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Kenneth A. Kent
Florida Association of Court Clerks
3544 Maclay Boulevard
Tallahassee, FL 32312

Re: Effect of Section 20 of HB 7095 (Chapter 2012-100)

Dear Ken:

You have asked, essentially, for an interpretation of Section 20 of HB 7095, enacted as Chapter 2012-100, Laws of Florida, which creates new subsections (8) and (9) to Section 938.30, Florida Statutes.

Section 938.30 provides, in part, that a criminal court may enter a judgment against a person who owes a court-imposed financial obligation in a criminal matter, which judgment constitutes a civil lien on such person's real or personal property, either owned at the time or thereafter acquired, when recorded pursuant to Section 55.10, F.S. The statute was silent, however, with regard to the Clerk's ability to satisfy any such judgment lien. In comparison, Section 938.29, F.S., provides that a judgment and lien may be similarly entered against a criminal defendant for the repayment of attorneys' fees and costs of a public defender. See, Section 938.29(1)(b), (c). However, Section 938.29 further provided in subsection (3) that the Clerk "shall enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debt or lien imposed under this section." Thus, S. 938.29 F.S. gave to the Clerk the specific duty and ability to satisfy the debt or lien or to compromise, settle, etc., the debt or lien.

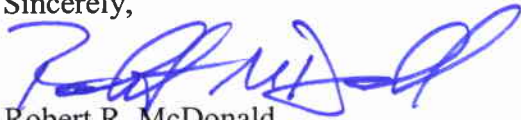
Section 20 of Chapter 2012-100 created Section 938.30(8) and (9). Section 938.30(9) now specifically provides the Clerk "shall enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debts or liens imposed and collected under this section in the manner as prescribed in s. 938.29(3)." Thus, with the enactment of Chapter 2012-100 the Clerk's authority to enforce, satisfy, compromise, etc., amounts due from criminal defendants against whom judgment liens are imposed is expanded to include all financial obligations imposed and not just those for attorneys fees and costs for a public defender.

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The authority given to the Clerk includes the ability to enforce, or to satisfy, or to compromise, or to settle, or to subordinate, or to release, or to otherwise dispose of any debts or liens. The clear language, therefore, is that the Clerk does not have to demand full payment (which would require a satisfaction), but could negotiate a lesser amount to release the debt or lien (“compromise”, “settle”, “release”), or to reach an agreement with other creditors of the defendant to subordinate the debt or lien (i.e., if the criminal defendant was obtaining financing and needed the new loan to have lien priority), or otherwise dispose of any debts or liens (this could include substituting the lien for a bond, or any other mechanism the Clerk deemed appropriate). If it was not the intent of the Legislature to allow the Clerk to negotiate the release of the debt or lien for any reason other than full payment the language would have been restricted to requiring the Clerk to satisfy the judgment lien upon full payment.

We hope this has satisfactorily answered your question. If it has not, or if we may be of any further assistance, please feel free to contact us.

Sincerely,



Robert R. McDonald

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