



Office of Court Administration

Memo

To: Chief Justice Nathan Hecht
Presiding Judge Sharon Keller
Members, Texas Judicial Council

From: David Slayton, Administrative Director

Date: May 27, 2016

Re: Analysis of Proposed Amendments to Texas Administrative Code, Chapter 175, Collection Improvement Program

The following is a brief analysis of the proposed changes to the Collection Improvement Program (CIP) rules that will be considered by the Judicial Council at its meeting on June 3. The primary goal of the proposed amendments is to provide procedures that will help defendant's comply with court ordered costs, fines and fees without imposing undue hardship on defendants and defendant's dependents. The amendments also clarify that the CIP is not intended to encourage the incarceration of defendants who are unable to pay.

§175.1. Purpose and Scope

Section 175.1 clarifies the following:

- 1) the purpose of the rules is to improve defendant's compliance with court ordered costs, fines and fees without imposing undue hardship on defendants and defendant's dependents;
- 2) the CIP components do not apply to cases in which the court has determined that a defendant is unable to pay any portion of the costs, fines and fees;
- 3) courts may utilize local program staff to monitor compliance with court orders in cases that don't fall under the local program, such as when a defendant has been ordered to satisfy the assessed costs, fines and fees through community service or other non-monetary compliance options; and

- 4) the CIP is not intended to alter the legal authority or discretion of a judge regarding the determination of whether to waive or the method to satisfy the payment of costs, fines and fees, or how to adjudicate any aspect of the case.

§175.2. Definitions

The proposed amendments to Section 175.2 add the following definitions: 1) discretionary income, 2) household income, 3) non-monetary compliance, and 4) spouse. The definition of “eligible case” is deleted from the definitions section in the current rule and moved to the only section in which that term is used, the compliance review section. The amended rule also adds “e-mail” to the list of “contact information” in that definition. Lastly the proposed amendments delete the following definitions because they were determined to be unnecessary: 1) contact, 2) designated counties, and 3) designated municipalities.

§175.3. Collection Improvement Program Components

The proposed amendment would make several changes to this section. The current rule separates the CIP components into two subsections (current Sec. 175.3(c) and (d)). The proposed rule lists all of the component in one subsection (new Sec. 175.3(a)) and rearranges the order of the components so that they are consistent with the processing of a case by local program staff.

The following are the most pertinent changes:

- 1) Application or Contact Information. Under the current rules, local program staff does not have to collect an application with payment ability information from defendants who have a payment plan set by the judge before the case is referred to the local program. They only need to collect contact information. Under the proposed rule, staff must obtain from these defendants signed statement regarding whether the defendant has the ability to pay the assessed costs, fines and fees under the imposed terms without undue hardship to the defendant and defendant’s dependents. If the defendant is unable to make this acknowledgment, the local program staff must obtain contact information and payment ability information from the defendant.

The proposed rule does not change the requirement that local program staff collect from all other defendants an application with payment ability information and contact information.

- 2) Defendant Interviews. The amended rule would require local program staff to review payment ability information obtained from defendants who have a payment plan set by the judge before the case is referred to the local program if they do not provide an acknowledgment that they have the ability to pay. If they

do provide this acknowledgement, local program staff would only be required to review the terms of the payment plan set by the judge with defendant as is provided under the current rules.

The proposed rule does not change the current local program requirements for interviewing other defendants. Local program staff would continue to review payment ability information with these defendants.

- 3) Referral to Court for Review of Defendant's Ability to Pay. This is a new component without a comparable component in the current rules. It would require local program staff to refer a case back to the court if they receive information indicating that the defendant is unable to pay the assessed costs, fines and fees without undue hardship to the defendant and defendant's dependents. This component also provides that a defendant is presumed to be unable to pay all the costs, fees, and fines assessed if the defendant meets at least one of the following three criteria: 1) the defendant is required to attend school pursuant to the compulsory school attendance law, 2) the defendant's income or defendant's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines, and 3) the defendant qualifies for certain federal assistance programs. The proposed rule also requires local program staff to collect information regarding a defendant's ability to satisfy the assessment with non-monetary compliance options (i.e. community service, etc.) and to provide the court with this information when the case is referred back to the court. Though local program staff are currently able to refer cases back to the court if they believe a defendant is unable to pay and are able to collect information regarding available non-monetary compliance options, there is no comparable provision specifically stated in the current rules.

The proposed rule also specifies that it is not intended to discourage staff from referring other cases back to the court even if the defendant does not specifically fall under the provided "inability to pay" presumption, and it also provides that it is not intended to bind or influence judicial discretion regarding these matters.

- 4) Payment Plan Guidelines. The current rules contain a subsection (Sec. 175.3(c)(4)) called "Specified Payment Terms" that includes documentation requirements, payment guidelines and time requirements. The proposed rules substitute the "Specified Payment Terms" subsection with a new "Payment Plan Guidelines" subsection which, in effect, repeals all of the current "Specified Payment Term" provisions except for one, the requirement that payment plans be documented. The new rule requires that payment plans include payment amounts, the designated payment intervals and the number of payments and

provides that, generally, payment amounts should not exceed 20 percent of the defendant's discretionary income per month.

The proposed rule does not include language from the current rules that imposes specific time requirements by case type and that requires that payment plans have payment amounts that are the highest that can be made in the shortest period of time.

- 5) Telephone and Written Notice Contact. The proposed rules add e-mail and other electronic communication options as a means to communicate with defendants. They also require local program staff to include instructions in their telephone and written contacts about what a defendant can do if the defendant is unable to pay and information regarding the availability of non-monetary compliance and how a defendant can request a hearing for the judge to consider the defendant's ability to pay.
- 6) Final Contact Attempt. The proposed rule replaces the "Contact if Capias Pro Fine Sought" with a subsection called "Final Contact Attempt." The new provision would require that before reporting the case as non-compliant to the court, the local program make a final contact in writing by mail. The final contact must include all of the information included in the telephone and other written contacts regarding steps a defendant can take if defendant is unable to pay. The proposed rule provides that local program staff must wait a month before reporting the case to the court in order to give the defendant time to discuss options with local program staff. It also clarifies that the provision is not intended to interfere or alter the judge's authority to adjudicate a case for non-compliance at any time.

§175.4. Content and Form of Local Government Reports

The proposed rules would require an additional report – the number of cases in which local program staff referred cases back to the court under the new provision that requires local program staff to refer the case if they determine that the defendant is unable to pay.

§175.5. Compliance Review Standards

The proposed rule would change the name of Sec. 175.5 from "Audit Standards" to "Compliance Review Standards." The purpose is to remove the impression that the audits OCA conducts are to review matters related to "how much money an entity collects" and more closely follow the intent of Code of Criminal Procedure Art. 103.0033(j) which requires that OCA conduct an audit to "confirm that the county or municipality is conforming with requirements relating to the CIP.

§175.6. Waivers

The only change to this section is to add the statutory provision (Code of Criminal Procedure Art. 103.0033(h-1)) that OCA must grant a blanket waiver to a county that contains within its borders a correctional facility operated by or under a contract with the Texas Department of Criminal Justice and that has a population of 50,000 or more because the inmate population is included in the county's population.