatively contact CCU be removed from the rule entirely, or alternatively replaced with a requirement that the court debtor be informed that this will result in a 10% surcharge;
- That the authority of courts to entertain legal challenges to payment plans set up by the courts, CCU, county attorney, or third party collection agency be allowed to the maximum extent allowed by statute and strike rules 26.2(8), 26.2(12) and 26.3;
- Correct the proposed installment plan form to conform to the rest of the recommendations of this comment, and to reflect accurate statutory collection surcharge rates.

We are interested in further discussion of these and other court debt related issues, and welcome further discussion. Please do not hesitate to contact us. Our contact information appears below.

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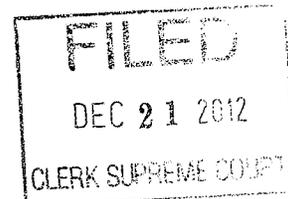
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To <rules.comments@iowacourts.gov>,

cc

bcc

Subject "Court Collection Activities"



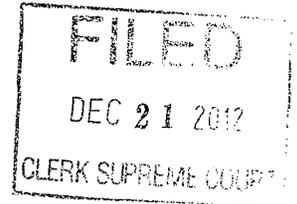
Who	Date	Time	Subject
Jacki Michael	12/21/2012	11:29 AM	"Court Collection Activities"

Per Assistant County Attorney Emily Nydle, please add to 26.2(3) a, line 21 after request a payment plan;  
or CAN BE DONE RIGHT AWAY IF PERSON STATES NO MONEY



"Cooperrider, Ruth [LEGIS]"  
 <Ruth.Cooperrider@legis.iowa.gov>  
 12/21/2012 05:27 PM

To "rules.comments@iowacourts.gov"  
 <rules.comments@iowacourts.gov>,  
 cc  
 bcc



Subject Comment on "Court Collection Activities"

Who	Date	Time	Subject
→ Cooperrider, Ruth [LEGIS]	12/21/2012	05:27 PM	Comment on "Court Collectic

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Comments on Court Rules, Ch. 26.docx

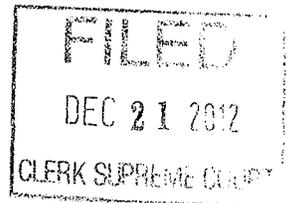
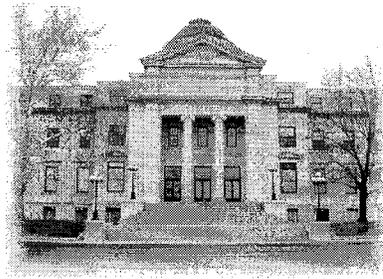
Please find in the attachment the comments which I am submitting regarding proposed Chapter 26 of the Iowa Court Rules, "Rules for Installment Payment Plans and Other Court Collection Activities."

Sincerely,

Ruth Cooperrider  
 Citizens' Aide/Ombudsman

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**Ombudsman's Comments Regarding Proposed Permanent Court Rules for Court Ordered Installment Payment Plans and other Collection Activities of the Iowa Courts**

December 21, 2012

I submit the following comments on behalf of the Office of Citizens Aide/Ombudsman for consideration by the Iowa Supreme Court regarding the "Proposed Permanent Court Rules for Court Ordered Installment Payment Plans and Other Collection Activities of the Iowa Courts," specifically proposed new Chapter 26. In considering these proposed court rules, we focused primarily on what we think would be the best course for state government, which we believe would also ultimately be the best course for the citizens of our state.

On their face, it appears the rules are designed to impress upon the debtor the seriousness of the matter and to enable the courts to more expeditiously and efficiently collect on the debt. We understand the need to achieve these purposes. However, we are concerned that, for the two years these debts will be collected either at the local level (county) or at the state level (CCU), time and resources will be spent on futile attempts to collect from those debtors who do not have the ability to pay. For this reason, it might be best to focus collection efforts on those debtors who do have the financial means to pay and allow some more flexibility for those who do not.

My office has handled a number of complaints since the 2011 statutory changes to include civil debt in the collections process. The following examples are illustrative of the concerns:

- A woman who owed for fines and had difficulty paying on them because she was on a fixed income and needed her vehicle registration in order to go to the doctor.
- Three cases in which the individuals owed sizeable court debts and were on fixed income with no financial means to pay off the debts and needed to have their vehicles registered to have transportation for food and to the doctor.
- An unemployed woman who owed a 12-year old court fine and needed use of her vehicle.

- A woman who always paid her court debt on time. Linebarger, the contract collection entity, threatened her with contempt of court if she did not pay the balance. The county then advised her to ignore Linebarger's threats and to just send the money to them.
- Two cases in which the individuals were unable to prove they paid off old debts because they lost their records in a flood.

