

**MEMORANDUM OF UNDERSTANDING
FOR
COLLECTION SERVICES**

This Memorandum of Understanding ("MOU") is between the County of Monterey, by and through the County Treasurer-Tax Collector (collectively, "County") and the Superior Court of California, County of Monterey ("Court") (individually, a "Party"; collectively, the "Parties"). This MOU will become effective on the date of the last signature affixed hereto.

RECITALS

1. California Penal Code Section 1463.010 (Exhibit 1) requires the Court and County to develop a cooperative plan to implement a collection program for the collection of delinquent fees, fines, forfeitures, penalties, and assessments arising from criminal, traffic, and minor offense cases.
2. The Parties had a previous MOU dated April 27, 2005, establishing the Parties' responsibility to collect and distribute criminal fines, fees, forfeitures and assessments pursuant to California law and which was continued with a MOU dated October 6, 2009, and is superseded by this MOU. The Parties have developed a collection program for the collection of delinquent fees, fines, forfeitures, penalties, and assessments arising from criminal, traffic and minor offense cases (the "Delinquent Collection Program"). For purposes of this MOU, delinquent payments are payments on accounts that have become past due.
3. The Parties have an arrangement whereby the County receives and processes forthwith and current payments for fees, fines, forfeitures, penalties, and assessments arising from criminal cases (the "Forthwith-Current Collection Arrangement"). The Parties also have an arrangement whereby the County receives and processes delinquent traffic and minor offense accounts.
4. The Parties wish to revise and set forth their respective rights and responsibilities under the Delinquent Collection Program and the Forthwith-Current Collection Arrangement to incorporate new or updated program, systems, and process references as applicable.

AGREEMENT

NOW, THEREFORE, the Parties agree to the following:

1. PURPOSE

The purpose of this MOU is to update the established County Treasurer-Tax Collector, Revenue Division's ("Revenue Division") and the Court's responsibility for the collection of delinquent fees, fines, forfeitures, penalties and assessments arising from criminal, traffic and minor offense cases as well as the receipt and processing of forthwith and current payments for fees, fines, forfeitures, penalties, and assessments arising from criminal cases on behalf of the Court.

2. DEFINITIONS

- 2.1 Adjustment** – Any change in a debtor's original fine, fee, forfeiture or assessment.
- 2.2 Assessment** – A charge established by Court that is not a fine, fee or forfeiture.

- 2.3 Case Management System** – An information system used by either the Court or County, to carry out the data management functions required for the Comprehensive Collection Program.
- 2.4 Collections** – The process used by the Revenue Division as a debt collection agency to facilitate debt repayment.
- 2.5 Comprehensive Collection Program (“CCP”)** – A broad program pursuant to Government Code Section 1463.007 (Exhibit 1) that provides for allowable costs of collections to be reimbursed to the collection agency.
- 2.6 Current Payment** – payments made on an installment plan.
- 2.7 Defendant** – The accused person or party in a civil or criminal action.
- 2.8 Fee** – a fixed charge established by Court, County or State.
- 2.9 Fine** – a punitive sum determined by the State or Court.
- 2.10 Forfeiture** – a sum imposed by the State or Court due to a breach of a legal obligation.
- 2.11 Forthwith Payment** – payments paid immediately upon sentencing.
- 2.12 State** – The State of California.

3. COURT RESPONSIBILITIES

The Court will:

- a. Transfer the following accounts to the Revenue Division for collection services: 1) all criminal accounts, both forthwith (current) and delinquent; and 2) all delinquent traffic and minor offense accounts with a balance due of \$10 or greater (collectively, “Transferred Accounts”).
- b. Transfer to the Revenue Division all information stored on the Court’s case management system that is necessary and appropriate to pursue billing and collection of the Transferred Accounts in an organized and efficient manner. Such transfer will be through the Court’s shared File Transfer Protocol (FTP) server. The electronic transfer of such data will be completed daily (excluding weekends, Court holidays, and County holidays).
- c. Provide the County with clarification, reconciliation, and verification for amounts ordered for criminal cases never transferred, case discrepancies, and adjustments on all Transferred Accounts within seven (7) Court business days.
- d. Accept payments on all Transferred Accounts in the Court’s branch offices. Payments accepted by the Court will be forwarded within seven (7) Court business days to the Revenue

Division with a transmittal form. If the payment is made by check, the checks will be batched with a transmittal form and sent to the Revenue Division. If payments are made by cash, the Court will deposit the cash payments, provide receipts for individual payments, and issue Court checks to the Revenue Division. Each Court check sent to the Revenue Division will include a transmittal form. The transmittal form will include, at a minimum, the following:

- 1) the defendant's name;
- 2) the case number;
- 3) the amount of the payment; and
- 4) the date of the payment.

e. Provide the County with daily adjustments or "modification" reports on Transferred Accounts based on Court orders (excluding weekends, Court holidays, and County holidays). The modification report for accounts arising out of criminal, traffic, and minor offense cases will be through the Court's shared FTP server.

f. Provide the Revenue Division continued access of the Court's Justice Partners' Automated Website (JPAW).

g. Delegate authority to the County authorizing the County to add civil assessments to all appropriate delinquent criminal cases as specified in the written judicial order Superior Court Directive 10-04 (Exhibit 2).

