

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ARIZONA CODE OF JUDICIAL) Administrative Order
ADMINISTRATION § 3-401:) No. 2008 - 15
PRIORITY OF OFFENDER PAYMENTS) (Affecting Administrative
) Order No. 2002-103)
)

On October 24, 2007 the Arizona Judicial Council approved and recommended for adoption an amendment to the above captioned section of the Arizona Code of Judicial Administration. New case management systems that include programming changes required to implement this amendment will soon be installed in the Superior Court. It is not cost effective to require courts to reprogram existing case management systems in order to implement this amendment immediately.

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

IT IS ORDERED that Arizona Code of Judicial Administration § 3-401 is amended as indicated on the attached document. All other provisions of § 3-401 as originally adopted, remain unchanged and in effect.

IT IS FURTHER ORDERED that the amended version of § 3-401 shall apply to each court upon full implementation of a new case management system or a new or reprogrammed financial system after the date of this Order and until that time each court shall be governed by the unamended version of § 3-401.

IT IS FURTHER ORDERED that § 3-401 as amended shall be fully implemented and effective as to all courts no later than January 1, 2010.

IT IS FURTHER ORDERED that the unamended version of § 3-401 shall be published along with the amended version until February 1, 2010.

Dated this 13th day of February, 2008.

RUTH V. MCGREGOR
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 3: Superior Court
Chapter 4: Administration
Section 3-401: Priority of Offender Payments

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

“Account” means a composite of an individual’s or assessed party’s legal entity’s court financial obligations ordered by the court or administrative assessments ordered by the probation department for one case.

“Active case” means a case in which the offender’s criminal sentence, including a sentence to probation, has not expired.

“Allocation” means the association of a payment to a recipient. For example, restitution is allocated to victims.

“Application” means the association of a payment to a receivable ~~or court-ordered obligation account.~~

“Arrearage” means an amount owed the court that is past the payment due date.

“Assessed party” means a person or entity that has not been adjudicated or convicted but has been ordered to pay a financial obligation to the court or probation department.

“Category” means one of the following receivable types: of obligation, such as restitution, time payment fee, probation service fees, attorney fees, reimbursement fees, fines and surcharges, juvenile monetary assessments, parental assessments and surcharges or driving under the influence (DUI) abatement fee, and other assessments.

“Clerk” means the clerk’s office of the superior court.

“Court” means the superior court in Arizona.

“Current” means all scheduled payments have been paid on or before the due dates and the ~~defendant’s~~ offender’s or assessed party’s account is up-to-date.

“Defendant” means ~~the adult or juvenile offender or the juvenile’s parent, guardian or estate against whom a financial obligation has been assessed.~~

“Department” means either the adult or juvenile probation departments of the court.

“FARE fee” means any fee established by the supreme court for services provided to enhance enforcement of court orders.

“Inactive case” means a case in which the criminal sentence, including any probation term, has expired.

~~“Obligation” means the amount per category the defendant is ordered to pay.~~

“Offender” means a person or entity convicted or adjudicated of an offense.

“Past due” means a payment that has not been received on or before the due date.

~~“Payment plan” means a signed agreement a schedule of payments ordered by between the defendant and the court or a probation department. for obligations not paid in full the day of sentencing or for a schedule of periodic payments.~~

“Payment” means any amount received, or scheduled to be received, on behalf of the offender or assessed party by the clerk on behalf of the defendant.

“Payor” means the individual, including the offender or entity, making the offender’s payment.

“Pre-payment” means a partial or full payment received in advance of a due date, other than the next scheduled payment.

“Receivable” means the amount the offender or assessed party is ordered to pay.

B. ~~Applicability Purpose.~~ Az. Const. Art. 6, § 3 Article VI, Section 3 of the Arizona Constitution authorizes the supreme court to provide for the priority of payments ordered by superior court for financial obligations exercise administrative supervision of all the courts of the state.

C. ~~Purpose.~~ This section establishes procedures and forms for ordering, assessing, for collecting and allocating payments in superior court criminal cases involving adult and juvenile offenders sentenced or adjudicated in the superior court or assessed parties.

D. ~~Use of Forms.~~ The supreme court shall develop uniform forms for payment plans, contracts and final judgments and orders. Courts, clerks and departments shall use these forms.

E. ~~Application of payments.~~

1. ~~The clerk shall apply payments to the following categories in the order shown:~~
 - a. ~~As required by this code, monies received from the defendant each month for each case shall be applied first to satisfy any ordered periodic restitution payment and any restitution payments in arrears in that case.~~
 - b. ~~Pursuant to A.R.S. § 12-116(A), the time payment fee shall be collected next after restitution.~~
 - c. ~~Probation service fees including;~~

