

PALM BEACH COUNTY CRIMINAL JUSTICE COMMISSION
PROBATION ADVISORY BOARD
Subcommittee Meeting

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

September 1, 2015, 12:15 p.m.

MINUTES

Members Present

Leonard Hanser, Chairman	Administrative Judge, County Criminal Court
Rosalyn Baker	Florida Department of Corrections
John Rivera	Public Defender's Office

Guests Present

Glenny Cueto	Professional Probation Services
Richard Clausi (for Adrienne Ellis & Brian Fernandes)	State Attorney's Office
James Eisenberg	Private Defense Attorney
Federico Forero	Professional Probation Services
Thomas Gano	Private Defense Attorney
Jessica Jefferys (for Louis Tomeo)	Clerk and Comptroller's Office
Thomas York	Professional Probation Services

CJC Staff Present

Michael Rodriguez	Executive Director
Damir Kukec	Research & Planning Manager
Bert Winkler	Temporary Professional
Candee Villapando	Criminal Justice Analyst

I. Welcome/Opening Comments

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

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

Damir Kukec did roll call and Judge Hanser asked the guests to introduce themselves.

III. Approval and/or Amendments to the Agenda

The agenda was approved without amendments.

IV. Approval and/or Amendments to the June 18, 2015 meeting minutes

The minutes from the June 18, 2015 meeting were approved.

Mr. Kukec updated that the contract with Professional Probation Services, Inc., has been signed by the County Purchase Director and will good for another year at least. Judge Hanser noted that the comment he has had regarding PPS have all been positive. He and the other members of the committee congratulated PPS.

V. Discussions

A. Payment Plans

Ms. Jessica Jefferys came on behalf of Louis Tomeo to discuss the payment plans. Judge Leonard Hanser noted that as far as he knows almost all the county court judges now require the defendants to enter a payment plan. Ms. Jefferys reported that circuit judges have also been on board and that the payment plans have increased, and are going very well. Judge Hanser asked if the payment plans have been in place long enough for the Clerk's Office to determine to notice whether there were fewer driver's license suspensions because of the payment plans. Ms. Jefferys said that they have been doing statistics since 2014, and so far this year, depending on court type, over 60% have been successful, and the defendants' DLs have not been suspended. Judge Hanser asked to clarify that there are no upfront costs for entering into a payment plan, but there is a \$25 fee that is amortized for the life of the balance. Ms. Jefferys said yes; the cost is incorporated into the monthly payments.

Mr. James Eisenberg asked about old cases where individuals had been in prison for 3-5 years, and their DLs are suspended, whether they are asked to sign up for a payment plan when they get out. Ms. Jefferys said it depends on the case and that they try to work with the individuals, which is about 80% of cases. Mr. Bert Winkler asked at what point in the process until the DL get suspended. Ms. Jefferys said 60 days after the court costs are due; but they try their best to contact the defendant, and then notify the state about the financial obligation. For financial obligations, the Clerk's Office does not have the ability to reinstate the DL once the defendant has completed the payment plan, but they are able to issue an affidavit good for 30 days during which the individual can reinstate their DL with the DMV. Judge Hanser asked what financial information they use to base the payment plan; Ms. Jefferys said as of now, they only have the application of indigence as a starting point, and basically just talk with the defendants to determine their debt situation. Judge Hanser asked about resistance to entering payment plans; Ms. Jefferys said that for the most part, defendants are just grateful for this option so that they would not have to pay in lump sum.

Mr. Winkler wanted to clarify that the Procedure Draft (attached) is just a proposal, and not yet in effect; Ms. Jefferys said yes, for defendants placed on probation. Judge Hanser asked how the \$25 came about; Ms. Jefferys said it is a one-time fee authorized by statute. Mr.

Eisenberg asked for old cases where the individual had been in jail for a number of years, when they get out, does the Clerk's Office collect on the accrued interest and collection fees for the time the individuals were in jail, or are these costs waived? Ms. Jefferys said it depends on how the order is signed and on the amount. In some instances, cases are referred to the Clerk's Office legal department because there is a statute that allows them to work with the individuals and negotiate the interest. Mr. Eisenberg brought up the issue of defendants who are poor and just do not have the ability to pay on a monthly basis. Mr. Tom York said that as of now, without the payment plan, the order requires the defendant to pay his obligations at a certain date, at the end of probation. And although you cannot violate the defendant for non-payment, with the payment plan, they have more authority to tell the defendants to go pay their monthly fees, and maybe help set up the defendants for a greater chance of successful completion; as opposed to them waiting until the end of their probation to pay a bigger amount that is more difficult to pay. For individuals who really do not have the ability to pay, the costs are entered into judgement.