4. COUNTY RESPONSIBILITIES

The County will:

a. Accept and process pursuant to applicable law forthwith payments received for fees, fines, forfeitures, penalties, and assessments arising from criminal cases.

b. Operate the Delinquent Collection Program as a comprehensive collection program as that term is defined in California Penal Code Section 1463.007 (Exhibit 1) and applicable guidelines and standards approved from time-to-time by the Judicial Council of California. Specifically, County will operate the Delinquent Collection Program as a separate and distinct revenue collection activity.

c. Provide the Court with access to the County's case management system to enable the Court to view and print the payment history for all Transferred Accounts. The County shall bear the costs for this access.

d. Provide the Court with a monthly report indicating the amount of revenue collected under the Delinquent Collection Program, in a format mutually agreed upon to enable the Court to meet its reporting requirements to the Judicial Council of California ("Judicial Council"). The monthly report will include the following:

- 1) the gross amount of revenue collected under the Delinquent Collection Program;
- 2) the number and balance of accounts transferred to the County;
- 3) the monthly detailed amount the County has deducted as its allowable collection costs under California Penal Code Section 1463.007 (its "Allowable Costs"); and
- 4) the monthly net revenue to be distributed.

This report will be provided to the Court's Chief Financial Officer no later than seven (7) County business days after the end of each month.

e. Provide the Court with a weekly report, in a format mutually agreed upon, of each manual adjustment processed by the County for each account transferred under the Delinquent Collection Program. The weekly report, which will be sorted by case number, will include the following information:

- 1) the case number;
- 2) the defendant's name;
- 3) the reason for adjustment;
- 4) the original fee, fine, forfeiture, penalty, and assessment; and
- 5) the adjusted fee, fine, forfeiture, penalty, and assessment.

This report will be provided via email to the Court's Traffic, Court Services, and Finance Manager every Monday or as mutually agreed by the Parties.

f. Provide the Court with a monthly report indicating the amount of revenue collected under the Forthwith-Current Collection Arrangement, in a format mutually agreed upon, to enable Court to meet its reporting requirements to the Judicial Council. The monthly report will also include the following:

- 1) the number and beginning balance of all accounts including adjustments transferred from the Court to the County each month;
- 2) the total amount of gross revenue collected for all accounts with a forthwith-current collection status;
- 3) the total amount of gross revenue collected for all accounts with a delinquent status collection; and
- 4) the number of and remaining balance on all accounts (the ending inventory will exclude all accounts that have a balance that is less than or equal to zero)

This report will be provided to the Court's Supervising Accountant and Chief Financial Officer no later than seven (7) County business days after the end of each month.

- g. Provide the Court with a report, at least annually, on the effectiveness of the Delinquent Collection Program in the format and with the information required by the Judicial Council and statute. The County shall provide the report to the Court ten (10) business days prior to the date it must be submitted to the Judicial Council.
- h. Collaborate with the Court to streamline electronic referrals of conditional probation and victim restitution accounts.
- i. Process daily adjustments or "modification" reports on Transferred Accounts based on Court orders (excluding weekends and Court and County holidays) to adjust original amounts of Transferred Accounts in the County's collections information system based on a court order.
- j. Work with the Court to identify and discharge eligible debt per Government Code sections 25257 through 25259.95 (Exhibit 1).

- 1) For all cases that have an outstanding balance and have gone delinquent, with no payment activity for not less than 5 years for infraction cases and 10 years for misdemeanor and felony cases, and for which the Revenue Division has exhausted all collection efforts, the County will identify and list each account as uncollectible debt and will submit an application to the Board of Supervisors for approval to discharge the County's accountability for all further collection responsibilities on these cases.
- 2) The application must include the combined total amount subject to the request for discharge, individual names and amounts owed for each person liable, and further state that the amounts owed are either less than the estimated cost of collection or the likelihood of collection does not warrant the estimated expense, and that all reasonable efforts, in accordance with collections standards, have been exhausted for these accounts. The application shall include any other facts that warrant the discharge and verification by the applicant attesting to the facts.
- 3) Within 45 days after Board of Supervisors' approval of discharge, the County should report to the Court all court-ordered debt discharged from accountability. The report should, at minimum, include the following for each debt discharged:
 - i. the case number;
 - ii. the case type (infraction, misdemeanor, or felony);
 - iii. the amount discharged; and
 - iv. the number of years since the debt became delinquent or date of last payment.

- 4) The Court and County recognize that the discharge from accountability does not release any person from liability for payment of any amount discharged.
 - 5) Once an order of discharge has been made, the presiding judge of the Court, or authorized judicial officer, shall direct the clerk of the court to enter a record of the discharge in the court case file for each debt.
 - 6) Once an order of discharge has been made, the presiding judge of the Court, or authorized judicial officer, shall direct the clerk of the court to post a copy of the order of discharge on the court's web site for at least three weeks.
 - 7) The County will discharge uncollectible debt on an annual basis.
- k. Distribute the revenue collected under this MOU pursuant to applicable statute or law.
 - l. Refrain from subcontracting any of its responsibilities under this MOU without the prior notification of the Court.
 - m. Pay for background investigations, including fingerprinting through the Sheriff's Office, for County candidates for positions responsible for County workload on behalf of this MOU, or that otherwise have access to Court information.
 - n. Provide the Court's Operations Manager of the Traffic Division with drafts of all written collection notices proposed to be used by County, as well as the procedures for reviewing and editing language of such notices. County will not use any collection notice that has not been previously approved by the Court.
 - o. Ensure that failure to appear and failure to pay cases are updated and DMV holds are released in a timely manner by providing a record of payments taken each day, submitted as a CSV file (text file) to the Court's shared FTP server via the daily interface extract from the County's collections information system. When the County receives notification of payment from a subcontractor/third party vendor (e.g. MSB, FTB), the County shall provide daily to the Court's designee a list of cases via email to ensure timely release of any DMV holds.
 - p. Advise defendants that an FTA hold on a driver's license will be released within one to two business days of their first payment.
 - q. Coordinate with the Court to schedule court appearances on accounts transferred to the County where debtors are disputing the underlying charges.

