

PALM BEACH COUNTY CRIMINAL JUSTICE COMMISSION
PROBATION ADVISORY BOARD

Governmental Center, 10th Floor
301 N. Olive Avenue
West Palm Beach, FL 33401

November 10, 2015, 12:15 p.m.

MINUTES

Members Present

Leonard Hanser, Chairman	Administrative Judge, County Criminal Court
Rosalyn Baker	Florida Department of Corrections
Adrienne Ellis	State Attorney's Office
John Rivera	Public Defender's Office
Louis Tomeo	Clerk and Comptroller's Office

Guests Present

Glenny Cueto	Professional Probation Services
James Eisenberg	Private Defense Attorney
Brian Fernandes	State Attorney's Office
Federico Forero	Professional Probation Services
Thomas Gano	Private Defense Attorney
Diane McCarthy	Clerk and Comptroller's Office
Yasmin Rivera	Florida Department of Corrections
Thomas York	Professional Probation Services

CJC Staff Present

Damir Kukec	Research & Planning Manager
Candee Villapando	Criminal Justice Analyst
Bert Winkler	Temporary Professional

I. Welcome/Opening Comments

Chair Judge Leonard Hanser welcomed everyone to the Probation Advisory Board meeting.

II. Roll Call and/or Introduction of Members & Guests

Damir Kukec did the roll call.

III. Approval and/or Amendments to the Agenda

The agenda was approved without amendments.

IV. Approval and/or Amendments to the May 21, 2015 and the September 1, 2015 meeting minutes

The minutes from the May 21, 2015 PAB and September 1, 2015 subcommittee meeting were approved.

V. Updates

A. Payment Plan – Probation Cases on a Payment Plan – Pilot Project (*Presented to CJC Full Committee on September 28, 2015*)

Judge Hanser asked Louis Tomeo to talk about the success of probation and non-probation cases that were on payment plans. Mr. Tomeo reported that in the non-probation perspective in the county criminal arena, they been developing what they call aging report for payment plans established in January, February, and March of this year and which were then aged out to the end of the plan. From plans established in January, there has been a 74% success rate; and 73% success rates in February and March (success meaning either plan was paid off, or being paid off monthly). In January, there were 1,272 plans established (325 not successful); and about 3,400 plans established for the three-month period (about 700 unsuccessful). Over the last year, the volume of payment plans increased by 35% in county criminal; and over 120% in circuit criminal. Mr. Tomeo asserted that the payment plans keep individuals out of jail, and from having their license suspended; and also brings in revenue into the system.

Mr. Tomeo recalled that CJC Executive Committee approved establishing payment plans, but the county criminal judges did not want to move forward with the payment plans. Judge Hanser wondered if Judges doing First Appearance in weekends are requiring payment plans and whether this was something they needed to look into. The committee agreed; and as Chair, Judge Hanser said he will send an email to the Chief Judge about establishing payment plans at First Appearance hearings.

Judge Hanser reported on the County Criminal Court judges meeting on September 24th. One of the issues in the agenda was placing misdemeanor probationers on payment plans. Judge Hanser and another judge spoke in favor of it, or expressed support of the idea. One judge spoke against the idea; the said judge did not see the need to charge people twice. Judge Hanser suggested deducting the approximately \$2 monthly fee from the monthly probation fee. Will this require a change in the contract, and how will they go about it. Tom York said they will need to look at it at a budgetary perspective as the probation fee is their sole source of revenue, to see if it will be feasible for them or not. But they will certainly entertain the option.

Mr. Gano was confused if individuals are on probation, why would they need a payment plan, instead of the court costs and fines be added to the monthly payments; and then create a payment plan once they are unable to pay the fees, instead. Mr. York said they are if ordered by the court. Mr. Gano suggested it then be ordered by the court. Judge Hanser said that he has started requiring people on probation to be on payment plans, on a case by case basis. Mr. Gano, however, still expressed concern over the additional \$25 fee for the defendant. Mr. Tomeo explained the fee covers their costs, and is usually rolled over 12 months. Judge Hanser suggested submitting a formal request to PPS to consider looking into the option of deducting the \$25 fee from the cost of supervision. Mr. Eisenberg suggested asking the judges to send the defendants directly to the Clerk for payments, and not make court costs and fines a condition of probation. Judge Hanser said he cannot do that; you would not get all the eight or so county criminal court judges to do it. Mr. Eisenberg expressed concern about probationers' inability to terminate early and be on supervision longer due to the payment plan. Mr. York said that they can terminate probation early if all conditions are met, except court costs and fines, if the judge gives them direction to do it. Mr. Eisenberg asked if the judge can waive the \$25 fee; Judge Hanser said no; Louis Tomeo it is a statutory fee.

