

# Clerk Collection Best Practices

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## **BEST PRACTICE: CLERK COLLECTION PRACTICES**

- I. **Background and History:** As a result of Revision 7 to Article V, Florida Clerks became the collection agent for state revenues of court costs and fines and were required to report on their collections performance. After that revision, Florida's legislature enacted laws to direct this collection.

The legislature has made the collection of court cost and fines a priority for Clerks. The CCOC collects and reports to the Legislature on the effectiveness of Clerks collection activities and Clerks not meeting standards must provide an explanation and identify corrective actions they will be taking to bring them into standards.

In March 2007, the Florida Office of Program Policy Analysis and Government Accountability (OPPAGA) Report [07-21](#) made several recommendations to increase collections. And in November 2012, the National Center for State Courts (NCSC), in its "[Study of the Effectiveness of Collections in the Florida Courts](#)," made 20 recommendations to increase court collections, including better communication among the court partners, development of consistent assessment and enforcement practices, and adoption of collection practices.

Clerks statewide must employ all tools provided by the legislature in a consistent manner. The legislature has set the court costs and fines; the courts impose court costs and fines; and Clerks must comply with the laws and enforce the court orders, using all tools in a consistent manner. While maximizing collections is an important goal, it must be balanced against Clerks' duty to collect as much as is practicable in the circumstances presented by defendants. This best practice is intended to provide guidance on a consistent approach to collections.

### II. **Legal References**

- A. FS 27.52(1)(c)
- B. FS 28.24(26)
- C. FS 28.246(4) - (6)
- D. FS 322.245(5)
- E. FS 938.30

- III. **Recommendations:** The Best Practices Committee, appointed by the President of the Florida Court Clerks and Comptrollers (FCCC), recommends that the following guidelines are implemented by the Clerks of the Circuit Court in the State of Florida in compliance with legal requirements set out in the Florida law.

#### **A. Communicate with all parties involved in collections**

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1. Sheriff's Office – for transportation from the jail for hearings, and reminders to defendants to report to Clerks' offices to arrange payment plans.
2. Judiciary – to encourage imposition of mandatory costs and referral to Clerks for payment programs and collections processes.
3. Private collections agencies and law firms as used by Clerks under FS 28.246(6) – to set guidelines for the collections.
4. Local attorneys/bar association/Public Defender's Office – for notification to clients of collections processes.
5. Department of Corrections
  - a. To notify defendants being released from prison or being placed on felony probation about outstanding court costs and fines (DOC's Offender Information Search page can be used as well - <http://www.dc.state.fl.us/AppCommon/>)
  - b. To coordinate DOC's collection of payments from incarcerated defendants and defendants on parole, to send to Clerks.
  - c. To address alternatives to FS 948.09(7) that requires DOC to create payment plans for defendants on circuit probation, and distribute those collections differently than FS 28.246(5) requires.
6. Circuit and County Probation departments
  - a. To coordinate the collection/receipt of the fines, fees, and court costs, regardless of whether the payment of court costs and fines is a condition of probation.
  - b. For coordination with county governments that may have entered into contracts with private companies to privatize county probation services. Some of these companies offer the collection of court costs and fines as part of the services they provide to the county and may not follow the required distribution of FS 27.52 and 28.246(5) and which may affect Clerk reporting and performance standards. Further, to insure that collections performance measures are not affected negatively, Clerks be involved in establishing weekly transmissions from such companies.
7. State Attorney's office – for notification to defendants of the payments as required through plea agreements.
8. County Attorney's office and other city and county agencies – for notification if the county is involved in the monitoring, collection, and/or enforcement of local ordinance assessments like FS 939.185.
9. Pro se defendants – to provide information on Clerk websites and via handouts at sentencing and at payment concerning Clerk collection processes.