5. JOINT RESPONSIBILITIES

The Parties will:

- a. Each designate an employee to act as the contact person for each Party to facilitate the exchange of information and resolve any day-to-day issues. Parties will work cooperatively to

effectuate the provisions and purposes of this MOU, which includes maximizing collection revenue, improving the flow of information, and improving customer service.

For traffic case specific questions, the County will contact the Traffic Division designee as identified by the Operations Manager of the Traffic Division. For criminal case-specific questions relating to fine/fees imposed or minute orders, the County will contact the Criminal Division designee as identified by the Operations Manager of the Criminal Division. Case-specific questions relating to petitions to vacate civil assessment shall be submitted to the respective division designee of the Operations Managers in the Traffic and/or Criminal Divisions. The Parties will also meet quarterly or as otherwise agreed to discuss issues of mutual interest and concern that may arise in connection with this MOU.

The County contact is the Revenue Management Analyst, whose contact information is as follows:

Revenue Management Analyst
168 West Alisal Street, First Floor
Salinas, CA 93901
(831) 755-5042

- b. Receive, reply to and/or comply with any audit of an appropriate State audit agency that directly relates to the Delinquent Collection Program or revenue to be handled or disbursed under this MOU. Each Party will permit authorized representatives of the other Party, the Judicial Council, the State Controller's Office ("SCO") and/or their designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of this MOU, including records related to billings and other financial records. Each Party will allow the other party's auditor(s) access to such records during normal business hours and will allow the other party's auditor(s) to interview any employees or others who might reasonably have information related to such records.
- c. Safeguard as confidential all information as shared between the Parties to carry out the purpose of this MOU. Neither Party will disclose the information shared between the Parties to a third party without the prior written consent of the other Party, except for audits performed by the Judicial Council, the SCO, or other legally authorized agency.
- d. Monitor and implement any changes or modifications to California state laws and/or regulations affecting the Delinquent Collection Program or the revenue collected under this MOU and notify the other Party of such changes.
- e. Collaborate in making any changes to the manual of operational policies and procedures to adhere to Judicial Council guidelines governing the Delinquent Collection Program. Both Parties will also jointly report to the Judicial Council at least annually on the effectiveness of the Delinquent Collection Program, or as the Judicial Council may otherwise require.

- f. Maintain all records and documentation related to the performance of this MOU, including records related to billings and other financial records, in an accessible location and condition for a period of not less than five (5) years after a Transferred Account is completely paid or until after final audit has been resolved, whichever is later. Each Party will adequately protect all records against fire or other damage.
- g. Bear their own costs for maintenance and any necessary programming or other IT services, to enable the data exchange with the other Party. With respect to the County, this cost includes reprogramming of County case management systems, as necessary, when the Court updates its existing case management system or implements a new case management system.
- h. Cooperate in any performance audit initiated by the other Party. If the performance audit is not mutually agreed upon, the Party requesting the audit will pay for all costs related to the audit. If the Parties mutually agree on a performance audit, the costs will be shared. Each Party will permit authorized representatives of the other Party at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of this MOU, including records related to billings and other financial records. Each Party will allow the other party's auditor(s) access to such records during normal business hours and will allow the other party's auditor(s) to interview any employees or others who might reasonably have information related to such records.
- i. Notify the other Party immediately when there are technical errors or issues with the County's collections case management system or with the Court's case management system that may impact the day-to-day operations of the other Party.

6. FINANCIAL PROVISIONS

- a. County will reimburse Court for the actual costs of receiving and processing delinquent payments on criminal, traffic, and minor offense cases in Court's branch offices. Court will submit monthly invoices based on timesheets for the actual salary and benefit costs incurred by Court in accordance with direct billing by Court for collection activity.
- b. Court will reimburse County for the actual costs of receiving and processing forthwith payments made in the Treasurer-Tax Collector – Revenue Division Office located at 168 W. Alisal St. in Salinas, CA. County will submit monthly invoices based on timesheets for the actual salary and benefit costs incurred by Court in accordance with direct billing by the Revenue Division for collection activity.

7. DEDUCTIONS FOR ALLOWABLE COSTS

- a. Each Party may deduct from the monies collected under the Delinquent Collection Program its Allowable Costs prior to distributing such monies. Allowable Costs, either direct or indirect, will be reimbursed in the amount and manner set forth in the guidelines and regulations established by the Judicial Council and the SCO.

b. Each Party's responsibilities under this MOU are independent of any right to deduct its Allowable Costs. The Parties agree that neither Party has an obligation to pay or reimburse the other Party for any amounts or costs incurred by the other Party in performing its responsibilities under the Delinquent Collection Program.

