



COMMONWEALTH of VIRGINIA

Auditor of Public Accounts

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MEMORANDUM

RE: Commonwealth Attorney Collection Program Procedures

Date: October 8, 2009

Background

In accordance with Sections 19.2-348 and 19.2-349 of the Code of Virginia, the Commonwealth Attorney has the responsibility to institute proceedings for the collection and satisfaction of judgments issued in the courts of the Commonwealth. These sections authorize the Commonwealth Attorney to contract with attorneys or collection agents, a local governing body, county or city treasurer, or the Department of Taxation to assist in this collection. Collection agents are paid on a contingency basis out of the proceeds collected.

Chapter 781 of the 2009 Acts of Assembly, also allow Commonwealth Attorneys to directly employ individuals to assist in collection efforts. The Commonwealth Attorney can pay costs associated with collecting court judgments by retaining a portion of the amounts collected. This legislation allows the Commonwealth Attorney to operate a collection program for court judgments much like a collection agent. The cost of funding this program must come from both collections due to the state and that due the locality.

The Supreme Court of Virginia has issued procedures for courts in assigning cases to collection agents and receiving their payments. These procedures include documenting a contract with the collection agent, the forms collection agents use in transmitting collections to the court, procedures for sending cases to the collection agent, and procedures for recording amounts received from collection agents. These procedures are available from the courts or directly from the Supreme Court of Virginia.

The Supreme Court of Virginia has also issued instructions for collection agents. A copy of those instructions is available from the Supreme Court of Virginia. These instructions are essential for the efficient operation of a collection agent program.

Procedures

Chapter 781 of the 2009 Acts of Assembly requires the Auditor of Public Accounts to issue procedures to Commonwealth Attorneys who have staff operating as collection agents. The procedures should provide Commonwealth Attorneys methods to account for amounts collected and apportion costs associated with collections. This memorandum contains the procedures the Auditor of Public Accounts is prescribing for Commonwealth Attorneys who implement a collection program to apportion collections to offset the costs of collection. Amounts retained from the collection proceeds are referred to as "collection fees." These fees are a portion of the amounts collected and not an additional charge to the debtor. Commonwealth Attorneys

cannot retain collection fees from collections due to others such as restitutions. Commonwealth Attorneys not instituting a program that includes retaining collection fees would continue to remit any collections individually to the courts.

1. In lieu of the contract the Commonwealth Attorney would have with a collection agent, the Commonwealth Attorney should provide the court with a memorandum of understanding. This memorandum should detail the procedures the Commonwealth Attorney will use in collecting the court's judgments and the Commonwealth Attorney's expectations of the court's cooperation. This memorandum should comply with all terms and conditions of collection agent contracts as set by the Attorney General and the Executive Secretary of the Supreme Court.
2. A program funded by collection fees where the Commonwealth Attorney employs additional staff to assist in collection efforts, requires an appropriation from the local governing body. The local Treasurer or Director of Finance must pay salary costs and other related collection expenses directly. Under no circumstances can the Treasurer or Director of Finance authorize the expense of any collection fees without sufficient appropriation from the local governing body. Distributions of collections to courts and excess collection fees to the state and locality's general accounts do not require an appropriation, as they are funds held in a trust capacity by the Treasurer, Director of Finance, or Commonwealth Attorney.
3. The Commonwealth Attorney should elect one of two methods for depositing and/or distributing funds to the courts and locality.

Preferred Method

- A. The Commonwealth Attorney instructs individuals owing monies to pay the courts. The courts receipt the funds to the appropriate account and the court's automated accounting system transfers the collection fees into a designated account. The court disburses the collection fees weekly to the local Treasurer or Director of Finance and remits the corresponding weekly report to the Commonwealth Attorney.

Alternative Method

- B. The Commonwealth Attorney, with assistance from the local Treasurer or Director of Finance, opens a bank account for depositing the collections before monthly transmittal to the courts or local operating accounts. The Commonwealth Attorney cannot use this account to pay any expenses. The only disbursements from the account are the distribution of collections to courts and collection fees to the locality.
4. Commonwealth Attorneys using the alternative method described in #3B, should write receipts for payments using forms provided by the courts. The Commonwealth Attorney should send all collections fees to the Treasurer or Director of Finance or deposit all collections intact daily. The individual receipts should total to each transmittal or deposit. The Treasurer or Director of Finance should deposit the collections fees to the accounts used to fund the cost of the program.
5. Commonwealth Attorneys using the alternative method described in #3B should follow the procedures of the Executive Secretary of the Supreme Court in calculating the amount sent to the courts monthly. The Commonwealth Attorney should complete both the delinquent

payment records and delinquent collection reports and send them to the court with the collections, net of collection fees.

6. Annually, the locality's Finance Department or local Treasurer has the responsibility to accumulate the costs of collection and compare the cost to amounts retained as collection fees. If employees hired for collection of court judgments perform other office activities, the Commonwealth Attorney should provide the Treasurer or Director of Finance the time spent on other activities to exclude this time when determining the costs of collection. These other activities would include time spent on collecting amounts other than court judgments.
7. The local Treasurer or Director of Finance should distribute the excess collection fees 50 percent to the state and 50 percent to the locality. The Treasurer or Director of Finance should remit the state share with state taxes and other collections on their next Deposit Certificate using transaction code 001, fund 0100, and revenue source code 08000.
8. The Commonwealth Attorney should prepare an annual report of the total collections, the collection fees retained from collections, the cost of the collection program, and any excess collection fees distributed to the state and locality. The Auditor of Public Accounts should receive a copy of this report.
9. The Auditor of Public Accounts will review the deposit and distribution of these funds by the Commonwealth Attorney during their annual audit of Constitutional Officers.

Please contact our office if you have any questions regarding these procedures.