### **B. Work with the judiciary**

1. Clerks should work with local judges to coordinate efforts to maximize collection of court costs and fines.

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2. Clerks should work with the judiciary to develop a “script” for use by criminal judges at sentencing to communicate to defendants that:
  - a. Court costs and fines are part of their sentence.
  - b. Conversion of court costs and fines into community service hours is an option for indigent defendants.
  - c. Defendants should leave sentencing and go directly to the Clerks’ Office to pay in full and/or enter into a payment plan.
  - d. The Clerk will enforce payment plans vigorously, and will place defendants on payment plans automatically, and assess additional fees, if the defendant does not visit the Clerk’s Office after sentencing and make regular payments.
3. Clerks should consider discussing the following issues with the judiciary:
  - a. Theft-related criminal judgment and sentences that may order defendants to pay restitution before any other court costs and fines, so this can be weighed against the statutory requirements of FS 27.52 and 28.246(5).
  - b. Consistency in the assessment of court costs and fines between judges/divisions/case types.
  - c. Collection of civil fees and service charges from litigants who do not pay at the time of filing.
  - d. The use of “civil judgments” by the judiciary as these judgments do not dismiss court costs and fines, will be sent to Clerks’ collections agencies/law firms under FS 28.246(6), may be recorded in the Official Records to create a lien, and do accrue statutory interest.
  - e. The settlement authority provided in FS 938.30.
  - f. The possibility of a local administrative order that, despite seal or expunge orders, permits the collections/financial part of cases to remain open and public until paid in full.
  - g. A process for Clerks to claim money seized during a case, whether used as evidence or not, to apply to court costs and fines instead of returning to defendants.

### **C. Payment Programs in General**

1. Clerks should understand their statutory responsibility to provide for payment programs, to collect and remit payments, and to negotiate to collect as many payments as possible.
2. Clerks should understand the direct correlation between the effectiveness of collections and the amount of time that passes after imposition of court costs and fines. Failure to move quickly to collect will decrease the likelihood of collections significantly.
3. If sufficient funding is provided, Clerks should consider assigning at least one employee to collection responsibilities, with collection as the employee’s primary job function.
4. If sufficient funding is provided, Clerks should consider establishing a collection unit/division/ department.

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5. Clerks should understand that communication with defendants immediately after the failure to make payments will improve the effectiveness of collection efforts.
6. Clerks should consider providing information sheets and forms to defendants in court and at customer counters, like application forms, brochures, community service information sheets, and payment plan forms, and may provide these forms in multiple languages as the Clerk deems appropriate.
7. Clerks should consider use of a phrase like “judgment debtor” to refer to defendants who owe court costs and fines.
8. Clerks should consider offering several payment options to defendants, including electronic payments from bank accounts (ACH), credit and debit card payments, checks, electronic checks, etc.

### **D. Create flexible payment plans for defendants**

1. Criminal (*CF, CJ, CT & MM*)
  - a. If a defendant is sentenced to a term of probation, the Clerk should work with the courts, county and state probation departments to require a payment plan be established.
  - b. If a defendant is sentenced to jail, the judiciary should instruct defendants that within a certain number of days of their release, they must contact Clerks’ offices to arrange for payments/payment plans.
  - c. Clerks should coordinate with local jails so that defendants are reminded, shortly before their release, of the obligation to appear at the Clerks’ offices to enter into a payment plan immediately after they are released.
  - d. As part of sentencing, the judiciary should address the defendant’s ability to pay. If a defendant is unable to pay, the judiciary should make an inquiry under FS 938.30 concerning community service and convert court costs and fines into hours if the defendant is eligible. If a defendant is not eligible for community service, the judiciary should inform defendants to report to Clerks’ Offices to make payment arrangements.
  - e. Clerks should ask the judiciary to allow distribution of payment plan information sheets in the courtroom at sentencing or to direct defendants to Clerks’ offices to obtain and complete those forms. The payment plan information sheets should advise defendants:
    - 1) To contact Clerks’ Office if they cannot make their required monthly payments on time.
    - 2) That if they fail to comply with the payment plan, their cases will be sent to collection firms as required by FS 28.246(6) and their driver license will be suspended under FS 322.245(5).
    - 3) That the collection firms will assess an additional percentage in addition to amounts currently owed.