8. TERM/TERMINATION

a. This MOU shall be effective on the date of the last signature affixed hereto and shall remain in effect until terminated by either Party in accordance with Section 8b of this MOU.

b. Either Party may terminate this MOU by giving notice to the other Party in the manner specified in Section 10d below; provided, however, such termination shall not be effective, and this MOU shall remain in full force and effect, unless and until the County and the Court execute a written memorandum setting forth their agreement on the operation of a subsequent collection program as required by Penal Code Section 1463.010. Such notice will be given at least sixty (60) days prior to the end of the County's fiscal year and, subject to satisfying the requirements of this Section 8b, will become effective only upon the first day of the County's succeeding fiscal year.

c. Notwithstanding Section 8b, the Parties may terminate the provisions of this MOU that relate to the Forthwith-Current Collection Arrangement by giving 180 days prior notice in the manner specified in Section 10d below.

9. DISPUTE RESOLUTION

a. If the Parties disagree as to any matter governed by this MOU, the dispute resolution process discussed in this Section 9 will govern. If after thirty (30) days of negotiations between the employees designated in Section 5a, the Parties cannot resolve a dispute, either Party may give the other Party a written request for a meeting between the Court Executive Officer and the Treasurer-Tax Collector for the purpose of resolving a disagreement between the Parties. If such meeting is requested, the meeting will be held within ten (10) business days of the receipt of such request.

b. If the meeting between the Court Executive Officer and the Treasurer-Tax Collector fails to occur or fails to resolve the disagreement, the dispute will be submitted for non-binding mediation by a third party mutually agreed upon by the Administrative Director of the Courts and the California State Association of Counties (CSAC). If the mediation fails to resolve the disagreement, either Party may request binding arbitration by a third party mutually agreed upon by the Administrative Director of the Courts and CSAC. Until the dispute is resolved, both Parties will continue to perform their respective responsibilities under this MOU.

10. MISCELLANEOUS

a. Entire Agreement. This MOU, and all exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous

modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties of this MOU.

b. Amendment. No addition to or alteration of the terms of this MOU will be valid unless made in the form of a written amendment, which is formally approved and executed by the governing bodies of each of the Parties of this MOU, or their respective authorized designees.

c. Further Assurances. Each Party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this MOU.

d. Notices. Any notices required or permitted hereunder shall be given in writing by (a) personal delivery; (b) email; (c) prepaid first-class mail; or (d) reputable overnight delivery service; addressed as follows or to such other place as each Party may designate by subsequent written notice to the other Party:

If to County: County of Monterey
Attn: Treasurer-Tax Collector
168 West Alisal Street, First Floor
Salinas, CA 93901
zeebm@co.monterey.ca.us

If to Court: Superior Court of California, County of Monterey
Attn: Court Executive Officer
240 Church Street
Salinas, CA 93901
chris.ruhl@monterey.courts.ca.gov

e. Waiver. Any waiver by either Party of the terms of this MOU must be in writing and executed by an authorized representative of the waiving party and will not be construed as a waiver of any succeeding breach of the same or other term of this MOU.

f. Counsel and Drafting. Each Party, by its due execution of this MOU, represents to the other Party that it has reviewed each term of this MOU with their counsel, or has had the opportunity for such review with their counsel. No Party will deny the validity of this MOU on the ground that such Party did not have the advice of counsel. Each Party has had the opportunity to participate in drafting and preparation of this MOU. The provisions and terms of this MOU will be interpreted in accordance with the plain meaning thereof and will not be construed in favor of or against either Party.

g. Counterparts. This MOU may be executed in one or more counterparts, all of which together will constitute one and the same agreement.

- h. Severability. The provisions of this MOU are separate and severable. If any provision of this MOU is held by a court of competent jurisdiction or arbitration to be invalid, void or unenforceable, then (i) the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way; and (ii) such provision will be enforced to the maximum extent possible so as to effect the reasonable intent of the parties hereto and will be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- i. Governing Law. This MOU will be construed under the laws of the State of California, venue as Monterey County, without regard to its conflict of law provisions.
- j. Authority to Execute this MOU. County and Court certify that the individual(s) signing below on behalf of the Party has authority to execute this MOU on behalf of the Party and may legally bind the Party to the terms and conditions of this MOU, and any attachments hereto.
- k. Legislative Changes. This MOU is subject to any future legislation that may alter or amend any provision contained herein.
- l. Independent Contractor. County will be, and is, an independent contractor, and is not an employee or agent of Court, and neither County nor any person engaged by County to perform County's responsibilities under this MOU is covered by any employee benefit plans provided to Court employees. County is liable for the acts and omissions of itself, its employees, its subcontractors and its agents. Nothing in this MOU will be construed as creating an employment or agency relationship between Court and County. County will determine the method, details and means of performing County's responsibilities under this MOU, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting County. County will be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding any and all employee benefits, and all regulations governing such matters.
- m. Risk Allocation. It is the intention of both parties that neither of the parties shall be responsible for the negligent and/or intentional acts and/or omissions of the other, or its judges, subordinate judicial officers, directors, officers, agents and employees. The parties therefore disclaim in its entirety the pro rata risk allocation that could otherwise apply to this MOU pursuant to Government Code 895.6 (Exhibit 1). Instead, pursuant to Government Code section 895.4 (Exhibit 1), the parties agree to use principles of comparative fault when apportioning any and all losses that may arise out of the performance of this MOU.
- n. Indemnification by County. County shall indemnify and hold harmless and defend Court, its officers, agents and employees, from any and all liability, demands, damages, penalties, fines, interest, costs or expenses (including reasonable attorneys' fees) that arise out of, or are alleged to arise out of or are in any way connected with or incident to the duties or obligations of County pursuant to this Memorandum, including any error or omission of County in performing such duties and obligations, except to the extent that such claims arise out of the negligence or willful misconduct of Court, its officers, agents or employees.

o. Indemnification by Court. Court shall indemnify and hold harmless and defend County, its officers, agents and employees, from any and all liability, demands, damages, penalties, fines, interests, costs or expenses (including reasonable attorneys' fees) that arise out of, or are alleged to arise out of or are in any way connected with or incident to the duties or obligations of Court pursuant to this Memorandum, including any error or omission of Court in performing such duties and obligations, except to the extent that such claims arise out of the negligence or willful misconduct of County, its officers, agents or employees.