Rule 26.2(6)(d), p. 2, lines 5-6; Rule 26.2(12), p. 3, lines 9-11):

There is no statutory requirement that the debt be paid in full within two years. However, both of these rules require the debt to be paid off within 2 years, without exception, and regardless of the amount of the debt and the ability of the debtor to pay it off. It is quite conceivable there will be many cases in which the debtor does not have or am unable to get the funds to meet this deadline because of an already poor financial status. These cases include those on a fixed income, temporarily or permanently out of work, or find themselves below 200% of the federal poverty guidelines. To expend court staff's time going after debt that is essentially uncollectable may not be the most efficient use of court resources. It would seem more productive to allow for more flexible payment plans (in terms of monthly payment amount and the length of time for payment) based on the individual's reasonable ability to pay the debt. Individuals may be more willing to voluntarily pay something within their means and may be less apt to pay a minimum required amount that they perceive to be unreasonable or beyond their means.

Additionally, we are concerned the two-year requirement will create a class of citizens who will be subject to greater penalties because they were poor at the outset or at some time during the term of the debt. After the first 30 days of delinquency the debt is sent to CCU for collections. At this point CCU must increase the debt by 10%, thereby creating a 10% "indigency" tax for persons who are poorer than those who can afford to pay off the debt.

Rule 26.2(8), p. 2, lines 10-11; Rule 26.3, p. 3, lines 30-31 and p. 4, lines 1-9 :

Under these proposed rules, a judicial officer as defined in 602.1101 (7), including judges, will no longer have the capability to review the debt and the present financial condition of the debtor, to assess if the option of temporary forbearance would be warranted. It is conceivable that the circumstances of the debtor, including illness or job loss, could change from the date when the debt and repayment plan were established, drastically reducing the debtor's income. We believe consideration should be given to allow for such situations to be reviewed and for alternative options to be granted, whether it be temporary suspension, lower payment amounts, etc.

We are also mindful of the fact that individuals who have lost their jobs under the present debt collections scheme also run the risk of losing their vehicle registration, which in turn will make it more difficult to find work to improve their situation.

Rule 26.4, p. 4, lines 16 – 20 and p. 5, lines 4-6:

This rule allows for community service to be an option of working off the debt if it "can be administered within existing court resources." However, this option may not be viable in many

situations simply because of the lack of local resources to administer community service. Rule 26.4(4) states that the number of community service hours is determined by dividing the amount of court debt by the “current minimum State of Iowa wage rate.” In addition to this restriction, the rule also says that community service will not be an option if the debt is over \$300. For these reasons, we doubt there is much latitude in local government budgets to facilitate administration of debts that would qualify for community services.

### Summary

Our main concern is that these rules do not focus on collectable debt and instead create a one-size-fit-all collection process that removes what little discretion decision-makers previously had in structuring payments based on the ability to pay. There is no mechanism through which someone on fixed income due to health reasons or job loss, and thus under poverty guidelines, can get any form of temporary relief from the necessity of making the required payments within two years. Persons who become sick enough to qualify for Social Security Disability, SSI, or who live on only another source of fixed income, are already well at or below the poverty level. Under these rules those persons are placed under a financial burden that is difficult to overcome. When faced with such hurdles, individuals may ignore their obligations all together rather than make an effort to pay what they can. The end result is both the state and the individuals lose out.

In addition, the proposed rules would also penalize a group of persons who find themselves unable to pay just because they have had the misfortune to become ill or lose their jobs. The amount of the debt only increases due to penalties, and will never decrease because the person simply has no way of paying off the debt. This will likely create more disincentive to pay.

For efficiency and fiscal reasons, it may make more sense to allow for some flexibility or discretion in structuring (initially) or restructuring (if circumstances change) the payment plans for individuals who clearly cannot meet the required payment plan outlined in rule 26.2(6).

Iowa’s Child Support Guidelines provides an analogous situation. In adopting these guidelines for child support payments, it was determined that it is unreasonable to require individuals with less than \$1,500 in monthly net income to impoverish themselves in order to make payment. Under the current guidelines the minimum payment can be lowered to \$10 per month in such instances. (See the schedule at the following link; in the grey area, only the income of the payee is considered.) <https://secureapp.dhs.state.ia.us/childsupport/includes/PDFfiles/Schedule.pdf> .

Thank you for considering my comments regarding these proposed court rules. If there are any questions or need for clarification about my comments, please contact me.

