

Response of Court Debt Collection Committee to Public Comments

On September 24, 2010, the Iowa Supreme Court appointed a committee to study court debt collection as it existed and recommend uniform rules and forms to strengthen that process statewide. The initial mandate required the committee to submit a report by June 30, 2011, that included recommendations for rules governing the terms and conditions for court ordered installment payment plans for the payment of court debt. That report was timely accomplished and the recommendations made by the committee were presented for public comment. A number of comments have been submitted. Those comments can be broken down into four (4) basic categories which are as follows:

1. Those that wish the courts to have complete discretion in establishing payment plans with no limitation as to time or required installment amounts.

Ruth H. Cooperrider – Citizens’ Aide Ombudsman
Gary Strausser – District Associate Judge
Alexander Kornya and Christine Luzzie – Iowa Legal Aide
Sara Davenport – Jackson County Attorney

The overwhelming majority of the committee is opposed to ad infinitum involvement of the courts in administering court debt payment plans. It was the committee’s position that such involvement by the courts has been generally ineffective and wastes time and resources that the courts no longer have. The general complaint made by this group concerns the additional 10% that CCU tacks on to court debt once that debt passes to CCU for collection. They feel that such an add-on is too onerous and would prefer that the courts continue to monitor and adjust the payment plans as necessary for the benefit of the debtor even, apparently, if that monitoring requires court involvement for years on end. The committee remains opposed to that position.

The consensus of the committee was that court payment plans should be allowed, however with certain restrictions. The court does not have the time and resources to be involved in collection of court debt. Nor does the court have the expertise to effectively and efficiently perform this task. Collection of court debt does not fit into the mission of the judicial branch.

Kornya comments:

- a. Recommended that proposed rule 26.2(5) be amended to 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. The committee is not opposed to this recommendation.
- b. Recommends 26.2(10) add criteria and guidance for judicial officers to consider when determining reasonable ability to pay for legal assistance for court-appointed counsel. That was not the charge of the committee or the purpose of these rules.

- c. Recommends that a provision be made to allow for court debtors to lift license and registration holds after referral to the third party collector. This would most likely require a statutory change.

Currently, by statute, the debtor must enter into a payment plan with CCU or the county attorney to have a license or vehicle registration restriction removed. The third party collector cannot do this. Many cases sent to CCU have been returned to due to lack of activity or inability to find the debtor. Currently, once a case has been returned to the JB from CCU, it cannot be sent to CCU a second time. ICIS is working with CCU to develop programming that will allow this to happen. Because of limited ICIS resources and the implementation of EDMS, the programming has been delayed. In the interim, Betty Buitenwerf issued instructions to clerks that if a debtor's license registration is being held for non-payment of court debt and the case has been sent to the third party collection agency, the clerk could temporarily request the County Treasurer to release the license registration hold and allow the debtor to pay for the license registration. Until the programming with CCU is accomplished, those instructions will remain in force. Therefore, the committee recommends that this not be included in the permanent rules as ICIS is working on a fix for this problem.

- d. Recommends that the debtor be informed of the 10% CCU fee. The committee developed an "Installment Payment Plan Order" for judicial officers to use. This included information that if the debt becomes delinquent it will be sent to collection and a fee of up to 25% may be added to the delinquent amount. It is anticipated that the judicial officer would review this with the debtor at the time the order is issued.
- e. Understated Collection Surcharge on Installment Plan Form. This is incorrect. Mr. Kornya assumes the 10% surcharge to CCU and the 25% surcharge to the third party collector are cumulative. Before the debt is sent to the third party collector, the 10% CCU fee is first removed and then the 25% fee is added for the third party collector so 25% is the maximum amount added. This is done by ICIS programming. The Installment Pay Plan Order does not need to be corrected.

- 2. Those that want to include payment plans and community service for court debt under \$300.00.

Julie DeVries – Appanoose County Magistrate
Patricia MCGivern – Black Hawk County Magistrate

It was the committee's position that engaging in installment payment plans for court debt less than \$300.00 would significantly add to the work burden of our clerks of court – see comments of Kim Johnson, Audubon County Clerk of Court. It was further the position of the committee that community service should not be available for court debt under \$300.00. Very few counties, particularly in rural Iowa, are willing to administer

community service of any kind. Offering a court debtor the opportunity to pay off court debt of \$300.00 or less through community service would be frowned upon by those likely required to administer such programs, i.e., county sheriffs and department of correctional service personnel as too taxing on their resources.)

It was determined that the \$300 amount would eliminate installment plans for lower cost traffic violations. In addition, complaints from clerks indicate that administration of community service is problematic for even monetary amounts over \$300. So, as stated above, in red, the committee agreed to a minimum amount for community service hoping that this would help alleviate this administrative problem to some extent.

3. Complaint that county attorney collections are not mentioned.

Thomas G. Kunstle – Assistant Story County Attorney

As stated above, the mandate given to the committee was to address **court ordered installment payment plans** only.

As stated in the Rule 26.1 Scope these provisions govern installment plans and other collection activities of the judicial branch. The committee did not include all of the collections procedures as outlined in Iowa Code 602.8017. The purpose of the rules and the mandate to the committee was to address internal court procedures for court ordered installment plans and other collections activities specific to judges, clerks and internal court personnel. It is not necessary to recite the role of county attorneys in the collection process as that is codified and has no relationship to these internal court rules.