The Parties have executed this MOU on date first below written.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY:

By:

_____ Presiding Judge

_____ Date

COUNTY OF MONTEREY:

By:

_____ Treasurer-Tax Collector

_____ Date

Reviewed as to form on behalf of County by:

_____, County Counsel, County of Monterey

Government Code Sections

895.4. As part of any agreement, the public entities may provide for contribution or indemnification by any or all of the public entities that are parties to the agreement upon any liability arising out of the performance of the agreement.

(Added by Stats. 1963, Ch. 1681.)

895.6. Unless the public entities that are parties to an agreement otherwise provide in the agreement, if a public entity is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of the agreement and pays in excess of its pro rata share in satisfaction of such judgment, such public entity is entitled to contribution from each of the other public entities that are parties to the agreement. The pro rata share of each public entity is determined by dividing the total amount of the judgment by the number of public entities that are parties to the agreement. The right of contribution is limited to the amount paid in satisfaction of the judgment in excess of the pro rata share of the public entity so paying. No public entity may be compelled to make contribution beyond its own pro rata share of the entire judgment.

(Added by Stats. 1963, Ch. 1681.)

25257. (a) Any department, officer, or employee of a county charged by law with the collection of any county or district tax assessment, penalty, cost, license fees, or any money, which is due and payable to the county or district for any reason, may apply to the board of supervisors for a discharge from accountability for the collection thereof if the amount is too small to justify the cost of collection, the likelihood of collection does not warrant the expense involved, or the amount thereof has been otherwise lawfully compromised or adjusted.

(b) Any collection program that is operated by a county may apply to the board of supervisors for a discharge from accountability for the court-ordered debt or bail that it would otherwise be responsible for collecting, if the amount is too small to justify the cost of collection or the likelihood of collection does not warrant the expense involved. Responsibility for collection of court-ordered debt or bail shall be demonstrated by a written agreement between the county and the court. If the court is responsible for collecting court-ordered debt or bail, the court may transfer responsibility for discharging court-ordered debt or bail to the county by written agreement.

(Amended by Stats. 2010, Ch. 720, Sec. 6. (SB 857) Effective October 19, 2010.)

25258. The application for a discharge from accountability under Section 25257 shall include:

(a) The amount owing.

(b) Except where disclosure of such information is prohibited by state or federal law, the names of the assesseees or persons liable and the amounts owed by each, which may be by reference to specific documents incorporated thereby in the application.

(c) The estimated cost of collection, or a statement that the likelihood of collection does not warrant the expense involved, or a specific reference to the official records establishing that the amount owed has been compromised or adjusted. If requested by the board of supervisors, the applicant shall furnish such additional information as the board deems necessary to determine that the request for discharge is justified.

(d) Any other fact warranting the discharge, except where the board of supervisors determines that the circumstances do not warrant the furnishing of detailed information.

(e) A verification by the applicant that the facts stated in the application are true and correct, which may be made on information and belief.

(Amended by Stats. 2010, Ch. 720, Sec. 7. (SB 857) Effective October 19, 2010.)

25259. The board of supervisors may make an order discharging the department, officer, or employee from further accountability and direct the county auditor to adjust any charge against the department, officer, or employee in a like amount. The discharge from accountability does not constitute a release of any person from liability for payment of any amount. Within 45 days after the end of the month in which any discharge from accountability is approved, the county shall report to the superior court the discharge from accountability for any court-ordered debt or bail that the county would otherwise have been responsible for collecting. The report shall include the following for each debt discharged: the case number; whether the case is an infraction, misdemeanor, or felony; the amount of the debt discharged; and the number of years since the debt became delinquent.

(Amended by Stats. 2010, Ch. 720, Sec. 8. (SB 857) Effective October 19, 2010.)

25259.5. The board of supervisors may, by resolution, authorize and designate the county auditor to exercise the powers set forth in Sections 25257 through 25259.

(Amended by Stats. 1977, Ch. 159.)

25259.7. Any collection program that is operated by a court may apply to the presiding judge of the court for a discharge from accountability for any court-ordered debt or bail that it would otherwise be responsible for collecting, if the amount is too small to justify the cost of collection or the likelihood of collection does not warrant the expense involved. Responsibility for collection of court-ordered debt or bail shall be demonstrated by a written agreement between the county and the court. If the county is responsible for collecting court-ordered debt or bail, the county may transfer responsibility for discharging court-ordered debt or bail to the court by written agreement.

(Added by Stats. 2010, Ch. 720, Sec. 9. (SB 857) Effective October 19, 2010.)

25259.8. (a) The application for a discharge from accountability under Section 25259.7 shall include the following:

(1) The amount owing.

