

Subject:

Recoupment of Court Appointed Attorney's Fees

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As you know, I have previously raised the issue of ensuring that we maximize recoupment of County funds used to pay for indigent defense. Last year we met and discussed the fact that court costs must be collected before fines are collected. And, most importantly, that we should determine which court costs can and should be given priority.

Art. 26.05(f) of the Code of Criminal Procedure makes it clear that County funds paid for indigent defense may be taxed as court costs. In the great majority of Collin County cases, when a person is placed on probation, the Judges order the defendant to reimburse Collin County for those fees. We need to focus on recoupment of that money as the most important of all court costs.

Last week, I completed changes to the FY 2013 Collin County Felony Indigent Defense Plan. The full document is now loaded on Collin County's website under "Indigent Defense" and a copy has been filed with the Texas Indigent Defense Commission. In the new plan, I included the following language:

"3.07. Reimbursement

a. An accused indigent person who is found guilty, and after all appeals, if any, are exhausted, shall be required to reimburse Collin County a sum not more than the amount paid by the County to the accused's attorney, provided, however that a finding is made at the time of final disposition that the accused has the ability to reimburse the County without substantial financial hardship. Such reimbursement shall be taxed as costs in the accused person's case, which are **ORDERED** to be collected by the District Clerk, Collections Department or Community Supervisions and Collections Department before all other court costs and fines."

Attorney General opinions on the issue make it clear that if the Judges of the County order the collecting agencies to collect court costs in a certain way, the order takes precedent over other methods. In the past, if a probationer did not have money to pay his court costs in full, the amount he did pay was divided proportionately and applied to all of the court costs he owes. I am proposing that with the Judge's adoption of the language cited above, all of the money paid by the probationer would be kept by Collin County as recoupment of its out of pocket money spent on the probationer's court appointed

attorney. After that amount is recouped in full, then future payments would be divided proportionately.

The District Judges have given direction to the Auditor, the District Clerk and CSCD that we want the money spent by the County for a probationer's defense recouped by the County first. So, I suggest that the matter be cleared with the State Comptroller for audit purposes. I believe the Comptroller will say that, in accordance with the various AG opinions and the Comptroller's own collections manual, court costs are to be collected as ordered by the Judges.

I suggest that the County Court at Law Judges also amend the County indigent defense plan to include this or similar language. And, I suggest that we begin tracking how much Collin County recoups. I believe it will be hundred of thousands of dollars.

Ray Wheless

JUDGE, 366TH DISTRICT COURT
COLLIN COUNTY, TEXAS