Mr. Kunstle states that the proposed rules do not accurately and completely describe the collection procedures under Iowa Code 602.8107, both the county attorney and CCU alternatives must be fully explained. The proposed rules do not address the county attorney or CCU rights and requirements to collect court debt because that is not the purpose of the rules as stated above. Following is a response to Mr. Kunstle's specific recommended revisions of the rules.

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." The interim procedures (not rules) were issued July 2, 2010. In 2012, the Iowa Code section 602.8107 was amended. Section 3 states that "Thirty days after court debt has been assessed, or if an installment payment is not received within thirty days after the date it is due, the judicial branch shall assign a case to the centralized collection unit of the department of revenue or its designee to collect debts owed to the clerk of the district court for a period of one year." This complies with the legislative amendment. And proposed rule 26.2(3) is consistent with that code section.

Section 3 "If a person establishes that he or she does not have the financial means to pay the court debt in full within 30 days from the date imposed, the judicial officer may (a) instruct the person to contact the CCU to request a payment or (b) establish an

installment payment plan pursuant to the rules contained in Chapter 26 of the Iowa Court rules.” This is an internal instruction to judicial officers on how to advise persons who cannot pay the court debt within 30 days. Under Iowa Code 602.8107 (2)(d) & (3) all court debt if not paid within 30 days of assessment or 30 days after the date it is due on an installment plan is delinquent and must be assigned to CCU. The county attorney’s right to collect the debt does not begin until the debt is delinquent for 60 days. (Iowa Code 602.8107(4)). Thus at the time the judicial officer assesses the debt, the instructions indicate the judicial officer has two options (a) refer to CCU or (b) give the person a court ordered installment plan. Under Iowa Code 602.8107(2)(d) &(3), the judicial officer does not have the option to refer to the county attorney at this point. There is no reason to include Mr. Kunstle’s recommended change for this proposed rule. The judicial officer should not be considering a county attorney payment plan at the time of assessing the fines, fees, etc. because the county attorney has no right to collect the debt or enter into a payment plan until at least 90 days from the date of assessment (60 days after the court debt is delinquent). (Iowa Code section 602.8107(4).

Proposed Rules 26.2(9) - Same explanation as above. This is in compliance with Iowa Code 602.8107 (2)(d). The county attorney’s right to collect the court debt does not begin until the debt is delinquent for 60 days. There is no reason to include Mr. Kunstle’s recommended change to this proposed rule. The committee could recommend that it be deleted from the rules as it is merely a recitation of the requirements of Iowa Code 602.8107 (3).

The interim procedures of July 2, 2010 addressed the new legislation that eliminates a long-standing provision that allowed judges to fix a date in the future for payment of the fine imposed. SF. 2838 (2010). That legislation also included a provision that gave judges the discretion to order a fine to be paid in installments and that the judicial officer shall establish the conditions of the installment payment plans by rule. That is the purpose of the proposed rules. The interim procedures were developed and issued very quickly as a stop gap until the committee could to recommend permanent rules. Because of this, the interim procedures were more general in nature. It was the determination of the committee that it was not necessary to recite the requirements of Iowa Code section 602.8107 for the permanent rules, as may have occurred in the interim rules.

Recommendation to include language from 26.2(1) “on the date of imposition of the court debt” in 26.2(2) & (3). The committee has no objection to this recommendation if the Court feels it is necessary. However it does seem redundant.

Add: “At sentencing or upon imposition of fines” to proposed rule 26.2(2) & (3). The committee recommends the following changes:
26.2(2) If the person establishes in full on the date of sentencing or imposition.....
26.3(3) If the person establishes.....30 days from the date of sentencing or imposition.....

Proposed rules 26.2(6), the committee has no objection to the following change. When ordering an installment pay plan, except

Recommended changes for proposed rule 26.2(12)(b), the committee has no objections to the following change: “Rule 26.2(12) permits inclusion of multiple new cases for the same defendant into one Installment pay plan because all new cases would be fully satisfied within two years from the date of imposition of the court debt or the oldest included case.”

4. Does not want court ordered installment payment plans.

Kim Johnson – Audubon Clerk of Court

Ms. Johnson voices concerns that the committee heard from many of its members. Court ordered and administered payment plans take up a lot of time and add considerable work for our support staff. Quite frankly it would have been the committee’s recommendation to do away with court ordered installment payment plans completely, but our mandate was to propose reasonable rules for such plans given our reduced resources in court personnel to oversee such plans. We believe that we have provided such reasonable recommendations that are uniform and fair, which comport with existing statutes, which provide some continued discretion with the courts, and which do not overburden our resources.

With the implementation of EDMS, it is unlikely that a technical fix for recording of payment plans in ICIS will occur in the near future.

5. Mike Dille, Jefferson County Attorney

The installment plan of a judicial officer, under the rules does not occur after 30 days. It occurs at the time of imposition or sentencing and therefore does not interfere with county attorney collection rights or procedures. The statistics do not indicate that CCU is ineffective. The 10% fee added by CCU and 25% added by the private collection agency is mandated by the legislature under Iowa Code 602.8107. Refer to responses in #3 above.

6. This recommendation does not address any comment but was discussed when the Collections Committee met regarding its responses to the comments to the proposed rules on March 8, 2013.

The committee recommends that 26.2(10) be amended to say “If a person is granted a court-appointed attorney, the person ~~shall~~ may be required.....”

Submitted by the Collections Committee
March 8, 2013