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- 4) That they may file motions to request conversion of amounts owed into community service hours.
- f. Clerks should use application/affidavit forms to enforce FS 28.246(4)'s provision that defendants must apply to Clerk payment programs, and to gather financial and employment data for use in collection efforts.
  - 1) Such forms should request at a minimum: Telephone numbers for home and cell, address, employment information, and financial data such as bank accounts.
  - 2) Clerks should establish a location for the completion of this paperwork as close as possible to courtrooms so that defendants can leave court and come directly to this location. In the alternative, Clerks should consider use of colored envelopes or file folders so that bailiffs, county probation, and others can direct them to Clerks' Offices to set up payment plans.
- g. Clerks should create payment plan schedules based on individual defendants' circumstances.
  - 1) Clerks should work with defendants when there is a change in circumstances. For example, if a defendant has lost employment, consider a 3-month deferral to allow the defendant an opportunity to find a job.
  - 2) Clerks should consider providing the defendant with a document that shows everything due on all cases, e.g., a total balance report. This insures that defendants are aware of all monies owed.
- h. Clerks should determine whether to assess a \$25.00 fee to set up the payment plan or to charge a \$5.00 per month partial payment fee, per FS 28.24(26).
- i. For monthly payment amounts, Clerks should consider default payment amounts that do not require defendants to pay over protracted periods of time, i.e., for MM and CT, \$50/month and for CF, \$75/month.
  - 1) FS 28.246(4) provides that a monthly payment amount, "calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The court may review the reasonableness of the payment plan." This language is a rebuttable presumption that Clerks should use as a minimum payment amount, except where the annual income is \$0. Clerks, therefore, may enter into plans that exceed 2 percent of the person's annual net income divided by 12, but they should be prepared to explain and justify their decision to do so on a case-by-case basis, if necessary, in light of the defendant's particular circumstances.

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- 2) When a defendant states that his income is \$0 for reasons like disability, illness, etc., Clerks should request paperwork to verify such claims and then consider marking these accounts as uncollectible. The accounts should not be written off, but no collection efforts are necessary. Clerks should docket this information so that it is apparent on the case as to why there are no active collection efforts. Written procedures should address who may approve such determinations and whether supervisory approval is necessary.
  - j. Case disposition and file destruction rules should not govern Clerk practices concerning amounts owed. For example, Clerks should not use Rule 6.575, Florida Rules of Traffic Court, to write-off amounts owed in these cases. This rule speaks only to disposition of the file after 7 years, and not to the amounts owed.
2. Civil (including DP and TPR)
    - a. When plaintiffs inform Clerks that they cannot pay the filing, summons issuance fees, etc., Clerks should determine indigence by utilizing the indigence application approved by the CCOC and the Supreme Court.
    - b. If indigence is determined, Clerks should explain that filing and summons issuance fees are waived pursuant to FS 57.082. Note: There is a \$50 application fee in DP cases under FS 57.082(1)(d).
- E. Modify individual payment plans**
1. Clerks should consider the circumstances of defendants in exercising discretion in payment amounts and extensions of time periods for payment.
  2. Clerks should consider written procedures that:
    - a. Address who may approve adjustments and whether supervisory approval is necessary.
    - b. Permit modifications to the overall program.
- F. Use all enforcement tools**
1. Clerks should use enforcement tools such as:
    - a. Record all criminal judgments and sentences in Official Records to create liens
    - b. Send late letters/postcards and charge appropriate administrative fees under FS 938.30
    - c. Use automated phone reminders to defendants
    - d. Use online and IVR (interactive voice response) payment systems to remind defendants to pay timely
    - e. Use an outbound call process. Example: During a certain timeframe, e.g., if your office is closed to customers from 4-5 pm each day, make calls to defendants who have missed payments on