Mr. Winkler asked about restitution payments. Judge Hanser said he is not aware if the state has ever asked for jail time on failure to pay restitution as a condition of probation. Mr. York said he has not seen this happen; Judge Hanser added that the state also has to prove willfulness. Ms. Jefferys also discussed what happens after probation on cases where costs were entered into judgement. Mr. York added that another benefit of the payment plan from their perspective is that for those who do not really have the ability to make the payments, PPS is able to start these individuals into community service; and Ms. Jefferys said that these individuals would still have to go to them and show the community hours completed. Judge Hanser asked if there is a written outstanding order converting some of the costs to community services. Ms. Glenni Cueto mentioned the judges who have written outstanding orders; Judge Hanser asked to be added to that group. He asked Ms. Cueto to send him copies, and he will email them to the other judges. Mr. Eisenberg wondered if we can make a recommendation that the entire county court judiciary accept what these other judges are doing. Judge Hanser agreed that they could communicate that idea.

Mr. John Rivera made a motion recommending that the Chief Judge sign an Administrative Order implementing the Clerk's Office Payment Plan proposal, seconded by Ms. Rosalyn Baker. The motion was unanimously approved. It was also suggested that the Chief consider entering into an Administrative Order allowing defendants to convert fines and court costs to community service. Ms. Baker however suggested that Judge Hanser survey what other judges have been doing, to which Judge Hanser agreed.

B. Notice to Appear for Violation of Probation

Judge Hanser said that according to the statute on violation of probation, the filing of the Notice to Appear is the same as issuing a warrant in terms of tolling a statute. The current form used by probation does not provide for an opportunity to do anything other than entering a bond. And even if you enter an OR bond, it still means that the individual will be picked up, brought to the jail, stay there for 4-6 hours and processed, bond out on OR. Judge Hanser drafted a form for the committee's review in considering the issue. He suggested adding an option in the VOP affidavit that the judge can circle. The form, if approved, would be attached to an administrative order. Mr. Winkler said it was an excellent idea. Ms. Baker

clarified whether the form will be issued by the probation officer or the judge, and when it will be issued. Judge Hanser said the form will be issued by the judge as a response to an affidavit of VOP; there would be an order signed by the court which would then go out to the Clerk's office and everyone who needs to be noticed for the hearing. Mr. Thomas Gano noted that there is a need to notify the counselor or the PD because they do not represent the defendant until they appear in court; Judge Hanser agreed that this is an issue because the defendant does not have representation for VOPs. Mr. Gano therefore suggested deleting SAO and PD/Private Defense Attorney from the form. Ms. Baker wondered if it would be better for the PO to issue the NTA since the Clerk's Office may not have the defendants current address; Ms. Cueto confirmed that the defendant's address is on the VOP affidavit under his name. Mr. Eisenberg recommended just following the felony probation process wherein the defendant is served the NTA when he comes in. Ms. Baker explained the process and noted that the judge lets them handle the process; they just call the judge's chamber and ask the judicial assistant for a hearing date, puts it on the NTA, and asks for the defendant's signature. Mr. Thomas York asked Judge Hanser if he felt it would be feasible for them to just call his JA for a hearing date; Judge Hanser said that will be fine with him although he does not know about the other judges. Mr. York requested for direction when they would need to issue an NTA versus a VOP; Judge Hanser said at the bottom of the VOP affidavit, the judge will circle either bond or NTA. As defendants move around, an issue was raised whether their addresses are updated; PPS staff confirmed that they keep the addresses updated. A decision was not reached by the end of the meeting so Judge Hanser suggested continuing the discussion at the next meeting.

C. Technical Violations/Alternative Sanctions

Will be discussed next meeting.

VI. Member and Guest Comments

No member and guest comments.

VII. Next Meeting

To be determined.

VIII. Adjournment