

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
TECHNICAL CORRECTION AND) Administrative Order
EXTENSION OF TIME TO IMPLEMENT) No. 2005-72
ARIZONA CODE OF JUDICIAL) (Affecting Administrative
ADMINISTRATION § 4-301:) Order No. 2005-11)
PRIORITY OF OFFENDER PAYMENTS)
_____)

During the review of new receivable types for the past legislative session, a conflict was uncovered between this code section and A.R.S. § 28-1382. Specifically, A.R.S. § 28-1382(F)(2) states any assessments shall be paid prior to assessment in paragraph 3 (DUI abatement fee). Therefore, Administrative Order No. 2005-11 is in conflict with statute because the DUI abatement fee was placed before other fees. Also, the new DUI assessment was established this past legislative session, and it should be inserted into this code. This is a technical correction and an extension of time to implement priority of payments.

Pursuant to the Arizona Code of Judicial Administration, § 1-201(E), the chief justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 4-301 is amended as indicated on the attached document and shall be fully implemented no later than November 30, 2005.

Dated this 31st day of October, 2005.

RUTH V. MCGREGOR
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 4: Limited Jurisdiction Court
Chapter 3: Administration
Section 4-301: Priority of Offender Payments

A. Definitions. The following definitions apply to this section:

“Application” means the association of a payment to a financial obligation owed to the court.

“Category” means the type of obligation, such as restitution, time payment fee, fines and surcharges, prison construction and operations fund or driving under the influence (DUI) abatement fees.

“Collections fee” means percentage-based fee imposed on the offender for collection agency services to collect unpaid court obligations, including the “FARE Special Collections” fee.

“Court” means a limited jurisdiction court in Arizona.

“Criminal charge” means a violation of a statute or local ordinance designated as a misdemeanor or petty offense.

“Electronic payment” means a payment using a credit or debit card or other financial transaction that may be transmitted and accepted through electronic methods such as web-based interaction or interactive voice response systems.

“FARE fee” means any fee established by administrative order of the supreme court designated to cover a cost for services provided to enhance enforcement of court orders.

“Misdemeanor” means statute or local ordinance violations that are designated as misdemeanor and include operating under the influence, criminal traffic or non-traffic criminal offenses.

“Obligation” means the amount the offender or designated payor is ordered to pay.

“Offender” means a person or entity who is ordered to pay an obligation in any criminal or civil traffic case.

“Other fees or reimbursable costs” means any fees or reimbursable costs authorized by statute or local ordinance and imposed pursuant to court order, excluding collection fees. These include, but are not limited to: non-sufficient fund fees, probation fees, process server costs, court appointed attorney fees, default fees, warrant fees, local court/public safety enhancement funds, substance abuse screening fees, and jail costs.

“Payor” means the individual or entity making the offender’s payment(s).

“Payment” means any amount of money received by the court for an obligation.

“Payment plan” means an approved agreement, not terminated, between the offender or designated payor and the court for obligations not paid in full the day of sentencing or a court-ordered schedule of periodic payments.

B. Applicability. Article VI, Section 3 of the Arizona Constitution authorizes the Supreme Court to exercise administrative supervision over all the courts of the state.

C. Purpose. This section establishes procedures for applying payments to financial obligations in the limited jurisdiction courts.

D. Application of payments to cases and payment plans.

1. In the absence of a specific request by the offender or a judicial directive, the court shall apply a payment in the following order:
 - a. To the offender’s payment plan(s) in scheduled payment due date order.
 - b. To the offender's obligations not associated with a payment plan.
2. Whether the court applies the payment to a payment plan or to obligation(s) not associated with a payment plan, the court shall apply the payment as provided by subsection E.
3. A payor may request the court apply a payment to obligations:
 - a. Associated with a specific payment plan;
 - b. Associated with a specific citation;
 - c. Associated with a specific case; or,
 - d. Arising from a specific charge within a specified case.
4. On request by a payor, the court may allow:
 - a. Payment-in-full of obligations on date of sentencing to take precedence over prior obligations;
 - b. Payment-in-full of all obligations taken into account for the Traffic Ticket Enforcement Assistance Program (TTEAP) in order to release registration hold;
 - c. Payment-in-full of all defaulted civil traffic charges in order to obtain driver license reinstatement; or,
 - d. Payment of underlying obligations associated with a warrant or posting of a bond.