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- established payment plans, reminding them to pay timely to prevent late and collection fees from being assessed.
- f. Use address verification software
  2. Clerks should consider the use of garnishments under Chapter 77 after a consistent practice regarding the payment of various fees in Chapter 77 has been developed.
  3. Clerks should send requests to DHSMV to request driver license suspensions under FS 322.245(5), regardless of whether the defendant is on a clerk-developed payment plan. For example, a defendant on court-ordered probation supervision may or may not have a clerk-developed payment plan but ordered to pay court assessments over a specified time period.
  4. Clerks should consider responding to pro se collection motions to advise the court of Clerk collections efforts, to recount the defendant's payment history, provide conversion figures to the court if community service hours are requested, and make appropriate recommendations.
  5. Clerks should consider attending VOP hearings, and/or working with the judiciary, to provide payment histories.
  6. In CA and CC mortgage foreclosure cases, Clerks should consider filing answers to complaints that identify criminal court costs and fines judgments to note the clerk/state interest in collecting on these liens.
  7. Pertaining to bonds, Clerks should:
    - a. Insure compliance with monthly disbursements under FS 142.01 but make provision for the 2 year remission requirement under FS 903.28.
    - b. Insure compliance with FS 903.26's requirement to mail notice to the surety agent and company in writing within 5 days of forfeiture.
    - c. Insure compliance with FS 903.26 by issuing a judgment after 60 days have passed with no payment/resolution of the forfeiture and recording it in Official Records.
    - d. Insure compliance with FS 903.27 if the judgment remains unpaid after 35 days by issuing a certificate that precludes the executing agent from writing bonds.
    - e. Insure compliance with FS 903.28
      - 1) Object to remission if the forfeiture was not paid within 60 days; and
      - 2) Review all motions for remission to insure that, if remission is available, the correct percentage to return to the bond agent is claimed, calculating the time periods from the arrest date to the forfeiture date. Consider filing responses to these motions.
    - f. Insure that notice under FS 903.286 is provided at the jail and on the case bond form, so that Clerks can apply these funds to any outstanding court costs, fines, fees, charges, etc. before returning any funds to the depositor.

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- G. Send Cases to Collection Firms:** In complying with FS 28.246(6), Clerks should determine when cases should be sent to collections agencies/firms and consider:
1. Using multiple collection agencies/firms.
  2. After the first missed payment on a Clerk payment plan, sending the defendant a late notice.
  3. After accounts are delinquent for 90 days or more, referring cases to collection agencies/firms if defendants are not current with payments on Clerk payment plans..
  4. Reviewing performance of the collection firms used; to the extent possible, insuring that the performance of the firms is commensurate with the fees being charged.
  5. Moving cases from one collection agency/firm to others used by your office, within 2 years of referral when no payment has been received.
- H. Compromise Amounts Owed**
1. General
    - a. FS 938.30 provides Clerks with the authority to “enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debts or liens imposed and collected”.
    - b. In using this authority, Clerks should consider developing a policy that documents the conditions under which the compromise authority can be exercised, and developing a list of costs and fines that can be settled vs. those that cannot, e.g., if the defendant is settling \$300 in court costs and fines, but his driver license is suspended and he owes a separate \$60 for reinstatement, the \$60 DHSMV fee should not be waived.
    - c. Clerks should follow the 05/15/12 legal opinion from Greenberg Traurig (see Appendix).
    - d. Clerks should not use compromise authority on community service hours. See FS 938.30(2) (“The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person’s inability to pay.”)
  2. Clerks should consider engaging in the following compromise efforts:
    - a. Attempting to collect the entire amount owed and before settling, as the goal is to maximize collections. If cases are considered “aged” (see below definition), Clerks should consider settling for no less than \$0.60 on the dollar.
    - b. Considering the amount owed and the length of time the court costs and fines have been owed, and the individual circumstances, e.g.:
      - 1) The longer owed, the greater the adjustment could be.
      - 2) The more owed the more flexibility in negotiation.
      - 3) Less flexibility in negotiation for employed individuals than for unemployed or underemployed individuals.