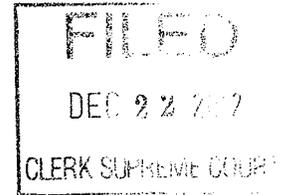
Respectfully,

Ruth H. Cooperrider  
Citizens’ Aide/Ombudsman



Sara Davenport  
<sdd2001@gmail.com>  
12/22/2012 12:07 PM

To rules.comments@iowacourts.gov,  
cc  
bcc  
Subject Court Collection Activities



Who	Date	Time	Subject
Sara Davenport	12/22/2012	12:07 PM	Court Collection Activities

1 attachment



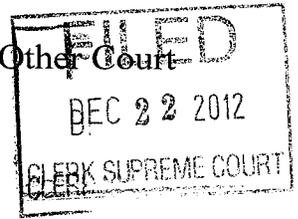
Comments to Proposed Rules.docx

Attached are my comments to the proposed new Chapter 26 Rules for Installment Payment Plans and Other Court Collection Activities.

Thank you,

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Comments to Proposed Rules for Installment Payment Plans and Other Court  
Collection Activities



**Rule 26.2(3)(a) lines 20-21**

By code CCU cannot establish a payment plan until court debt is delinquent (30 days past due). Having the Court instruct a person to contact CCU rather than setting up a payment plan with the Court will be counterproductive, especially since 10% will be added to the fines.

It would be a better rule to eliminate lines 20-21 and state simply “judicial officer may establish...”

**Rule 26.2(4) lines 24-25**

The majority of tickets under \$300.00 are traffic fines. Persons unable to pay them in 30 days will lose their license and be unable to register any vehicles in their name which can have unintended and lasting consequences. Due to the lack of public transportation in rural Iowa, these persons may lose their jobs due to an inability to drive to work. Or if they do not have a job it will impede their ability to get a job. Thus their fines will not get paid and they will remain unable to get their licenses back. For some people this becomes quite a vicious cycle.

A judicial officer should be given the discretion to order installment plans for fines less than \$300.00. Judicial officers, especially in smaller counties, are best able to assess the ability of the individual to make payments. Additionally, language should be added to this rule to allow the judicial officer to combine court debt that is assessed on the same day into one payment plan. For example: A person gets pulled over for a stop sign violation, his/her driver's license has expired, he/she most likely does not have their vehicle registered and does not have insurance. Under the proposed rule the person would be able to set up a payment plan for the insurance ticket (\$397.50), but not for the stop sign violation (\$195.00), the expired driver's license (\$127.50), or the expired registration (\$127.50). He/She may not be able to pay the three smaller fines in 30 days so the fine will be sent to CCU for collection. CCU will tack on 10% for each fine and because the tickets are traffic related his/her driver's license will be suspended. By allowing the judicial officer to combine all four of these fines into one payment plan, the goals of punishment, deterrence, and rehabilitation are still met without the unintended consequences that come with unpaid traffic tickets.

The effect of allowing for payment plans under \$300.00 and allowing judicial officers to combine court debt will help people who are willing but unable to pay their fines and still punish those who flat out refuse to pay their fines as the fines would all be sent to collections if no payment is made.

**Rule 26.2(5) line 27**

Fines are punishment not loans. Consider changing the wording from “down payment” to “initial payment”.

**Rule 26.2(6)(d) lines 5-6**

While I understand the rationale of requiring the payment plan to be completed in 2 years (maximum time a person can be on probation for a misdemeanor), this Rule may set a payment amount that is simply too high for some people to pay thus setting them up to fail from the very beginning.

Payment plans should be a reasonable amount based on the individual’s ability to pay.

Also incorporating the ability to pay the fines with both cash and community service (rather than limiting a person to either/or) can be a better punishment and deterrent. (see comments on Rule 26.4).

**Rule 26.4(1) lines 21-22**

Similar to proposed rule 26.2(4) lines 24-25, this rule will carry with it collateral consequences that will not only punish individuals but limit their ability to be productive members of society.

Fines are a punishment for violating a criminal law; they are not income for the State. If a defendant is willing to complete community service instead of paying the fine because they do not have a job isn’t it better punishment? At least they are doing something productive and good for the community. My arguments for giving discretion to judicial officers in ordering payment plans for fines under \$300.00 also apply to allowing for community service for fines under \$300.00.

**Rule 26.4(4) lines 3-6**

Requiring a payment plan to either include cash payments or community service does not benefit the State or the individual. Allowing for the individual to complete community service at the minimum State of Iowa wage rate and also continue making monetary payments is in everyone’s best interest.

The average fines, costs, and fees, for a typical Operating While Intoxicated first offense conviction is between \$1,800.00 and \$2,000.00. Under the proposed rules a payment plan would require \$100.00 monthly payments. Someone working less than full time at a minimum wage job will not be able to afford \$100.00 every month, but they may be able to afford \$50.00 a month and complete 80 hours of community service a month. Allowing judicial officers to have discretion allows for both punishment and rehabilitation.

Additionally, this Rule should allow for an order of community service to be entered after sentencing. People get laid off, they lose their jobs, and they are hit with hard times. Limiting the options of the Courts results in more delinquent and unpaid fines.