(2) The names of the persons liable and the amounts owed by each, which may be by reference to specific documents incorporated in the application, except where disclosure of that information is prohibited by state or federal law.

(3) The estimated cost of collection, or a statement that the likelihood of collection does not warrant the expense involved. If requested by the presiding judge, the applicant shall furnish the additional information as deemed necessary to determine that the request for discharge is justified.

(4) Any other fact warranting the discharge, except where the presiding judge determines that the circumstances do not warrant the furnishing of detailed information.

(5) A verification that the facts stated in the application are true and correct, which may be made on information and belief.

(b) The Judicial Council, by rule of court, may require that additional information be included in the application.

(Added by Stats. 2010, Ch. 720, Sec. 10. (SB 857) Effective October 19, 2010.)

25259.9. (a) The presiding judge may make an order discharging the collection program from further accountability. The order shall have the same effect as a discharge from accountability under Section 25259, which relieves the applicant from any further responsibility for collecting the discharged debt, and does not constitute a release of any person from liability for payment of any amount. Upon making an order of discharge, the presiding judge shall direct the clerk of court to enter record of the discharge in the court case file for each debt and to post a copy of the order of discharge on the court's Internet Web site for a period of not less than three weeks.

(b) Within 45 days after the end of the month in which any discharge from accountability is approved, the court shall report to the county the discharge from accountability for any court-ordered debt or bail that the court would otherwise have been responsible for collecting. The report shall include for each debt discharged: the case number; whether the case is an infraction, misdemeanor, or felony; the amount of the debt discharged; and the number of years since the debt became delinquent.

(c) The Judicial Council, by rule of court, may establish the process by which applications under Section 25259.7 are submitted and reviewed or the standards for ordering a discharge.

(Added by Stats. 2010, Ch. 720, Sec. 11. (SB 857) Effective October 19, 2010.)

25259.95. The presiding judge may authorize and designate another judge in the court to exercise the powers of the presiding judge set forth in Sections 25259.7, 25259.8, and 25259.9. *(Added by Stats. 2010, Ch. 720, Sec. 12. (SB 857) Effective October 19, 2010.)*

Penal Code Sections

1463.007. (a) Notwithstanding any other law, a county or court that operates a comprehensive collection program may deduct the costs of operating that program, excluding capital expenditures, from any revenues collected under that program. The costs shall be deducted before any distribution of revenues to other governmental entities required by any other law. A county or court operating a comprehensive collection program may establish a minimum base fee, fine, forfeiture, penalty, or assessment amount for inclusion in the program.

(b) Once debt becomes delinquent, it continues to be delinquent and may be subject to collection by a comprehensive collection program. Debt is delinquent and subject to collection by a comprehensive collection program if any of the following conditions is met:

(1) A defendant does not post bail or appear on or before the date on which he or she promised to appear, or any lawful continuance of that date, if that defendant was eligible to post and forfeit bail.

(2) A defendant does not pay the amount imposed by the court on or before the date ordered by the court, or any lawful continuance of that date.

(3) A defendant has failed to make an installment payment on the date specified by the court.

(c) For the purposes of this section, a "comprehensive collection program" is a separate and distinct revenue collection activity that meets each of the following criteria:

(1) The program identifies and collects amounts arising from delinquent court-ordered debt, whether or not a warrant has been issued against the alleged violator.

(2) The program complies with the requirements of subdivision (b) of Section 1463.010.

(3) The program engages in each of the following activities:

- (A) Attempts telephone contact with delinquent debtors for whom the program has a telephone number to inform them of their delinquent status and payment options.
 - (B) Notifies delinquent debtors for whom the program has an address in writing of their outstanding obligation within 95 days of delinquency.
 - (C) Generates internal monthly reports to track collections data, such as age of debt and delinquent amounts outstanding.
 - (D) Uses Department of Motor Vehicles information to locate delinquent debtors.
 - (E) Accepts payment of delinquent debt by credit card.
 - (4) The program engages in at least five of the following activities:
 - (A) Sends delinquent debt to the Franchise Tax Board's Court-Ordered Debt Collections Program.
 - (B) Sends delinquent debt to the Franchise Tax Board's Interagency Intercept Collections Program.
 - (C) Initiates driver's license suspension or hold actions when appropriate for a failure to appear in court.
 - (D) Contracts with one or more private debt collectors to collect delinquent debt.
 - (E) Sends monthly bills or account statements to all delinquent debtors.
 - (F) Contracts with local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.
 - (G) Coordinates with the probation department to locate debtors who may be on formal or informal probation.
 - (H) Uses Employment Development Department employment and wage information to collect delinquent debt.
 - (I) Establishes wage and bank account garnishments where appropriate.
 - (J) Places liens on real property owned by delinquent debtors when appropriate.
 - (K) Uses an automated dialer or automatic call distribution system to manage telephone calls.
- (Amended by Stats. 2017, Ch. 17, Sec. 33. (AB 103) Effective June 27, 2017.)*

1463.010. The uniform imposition and enforcement of court-ordered debts are recognized as an important element of California's judicial system. Prompt, efficient, and effective imposition and collection of court-ordered fees, fines, forfeitures, penalties, restitution, and assessments ensure the appropriate respect for court orders. The California State Association of Counties and the Judicial Council are jointly committed to identifying, improving, and seeking to expand access to mechanisms and tools that will enhance efforts to collect court-ordered debt. To provide for this prompt, efficient, and effective collection:

- (a) The Judicial Council shall adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees, fines, forfeitures, penalties, and assessments imposed by court order. As part of its guidelines, the Judicial Council may establish standard agreements for entities to provide collection services. As part of its guidelines, the Judicial Council shall include provisions that promote competition by and between entities in providing collection services to courts and counties. The Judicial Council may delegate to the Administrative Director of the Courts the implementation of the aspects of this program to be carried out at the state level.

