VIRGINIA: IN THE CIRCUIT COURT OF MADISON COUNTY

MADISON COUNTY CIRCUIT COURT PROCEDURES AND POLICIES FOR THE COLLECTION OF UNPAID FINES AND COURT COSTS

1. Any person requesting a plan for the payment of unpaid fines and court costs may file a written request in the clerk's office.

2. The written request must include a petition, under oath, on a form provided by the clerk. The petition must set forth the petitioner's financial condition and it must set forth the installment amount that the petitioner wishes to pay on a monthly basis. Additional financial information may be submitted by the petitioner. If necessary, a separate sheet or sheets of paper can be used.

3. The written request for a payment plan must include enough specific information about the petitioner's financial condition to allow the court to evaluate the request. If more information is required, the petitioner will be notified by the clerk and will be given an opportunity to provide it.

4. All decisions made by the court about a deferred or installment plan will include consideration of any unpaid fines and costs that the petitioner is obligated to pay in more than one jurisdiction. Persons should include such information on their petitions.

5. A downpayment will not be required as a condition of any deferred or installment plan.

6. Most deferred or installment plans approved by the court will require a monthly payment. Therefore, in making a request for such a plan the petitioner should advise

the court as to what day of the month she or he wishes to make regular payments. The court will give consideration to such requests.

7. When a decision is made regarding a request for a deferred or installment payment plan, the petitioner will be notified by the clerk. The petitioner will be responsible for completing and signing any forms that might be needed by the clerk. The petitioner will then be required to begin making the payments set forth in the approved plan.

8. The court has available a viable community service program for suitable participants as a means of satisfying fees and court costs. However, community service is only an option in cases where the court finds that the petitioner is a suitable candidate for such a program.

9. In accordance with Virginia Code Section 46.2-395(B) no license suspension should occur while a person is in good standing on a deferred or installment payment plan. Furthermore, if a driver's license is suspended, it should be restored if the person enters into an appropriate agreement and pays the required reinstatement fee to the Department of Motor Vehicles.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 1st day of November, 2016.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective February 1, 2017.

Add Rule 1:24 to read as follows:

Rule 1:24. Requirements for Court Payment Plans For the Collection of Fines and Costs.

The purposes of the statutory court collection process are (i) to facilitate the payment of fines, court costs, penalties, restitution and other financial responsibilities assessed against defendants convicted of a criminal offense or traffic infraction, (ii) to collect the monies due to the Commonwealth and localities as a result of these convictions, and (iii) to assure payment of court-ordered restitution to victims of crime. To achieve these purposes and the additional purpose of enabling defendants to restore their driver's licenses pursuant to § 46.2-395, this Rule is intended to ensure that all courts approve deferred and installment payment plans pursuant to § 19.2-354 consistent with the provisions of this Rule and to further the legal values of predictability, fairness, and similarity in the collection of fines, court costs, penalties, and restitution throughout the courts of the Commonwealth.

(a) *Definitions.* —

(1) "Fines and costs" shall mean all the fines, court costs, forfeitures, and penalties assessed in all cases by a single trial court against a defendant for the commission of crimes or traffic infractions. "Fines and costs" shall also include restitution unless the court orders a specific, separate payment schedule for restitution as part of the disposition of the criminal case.

(2) An "installment payment plan" is a plan in which the defendant agrees to make monthly or other periodic payments until the fines and costs are paid in full.

(3) A "deferred payment plan" is a plan in which the defendant agrees to pay the full amount of the fines and costs at the end of its stated term and no installment payments are required.

(4) A "modified deferred payment plan" is a deferred payment plan in which the defendant also agrees to use best efforts to make monthly or other periodic payments.

(b) *Access to payment alternatives.* — Any defendant who is unable to pay fines and costs for a particular offense within 30 days of conviction, or other disposition authorized by law, must be offered by the convicting court the opportunity to enter into either a deferred payment plan, a modified deferred payment plan or an installment payment plan to pay those fines and costs. The court shall not deny a payment plan solely because (i) of a defendant's prior default, (ii) the fines and costs have been referred to collections pursuant to § 19.2-349, (iii) a defendant has not established a payment history, (iv) the conviction in question is of a particular category, (v) of the availability of a restricted license authorization under § 46.2-395(E), or (vi) of the total amount of all fines and costs.

(c) *Notice of payment alternatives.* — The court shall give the defendant written notice of all payment alternatives set forth in subsection (b). The written notice shall also include the availability of the community service program referenced in subsection (d).

(d) *Conditions of a payment plan.* — All the fines and costs subject to the collection process which a defendant owes for all cases in a particular court may be incorporated into one payment plan, unless otherwise ordered by the court in specific cases. A payment plan shall include only those outstanding fines and costs subject to collection under the period of time set forth in § 19.2-341.

In determining the amount and length of time to pay under a deferred payment plan or an installment payment plan, a court must take into account the defendant's financial resources in light of the defendant's financial obligations, including defendant's indigence, as well as the fines and costs the defendant owes in other courts. The court should utilize either a written financial statement on a form developed by the Executive Secretary of the Supreme Court or a colloquy with the defendant to assess the defendant's ability to pay. The court may require a compliance summary from the Department of Motor Vehicles in order to assess the number of other courts in which fines and costs are owed.

The length of a payment plan and the amount of the payments shall not be based solely on the amount of the fines and costs.

Unless otherwise ordered by the court in a specific case, (i) if a down payment is required to enter into a payment plan, it should be a minimal amount to demonstrate commitment and to facilitate entry into a plan; and (ii) for installment payment plans, any monthly or periodic payment and the length of time to pay should be a reasonable amount and time considering all the financial circumstances of the defendant. If the fines and costs are $500 or less, the required down payment must not exceed 20% of the amount owed. If the fines and costs are more than $500, the required down payment must not exceed 10% of the amount owed or $100, whichever is greater. Nothing in this Rule shall preclude a defendant from choosing to make a larger down payment.

Where available, the court should liberally use community service work as an option to defray fines and costs, especially when the defendant is unable to make substantial payments. Any portion of the community service completed should be credited to the defendant's obligations. Community service shall not be credited against any amount owed as restitution, the interest which has accrued on restitution, and any collection fee required.

At any time during the duration of a payment plan, the defendant may request a modification of the plan, which shall be granted based on a good faith showing of need.

(e) *Timeliness of payments.* — Any payment which is received within 10 days of the date due shall be considered timely made.

(f) *Combined payment plans.* — When taking into account the defendant's financial obligations, including the fines and costs the defendant owes in other courts, the court may offer a payment plan combining an appropriate initial period during which no payment of fines and costs is required, followed by a period of installment payments. Such a combined payment plan may be appropriate when the defendant is incarcerated, but should not be limited only to these circumstances.

(g) *Re-entry into a payment plan after default.* — A defendant who has defaulted on a payment plan must have the opportunity to request a new payment plan and the court should consider the defendant's change in circumstances in determining whether to approve such request.

When a defendant enters into a subsequent payment plan, a court shall not require a defendant to establish a payment history on the subsequent payment plan before restoring the defendant's driver's license. A court may require a down payment to enter into a subsequent payment plan which is higher than the down payment required for entry into an initial plan, although the down payment required to enter into a subsequent payment plan should not exceed 20% of the total fines and costs owed.

A Copy,

Teste:

Patricia L Harrington

Clerk