Judge Hanser recommended two motions: 1) Recommend to the CJC to recommend to the Chief Judge that probationers be required to enter into payment plans with the Clerk of the Court; and possibly, if #1 is not successful, 2) Recommend to the Chief Judge that probationers enter payment plans with the Clerk of the Court with a \$25 waiver to address the county criminal court judges' concern regarding that additional fee. Mr. Kukec asked if that waiver is just for indigent clients or for all. Adrienne Ellis suggested creating a structure to let people who can pay, pay and direct those who cannot to enter into a payment plan.

Ms. Baker made a motion to let the judges decide whether or not to put probationers on a payment plan, on a case by cases basis, without any reduction to probation fees. All in favor; Mr. Tomeo opposed. Mr. Tomeo clarified his negative vote. He said he agreed that there should not be any reduction in PPS's fees, but strongly believed that the court should order people into payment plans when there are court fines and fees. The proof over the years have shown that when there is a structured payment plan, it's more likely that these folks will be successful in completing it than not having the penalties they get assessed when they don't pay, especially with the follow up calls made by the Clerk's Office reminding the probationers to make payments. Judge Hanser asserted there is no way to order a judge to do anything. Each judge will approach his or her caseload that judge deems appropriate. You can have an AO, but if a judge disagrees, he/she can do whatever he/she deems appropriate, without any consequence or remedy. After, further discussion, Ms. Baker again clarified her motion, after which Mr. Tomeo changed his vote to a yes, conceding that the \$25 fee will be assessed as \$2 monthly fee, and that the probationer will not be charged the full amount should they terminate earlier. Mr. Gano wanted to clarify the motion again, but Mr. Rivera strongly suggested putting the issue to rest because they had other issues to discuss, and they were taking a vote on taking no action. Everyone agreed, and Judge Hanser asked to move down to item VI. B, the alternative sanctions, first.

B. PAB Annual Monitoring Review for FY 2014-15 – Damir Kukec (*Draft attached*)

Not discussed.

VI. Discussion

A. Notice to Appear for Violation of Probation (*continued from last meeting*)

Not discussed.

B. Technical Violations / Alternative Sanctions

Judge Leonard Hanser noted that this issue was also discussed at the September 24th county court judges' meeting. One judge supported the idea, but he and other judges did not support it. Judge Hanser said he had asked the judges to reconsider it, but got only one response from the same judge who supported it at the meeting. Ms. Baker said that when they first instituted it and started with an AO in felony, there was also not a lot of buy in among the felony judges. Brian Fernandes noted that they did a single division pilot, and Ms. Baker added that they branched out from that. Bert Winkler explained his interest in the issue working on the MacArthur Safety and Justice Challenge Project. He said this is one of the things they wanted to include as a pilot, believing in its validity in terms of reducing jail population and preventing some arrest. Judge Hanser agreed to do the pilot. Mr. Gano made a motion that Judge Hanser start a pilot project using the alternative sanctions program similar to what was put in place with the felony court; Mr. Fernandes added, upon agreement that the committee will work out what the actual sanction will actually be. Ms. Baker seconded the motion. Everybody voted yes; Mr. Eisenberg and Mr. Rivera opposed. Mr. Rivera explained his opposition; what the vote meant and about the process. He was unclear as to what the committee was trying to do; i.e., whether they are recommending something to the CJC, or taking independent action, reminding everyone that the committee is under the jurisdiction of the CJC and is not supposed to take action independent of it. Judge Hanser said he did not know, but that he knows this is a probation issue that the PAB needs to address, and that they need a group of people who will sit down and hammer out potential sanctions. Judge Hanser said he does not envision this working the same as the way it works in felony where the probationer meets with the probation officer, reach an agreement, and the judge signs off. His concept for misdemeanors is different in that basically he uses entirely notices to appear rather than warrants for arrest and bonds. Having those alternative sanctions be addressed at a preliminary hearing on VOP when the person appears pursuant to the NTA, at that point the state, the defense, the court can then have a set of sanctions that they can look at. The common concern was about the defendant being properly counseled; creating clear expectations, as Mr. Fernandes put it.

VII. Member and Guest Comments - No member and guest comments.

VIII. Next Meeting – To be determined.

IX. Adjournment