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- 4) Cases more than 5 years old should be considered “aged” and less likely to be collected in full.
  - 5) Cases involving drug trafficking and large fines -
    - c. Negotiating interest first, if it owed on cases.
    - d. Considering contact with the agencies to whose trust funds the revenues will be disbursed to seek agreement on compromise. For example, \$300 Public Defender lien, recorded years ago, offer to pay is \$300, plus \$17 to prepare and record a satisfaction, plus \$50 in interest; contact local Public Defender to see if there can be agreement on compromise.
    - e. Keeping a record of the amounts negotiated and record the basis for these decisions. Consider using a negotiation form in reaching a settlement, so that the decision can be documented. These actions will protect Clerks from claims of special treatment and provide documentation for audits.
    - f. Considering use of amnesty programs where delinquent cases could be substantially discounted if paid by a certain date; if after, by a consistently applied discount amount.
    - g. When distributing settlement proceeds, considering payment of FS 27.52 and FS 28.246(5)(a) and (b) in full, and then apply the remainder pro rata to the tiers in FS 28.246(5)(c) and (d).
    - h. If a defendant has multiple cases, some of which have been sent to Clerks’ collections firms under FS 28.246(6) and some of which are being handled locally by Clerks, considering consolidation of the cases to permit and promote settlement on the total owed on all of the defendant’s cases.
    - i. Considering whether to allow FS 28.246(6) collections firms to use the settlement authority granted to Clerks. Clerks should provide clear guidelines and should include in their contracts with these firms the specific settlement authority the Clerks are permitting, e.g., grant the firms specific authority to negotiate interest.
- I. Use accounts receivable systems**
- 1. Consider the use of an in-house collection software program.
  - 2. Consider controlling the collection inventory by regular review of the number of payment plans, e.g., % of payment plans paying; % of payment plans paid in 30, 60 and 90 days; and % of payment plans paid on time, in default, and paid in full.
  - 3. Reporting capabilities should allow for date ranges and include:
    - a. Collection rate - % of money collected
    - b. Compliance rate - % of cases payment under a payment plan
    - c. Outstanding amounts due
    - d. Collection rates from specific case types – CF, MM, CT, and CJ
  - 4. Distribution should be reviewed to insure compliance with:
    - a. FS 27.52 and FS 28.246(5) concerning the statutory priority distribution of court costs and fines; and

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b. FS 28.245

**J. Improve collection goals & measure achievements**

1. Evaluate the cost and benefits of each of the collection tools (collection agencies, suspension of driver license, collection letters, phone calls, collection court, etc.) and emphasize those that have the greatest net benefit.
2. Review collection/payment programs regularly to insure the maximum in collections.
3. Request CCOC technical assistance and education services.
4. Consider setting collection goals.
5. Consider providing collection education and training to clerk staff.

## APPENDIX

### Sample Documents

1. Information and promoting collection
  - a. Agreement to Return and Pay in Full
  - b. Brochure- Court Ordered Payments (COP) – Info on forms and about collections program
  - c. Information Sheet on the Order on Fines and Court Costs given in court
  
2. Court Ordered Payment Applications and Forms
  - a. Notice of Court Ordered Payments / Court-Ordered Payments Application
  - b. Civil Non-Criminal Partial Payment Agreement
  - c. Payment Plan with Conditions of Probation
  - d. Court Ordered Payments Application – Financial Affidavit
  - e. Notice of Court Ordered Payments - Bilingual Application
  - f. Community Service Information (to be used on clerk letterhead)
  
3. Delinquency/late letters /postcards to defendants
  - a. 1<sup>st</sup> Late Letter
  - b. 2<sup>nd</sup> Late Letter
  - c. Clerk Notice of Driver License Suspension
  - d. Final Late Notice
  - e. Misdemeanor Delinquency Notice
  
4. Responses, Answers, and Motions
  - a. Response to Motion to Convert Court Costs and Fines into Community Service Hours
  - b. Response to Motion to Waive or Reduce Court Costs and Fines
  - c. Response to Motion for Bond Remission
  - d. Answer to Mortgage Foreclosure Complaint - when Clerk is served due to recorded criminal judgments that list court costs and fines
  - e. Motion to be Excused from Appearing for all Pretrial and Trial Matters filed by Clerk AND Proposed Order Granting Motion to be Excused (mortgage foreclosure case)
  
5. Training presentations/manuals for Clerk staff
  - a. Training Script for Clerk Staff
  - b. Training Presentations for Clerk Staff – PowerPoint
  
6. 05/15/2012 Greenberg Traurig legal opinion on Clerk compromise authority