- (1) Monthly supervision fees;
 - (2) Interstate processing fees;
 - (3) Transfer fees; and
 - (4) Parental assessments:
 - (a) Probation service fee;
 - (b) Partial or treatment payment fees; and
 - (c) Juvenile detention fees.
- d. ~~Attorney fees per judge's order or prorated if multiple attorney fees are assessed which include:~~
- (1) Indigent defense;
 - (2) Public defender;
 - (3) \$25 public defender fee; and
 - (4) Prosecutor cost.
- e. ~~Fines and surcharges per judge's order which include, but are not limited to:~~
- (1) Juvenile monetary assessments;
 - (2) Surcharges as applicable;
 - (3) Victim compensation; and
 - (4) Assistance fund sanctions.
- f. ~~Pursuant to A.R.S. §28-1382(D)(2), incarceration costs shall be paid before the DUI abatement fee.~~
- g. ~~DUI abatement fee.~~
- h. ~~Other reimbursable fees or assessments ordered by the court.~~
2. ~~In allocating the payments as required by subsection E.1., the clerk shall:~~
- a. ~~Apply payments proportionately within the same category unless specifically ordered differently by the court.~~
 - b. ~~Apply payments to arrearages in the highest priority first until current through the next payment due date. At that point the next category will be paid until current through the next payment due date and continue in that manner until:~~
 - (1) Either the payment is fully applied, or
 - (2) The account is current through the next payment due date.
 - c. ~~Apply partial payments, when the defendant is current, to each category in priority order until the obligations in the category are paid through the next payment due date. Within a payment category, the payment is applied proportionately to obligations unless otherwise ordered by the court.~~

- ~~d. Apply any partial or full pre payment as if it were the next periodic payment, unless the payor directs the clerk to apply the pre payment to the highest priority.~~
- ~~3. Pursuant to State v. Pennington, 178 Ariz. 301 (1994), only one time payment fee should be imposed on each count or case in which a time payment plan is approved, even though that plan may include, for example, a fine, a felony assessment, and restitution.~~

C. Application of Payments to Cases and Payment Plans. In the absence of a specific judicial order, the clerk shall apply payment to cases and payment plans as follows:

1. First to the assessed party or offender's court ordered monthly obligation on an active case in the highest priority order identified in subsection (D) and (E) until current through the next payment due date.
2. Then to arrearages in the assessed party or offender's court ordered monthly obligation on an active case in the highest priority order identified in subsection (D) and (E) until current through the next payment due date. 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.
3. When the assessed party or offender is current through the next payment due date on the court ordered monthly obligation on an active case, apply additional payments in the following order:
 - a. To the oldest inactive cases according to sentencing date, where restitution was ordered until restitution is paid in full;
 - b. To the active cases where restitution was ordered until restitution is paid in full;
 - c. When restitution is paid in full for all active and inactive cases, apply payment to the oldest inactive case first in the highest priority order identified in subsection (D) and (E).
4. If a non-offender payor requests a payment application that is inconsistent with this section, return the payment to the non-offender payor.
5. Payment in full of monetary obligations on date of sentence shall take precedence over prior obligations.
6. From an outside entity that provided services to a juvenile only to the receivable for which the claim or invoice was submitted, or to the receivable designated by the payor or required by statute.

D. Application of Payments to Obligations for an Adult Offender. The clerk shall apply payments to the categories and subcategories in the following order:

1. Restitution shall be applied proportionately first to private victims and second to institutional victims, unless specifically ordered differently by the court. Any monies received for each case shall be applied first to any restitution payments in arrears in that case and next to any ordered periodic restitution payment.
2. Pursuant to A.R.S. § 12-116(A), the time payment fee shall be collected next after restitution. Only one time payment fee should be imposed on each count or case in which a time payment plan is approved, even though that plan may include, for example, a fine, a felony assessment, and restitution.
3. Any FARE fees approved by the supreme court, excluding FARE special collections fees, shall be the next priority following the time payment fee.
4. Probation service fees including monthly supervision fees, interstate processing and transfer fees.
5. Reimbursable fees such as attorney fees, (prorated per judge's order if multiple attorney fees are assessed) including indigent defense, public defender fees and prosecutor costs.
6. Fines and surcharges per judge's order including, but not limited to, surcharges as applicable, victim compensation and assistance fund sanctions.
7. The prison construction and operations fund.
8. The DUI additional assessments (extra civil assessment).
9. DUI abatement fee.

E. Application of Payments to Obligations for a Juvenile Offender or Assessed Party. The clerk shall apply payments to the categories and subcategories in the following order:

1. Restitution shall be applied proportionately first to private victims and second to institutional victims, unless specifically ordered differently by the court. Any monies received for each case shall be applied first to any restitution payments in arrears in that case and then next to any ordered periodic restitution payment.
2. Pursuant to A.R.S. § 12-116(A), the time payment fee shall be collected next after restitution. Only one time payment fee should be imposed on each count or case in which a time payment plan is approved, even though that plan may include, for example, a fine, a felony assessment, and restitution.
3. Any FARE fees approved by the supreme court, excluding FARE special collections fees, shall be the next priority following the time payment fee.
4. Probation service fees including monthly probation supervision fees, diversion fees, diversion citation fees and "pic-act" fees.

5. Reimbursable fees including, but not limited to:
 - a. Administrative assessment for appointment of counsel;
 - b. Attorney fees;
 - c. Detention fees;
 - d. Treatment fees, including but not limited to, family counseling, diversion treatment, and placement.
 - e. Community restitution; and
 - f. Victim fees.
6. Fines and surcharges per judge's order including, but not limited to, juvenile monetary penalties, citation fines and applicable surcharges.
7. DUI abatement fee.

F. General Administration. If a court is unable to immediately comply with subsection (C)(3) due to programming or other automation changes, a request for an extension for implementation of this subsection may be made to the AOC and the administrative director may grant a reasonable extension.