5. If a payor makes an electronic payment, the court shall apply the payment as directed by the payor.
6. If a payor makes a payment by mail, the court shall apply the payment as directed by the payor, unless the court notifies the payor of the alternative payment application and the reason the payment was not applied as specified by the payor.

E. Application of payments to obligations. The court shall apply payments to the categories and subcategories of obligations in the order listed below, except as provided in subsections F and G. If there are two or more unpaid obligations within a category or subcategory, the court shall apply the payment between or amongst the obligations in any reasonable manner consistent with statute, rules of court, local ordinance, administrative order or local rule. If the unpaid obligations are equal in priority within a category or subcategory, the court shall establish policies to apply the payment either proportionately, oldest case first or smallest unpaid balance.

1. Pursuant to A.R.S. '13-809(A), "...payment and enforcement of restitution take priority over payments to the state".
2. Pursuant to A.R.S. '12-116(A), "the time payment fee shall be collected next after restitution".
3. Pursuant to supreme court administrative orders, any FARE fees, excluding FARE Special Collections fees, shall be the next priority following the time payment fee pursuant to A.R.S. §12-116(A). The FARE Advisory Committee shall recommend the priority of payment for each FARE fee subject to review and approval by the chief justice.
4. Other fees or reimbursable costs shall be the next priority. The local jurisdiction may establish subcategories of such obligations and designate a priority of payment for each subcategory.
5. Fines, sanctions, penalties and surcharges imposed pursuant to court order shall be the next priority. The local jurisdiction may elect to apply payment to either criminal charges or civil traffic charges first. After criminal charges and civil traffic charges, payment shall next be applied to obligations associated with violations of civil ordinances and only then to obligations associated with parking violations. Pursuant to A.R.S §§ 12-116.01 and 12-116.02, fines and penalties shall be paid proportionately with their associated surcharges.
76. The prison construction and operations fee shall be the next priority pursuant to A.R.S. §§ 5-395, 5-395.01, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8282, 28-8284, 28-8286, 28-8287 and 28-8288.
7. The DUI additional assessment (extra civil assessment) shall be the next priority pursuant to A.R.S. §§ 28-1382(D)(2), (F)(2), and 28-1383(J)(2).
8. Any financial obligation not included in subsections E1-E7 shall be paid after E1-E7.

69. The DUI abatement fee shall be the next priority pursuant to A.R.S. §§ 28-1382(D)(2), (F)(3), and 28-1383(J)(2).

F. Terminated Payment Plans

1. If an offender does not comply with the terms of the payment plan, the payment plan shall be terminated and the obligation shall be eligible for collections efforts and payment applied in compliance with subsection D1. The court shall have a written policy that states if it allows a period of time after the due date and prior to the actual termination of the payment plan. If the court does allow it, the court shall state the amount of time is allowed before terminating the payment plan. Payments received during this time period shall be applied as though received on or before the due date.
2. When a defendant mails in a partial payment on a terminated payment plan and a warrant or default has been issued, the payment is applied to the case in accordance with subsection E, taking into account the additional fees, if any, attributed to the delinquency.

G. Exceptions

1. If the court has assessed a collections fee on a delinquent obligation, the fee is added to the unpaid court obligation and this amount becomes the total balance due. Any payment received shall be applied proportionately between the collections fee and the delinquent court obligation. The delinquent court obligation portion of the payment shall be applied as specified in subsection E.
2. A court may elect to apply payment to all obligations arising from a given charge before applying payment to obligations arising from another charge associated with the same case. In doing so, the priority of payments for obligations on a given charge shall follow the priority specified in subsection E.

H. General Administration. Within ninety days after the effective date of this section, a court shall comply with each component of the section for obligations imposed after the effective date of this section. If a court is unable to comply with this section within the required timeframe, the presiding judge of the court shall advise the presiding judge of the county in writing of the court's inability to comply, describing the modifications, resources, and additional time needed to fully comply.