(b) The courts and counties shall maintain the collection program that was in place on January 1, 1996, unless otherwise agreed to in writing by the court and county. The program may wholly or partially be staffed and operated within the court itself, may be wholly or partially staffed and operated by the county, or may be wholly or partially contracted with a third party. In carrying out this collection program, each superior court and county shall develop a cooperative plan to implement the Judicial Council guidelines. In the event that a court and a county are unwilling or unable to enter into a cooperative plan pursuant to this section, prior to the arbitration procedures required by subdivision (e) of Section 1214.1, the court or the county may request the continuation of negotiations with mediation assistance as mutually agreed upon and provided by the Administrative Director of the Courts and the California State Association of Counties.

(c) The Judicial Council shall develop performance measures and benchmarks to review the effectiveness of the cooperative superior court and county collection programs operating pursuant to this section. Each superior court and county shall jointly report to the Judicial Council, as provided by the Judicial Council, information requested in a reporting template on or before September 1, 2009, and annually thereafter. The Judicial Council shall report annually, on or before December 31, to the Legislature, the Joint Legislative Budget Committee, and the Department of Finance all of the information required to be collected and reported pursuant to subdivision (a) of Section 68514 of the Government Code.

(d) The Judicial Council may, when the efficiency and effectiveness of the collection process may be improved, facilitate a joint collection program between superior courts, between counties, or between superior courts and counties.

(e) The Judicial Council may establish, by court rule, a program providing for the suspension and nonrenewal of a business and professional license if the holder of the license has unpaid fees, fines, forfeitures, penalties, and assessments imposed upon them under a court order. The Judicial Council may provide that some or all of the superior courts or counties participate in the program. Any program established by the Judicial Council shall ensure that the licensee receives adequate and appropriate notice of the proposed suspension or nonrenewal of the licensee's license and has an opportunity to contest the suspension or nonrenewal. The opportunity to contest may not require a court hearing.

(f) Notwithstanding any other provision of law, the Judicial Council, after consultation with the Franchise Tax Board with respect to collections under Section 19280 of the Revenue and Taxation Code, may provide for an amnesty program involving the collection of outstanding fees, fines, forfeitures, penalties, and assessments, applicable either statewide or within one or more counties. The amnesty program shall provide that some or all of the interest or collections costs imposed on outstanding fees, fines, forfeitures, penalties, and assessments may be waived if the remaining amounts due are paid within the amnesty period.

(Amended by Stats. 2019, Ch. 637, Sec. 10. (AB 1818) Effective January 1, 2020.)



Adrienne M. Grover
 Presiding Judge
 2009-2010

SUPERIOR COURT OF CALIFORNIA COUNTY OF MONTEREY

240 Church Street • Salinas, California • 93901 • (831) 775-5400

DIRECTIVE 10-04

September 27, 2010

Establishment of Court & County Cooperative Plan for Collection of Fines/Fees and Civil Assessments in Criminal and Traffic Cases

SUBJECT: Directive 08-01 established a Court-County cooperative process for the collection of delinquent fees, fines, forfeitures, penalties, and assessments arising from criminal and traffic cases. Directive 08-01 expired by its terms on June 30, 2010.

PURPOSE: The purpose of this Directive is to extend the provisions of Directive 08-01 indefinitely.

DIRECTIVE:

ADULT CRIMINAL CASES:

Fine/Fee imposed:

At the time of sentencing in criminal cases, the Court shall order the defendant to pay all fines/fees through the Revenue Division and direct the defendant to contact the Revenue Division within a specified time to make payment arrangements.

Failure to Pay Fine – Civil Assessment:

Pursuant to Penal Code § 1214.1, a \$300.00 civil assessment shall be imposed twenty days after the date of default if a defendant in a criminal case either

1. Fails to appear and make payment arrangements with the Revenue Division as ordered, or
2. Fails to pay all or any portion of a fine/fee pursuant to arrangements made with the Revenue Division.

No civil assessment shall be imposed if the defendant corrects the default during the twenty-day period following the default.

The mission of the Court is to dispense justice in all matters within its jurisdiction in an impartial manner and in accordance with the law.

Warning Notice of \$300 Civil Assessment:

In criminal cases, after twenty days from the date of default, the Revenue Division shall send a notice to the defendant warning that a civil assessment has been imposed in the amount of \$300. The notice shall be approved by the Court and comply with the requirements set out below.

ADULT TRAFFIC & MINOR OFFENSE CASES:

Appearance or Bail Forfeiture Required:

In traffic and minor offense cases, the defendant is required to either 1. Appear in court pursuant to his or her Notice to Appear, or 2. Post and forfeit bail in lieu of appearing, or 3. Enter into an agreement with the court clerk to pay and forfeit bail in installments to the court in lieu of appearing pursuant to § 40510.5 of the Vehicle Code.

Fine/Fee Imposed:

At the time of sentencing in traffic and minor offense cases, the Court shall order the defendant to pay all fines/fees, in whole or in monthly installments, to the Superior Court Clerk's Office.

