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

Re: Assessments & Collections

Dear Ken,

The Florida Association of Court Clerks & Comptrollers has posed to us the following questions with regard to the implementation of Section 28.2457, Florida Statutes, which was enacted into law in 2012:

Is the Clerk of Courts required, pursuant to Fla. Stat. § 28.2457, to insert the minimum mandatory assessment, as specified by statute, in a judgment when the court has imposed an amount less than the minimum mandatory assessment as prescribed in the statute?

If a court imposes concurrent sentences for multiple offenses, which includes the minimum mandatory assessment for only one offense, is the Clerk of the Court required, pursuant to s. 28.2457, F.S., to insert in a judgment the minimum mandatory assessment for the other offenses that require a minimum mandatory assessment?

Is the Clerk of Courts required, pursuant to Fla. Stat. § 28.2457, to insert the minimum mandatory assessment, as specified by statute, in a judgment when the court has remained silent on the imposition of the mandatory assessment?

Section 28.2457, Florida Statutes, requires that unless otherwise excepted in the statutes minimum monetary assessments required by statute be imposed even when the same is not announced as part of the sentence in court. In particular, Section 28.2457(1)(a), Florida Statutes, provides that “except as otherwise provided by law, a monetary assessment mandated by statute shall be imposed and included in the judgment without regard to whether the assessment is announced in open court.” Additionally, pursuant to Section 28.2457(1)(b), Florida Statutes, when an assessment mandated by statute prescribes a minimum assessment and a maximum assessment, or prescribes solely a minimum assessment, “the minimum assessment is presumed and shall be imposed and included in the judgment, unless the court specifies a greater amount.” (emphasis added).

The duties and responsibilities of the Clerk of the Court (“Clerk”) are set forth in statutes, and the Clerk must comply with statutes directing the Clerk to take a particular action. *Pan American World Airways, Inc. v Gregory*, 96 So.2d 669 (Fla. 3rd DCA

1957); *Overholser v. Overstreet*, 383 So.2d 953 (Fla. 3rd DCA 1980). However, the duties of the Clerk, when acting as clerk of the Court, is ministerial and the Clerk does not have the authority to contest the validity of any act of the Court for which the Clerk acts as clerk. *Corbin v. State ex rel Slaughter*, 324 So.2d 203 (Fla. 1st DCA 1976); *Barrett v State*, 965 So. 2d 1260 (Fla. 2d DCA, 2007); *Pan American World Airways, Inc.* As stated in *Corbin* at page 203, the “[the Clerk] has no authority to contest the validity of any act of the court for which he acts as clerk which purports to have been done in the performance of the court’s judicial function.”

While the statute is clear that when the Court does not announce any monetary assessment, the statute is unclear as to the Clerk’s duty when the Court imposes a monetary assessment less than the statutory minimum amount or, in the case of question 3 above, when there are multiple convictions and concurrent sentences are imposed and the Court only announces a single monetary assessment. The case law, however, as stated above clearly indicates the Clerk does not have the authority to contest the validity of the Court’s action.

Unless the applicable statute is amended and clarified, or until this matter is adjudicated, we are of the opinion that in a case where the court imposes a fine less than the statutory minimum, or where a minimum assessment for one count is imposed where a defendant has been convicted of multiple counts, each of which should result in a minimum fine being imposed but only the statutory minimum for one count has been imposed, the Clerk does not have the authority to change the Court’s announcement and impose additional fines in the judgment. We believe the Clerk should report any such difference between what was assessed and what should have been assessed as an “underassessment” in the Clerk’s reports of the fines imposed and collected.

We are of the opinion, however, that in the case where the Court fails to impose any fine it is proper for the Clerk to include in the judgment the statutory minimum assessment as required by Section 28.2457(1)(b). We do not believe that doing so contradicts an order of the Court.¹

We hope this has satisfactorily answered your questions. If we may be of any further assistance, please do not hesitate to contact us.

Sincerely,



Robert R. McDonald

cc: Honorable Karen Rushing (via e-mail)

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¹ This assumes the Court did not specifically state that no monetary assessment is to be made. Such case should be treated the same as if the Court imposed less than the statutory minimum.