Failure to Appear or to Pay Fine/Bail – Civil Assessment:

Pursuant to Penal Code § 1214.1, a \$300.00 civil assessment shall be imposed twenty days after the date of default if a defendant in a traffic/minor offense case either:

1. Fails to post and forfeit bail or appear in court, or
2. Fails to make all or any portion of the bail installment payments to the clerk as arranged pursuant to § 40510.5, or
3. Fails to pay all or any portion of a fine/fee in accordance with the court's order.

No civil assessment shall be imposed if the defendant corrects the default during the twenty-day period following the default.

Warning Notice of \$300 Civil Assessment:

In traffic/minor offense cases, after twenty days of default, the Superior Court Clerk shall send a notice to the defendant warning that a civil assessment has been imposed and that the case has been referred to the Revenue Division for collection. The Clerk shall then refer the case to the Revenue Division for collection of both the assessment as well as the balance of any fine/fee or bail.

NOTICE REQUIREMENTS

WARNING NOTICE - \$300 Civil Assessment:

In criminal, traffic and minor offense cases, the warning notice shall be in a form approved by the Court and mailed to the defendant by first class mail to the

defendant's last known address. The notice shall inform the defendant that he/she failed to appear or failed to pay as required, and as a consequence a civil assessment has been imposed in the amount of \$300.00 payable in addition to the outstanding balance of the bail, fine and/or fee. The notice shall further inform the defendant the \$300.00 assessment will become effective ten (10) calendar days after the date of the warning notice unless good cause is shown. The warning notice shall describe the action necessary on the defendant's part to pursue relief from this assessment as described below.

PETITION TO VACATE - Criminal, Traffic and Minor Offense Cases:

The assessment imposed shall be subject to the due process requirements governing defense and collection of civil money judgments.

The warning notice shall inform the defendant that he or she can contest the civil assessment by submitting a **Petition to Vacate Civil Assessment** along with supporting documentation. If a defendant presents acceptable good cause documentation for failure to appear or pay that meets the limited conditions set forth in this Directive, the Revenue Division is ordered to vacate the civil assessment.

To request that the civil assessment be vacated, at the defendant's earliest opportunity, he or she must complete a **Petition to Vacate Civil Assessment** form, attach the required supporting documentation, and return all documents to the Monterey County Revenue Division.

GOOD CAUSE – CRITERIA AND DETERMINATION:

The County Revenue Division shall review the Petition and documents submitted, and administratively determine whether the Petition establishes good cause for the defendant's failure to pay or failure to appear based on the criteria set forth herein. The Revenue Division has no discretion to deny a Petition to Vacate if the criteria are satisfied; the Revenue Division has no discretion to grant a Petition to Vacate if the criteria are not satisfied. Good cause is hereby limited to any one of the following conditions:

- Documented Hospitalization of the Defendant;
- Documented Out-of-Country Military Duty of the Defendant;
- Documented Incarceration of the Defendant;
- Documented Physical Incapacity Verified by a Physician;
- Documented Death of an Immediate Family Member*

****Immediate Family Member includes the defendant's spouse, parent, grandparent, child, grandchild, sibling, mother-in-law or father-in-law.***

Examples of documents that can demonstrate good cause: Records of admission and discharge from the hospital indicating period of hospitalization; court paperwork showing the dates of incarceration and release from custody; appropriate military orders for active service out of the country; documentation of medical practitioner indicating

physical incapacity; or death certificate and proof of relationship to the deceased.

PETITION GRANTED - Assessment Vacated:

As provided in Penal Code § 1214.1, if a defendant presents sufficient good cause documentation that meets the limited conditions set forth above for failure to pay or appear, the Revenue Division is directed to vacate the civil assessment.

In criminal cases, the Revenue Division shall then advise the defendant of the outstanding balance owed and reestablish payment arrangements with the defendant payable through the Revenue Division.

In traffic and minor offense cases after a civil assessment is vacated, the Revenue Division shall inform the defendant of the outstanding bail/fine balance due. The Revenue Division shall inform the defendant that it is authorized to only accept the full balance of the fine/bail due. If the defendant wishes to request monthly payments, traffic school, court trial, show proof of correction, etc., the Revenue Division shall direct the defendant to contact the Clerk of the Court and sign a Promise to Appear form. The Revenue Division shall follow the procedures as outlined by the Court for this process.

NO GOOD CAUSE FOUND -REQUEST FOR COURT REVIEW:

After the Revenue Division has reviewed the Petition and has determined that the defendant does not meet the good cause criteria indicated above, the Revenue Division shall advise the defendant that the Petition and supporting documentation can be submitted to a judicial officer for review at the defendant's request. If so requested, the Petition and supporting documentation shall then promptly be forwarded to a judicial officer for review. The judicial officer shall exercise discretion in view of the individual circumstances of each case in determining whether to vacate the civil assessment in whole or in part, or deny the request to vacate the assessment. In reviewing the Petition, the judicial officer is not limited to the administrative criteria identified above. The judicial officer may consider the timeliness of the Petition to Vacate and whether or not the defendant submitted the Petition at his or her earliest opportunity, and any other appropriate factor in deciding whether to grant or deny the Petition.

This Directive shall remain in effect until rescinded.

Dated: 9-23-10

Adrienne M. Grover
Presiding Judge of the Superior Court