

United States Attorney's Office
United States District Court Clerk's Office
United States Probation Office
for the
Northern District Of Indiana

Memorandum of Understanding for the Collection and Processing of
Criminal Fines, Restitution and Special Assessments

A. INTRODUCTION

This Memorandum of Understanding for the collection and processing of criminal fines, restitution and special assessments, collectively referred to herein as "criminal monetary penalties" is entered into between the United States Attorney's Office for the Northern District of Indiana (herein, "USAO"), the United States Probation Office for the Northern District of Indiana (herein, "USPO"), and the office of the Clerk of the Court, United States District Court for the Northern District of Indiana (herein, "Clerk's Office").

The purpose of this agreement is to promote maximum cooperation and coordination between the agencies involved in the collection and processing of criminal monetary penalties in the Northern District of Indiana, to ensure that the procedures utilized to collect the debts are as efficient and effective as possible, to avoid duplicative efforts on the part of the agencies, and to make sure that all criminal monetary penalties are paid as quickly as possible.

The parties are aware of the requirements of the Mandatory Victims Restitution Act of 1996 ("MVRA") and the Crime Victims' Rights Act, formerly the Justice for All Act of 2004 (CVRA). In light of the requirements of the MVRA and CVRA, and for the purposes set out herein, the parties agree to cooperate fully with each of the entities as authorized by the signatories to this Memorandum of Understanding as follows:

B. DEFINITIONS

Crime Victims' Rights Act (CVRA), formerly the Justice for All Act of 2004 refers to Title 18 United States Code, Section 3771. The CVRA reinforces a victim's "right to full and timely restitution as provided by law." 18 U.S.C. § 3771(a)(6). (Public Law 108-405), effective October 30, 2004.

Financial Litigation Unit (FLU) refers to the unit of the United States Attorneys Office for the Northern District of Indiana responsible for enforcing the collection of debts owing to the United States as well as victims of crime.

Judgment in a Criminal Case (JCC) refers to the document filed by the Clerk at the conclusion of a criminal case. It was formerly known as a Judgment and Commitment Order (J&C).

Mandatory Victims Restitution Act (MVRA) refers to Title II of the Antiterrorism and Effective Death Penalty Act of 1996 (104th Congress, Public Law 104-132), effective April 24, 1996.

Payee refers to the person, agency, company or entity to whom restitution is owed and has been identified in the Judgment in a Criminal Case.

Presentence Investigation Report (PSR) refers to the document prepared by the USPO prior to sentencing which generally includes personal, background, and financial information about the defendant.

United States Attorney's Office (USAO) refers to the office responsible for handling civil and criminal litigation for the entire District.

United States District Court Clerk's Office (the Clerk's Office) refers to the office responsible for maintaining a system to calculate, receipt, and disburse payments for all criminal debts including: special penalty assessments, fines, restitution and pretrial diversion agreement amounts, interest, costs and penalties.

United States Probation Office (USPO) refers to the USPO for the Northern District of Indiana responsible for preparing the presentence investigation reports as well as for supervising defendants sentenced to probation, supervised release or pretrial diversion.

Victim-Witness Unit (VW) refers to the Victim Witness Unit of the USAO responsible for notifying and assisting non-government victims and witnesses with matters related to their rights and concerns throughout the entire phase of the USAO's criminal prosecutions.

C. RESPONSIBILITIES OF THE UNITED STATES ATTORNEY'S OFFICE

1. The United States Attorney has and continues to emphasize the importance of the imposition and collection of criminal monetary penalties, with the expectation that the Criminal Division Assistant United States Attorneys ("AUSAs") will work with investigative agencies and case agents to identify the assets and holdings of defendants and use the information to assist the USPO in the completion of the presentence investigation report (PSR), determination of the amount of victims' losses, collection of restitution and fines, and assessment of forfeiture potential.

2. The United States Attorney, First Assistant, and Criminal Division Chief will ensure that all AUSAs pursuing criminal prosecutions ("prosecutors") are aware of the priority and importance of securing from investigative agencies and case agents information that specifically sets forth a defendant's financial status. In turn, the prosecutors will emphasize to case agents the priority and importance of securing complete and detailed information regarding a defendant's financial situation (e.g., the identification and location of real and personal assets, liabilities, sources of income), and

include all such information in their reports. It is the prosecutors' goal that case agents' financial investigations be oriented toward the enforced collection of all restitution ordered by the court and/or toward potential forfeiture of the defendant's assets.

Assistant United States Attorneys

3. The prosecutor will ensure that the investigating agencies and case agents identify the names of all restitution victims and that the agents determine the amount of loss suffered by each victim. The prosecutors will request that the case agents obtain updated addresses for all identified victims through the sentencing phase of the case.
4. In cases resolved by plea agreements, the prosecutor (1) will use the provision in the district's standard plea agreement which requires payment in full of special assessment at or before time of sentencing, and (2) where a fine or restitution is to be imposed will use the provision requiring the defendant to provide a financial statement when requested to do so.
5. After a plea or finding of guilty, the prosecutor will provide to the USPO, in every case involving restitution loss, a complete listing of the amount subject to restitution 60 days prior to sentencing. The listing shall include the identity of all payees or victims, and the amounts of loss. If the victim is a government agency or business entity, the listing shall include addresses, telephone numbers, name of contact person, applicable account or claim numbers, and amount of loss.
6. The prosecutor will share financial information regarding the defendant with the USPO.
7. In every case in which restitution is ordered, the prosecutor will ensure that the JCC states that all payments shall be made to the Clerk of the Court. In every case in which restitution is ordered in favor of two (2) or more victims, the prosecutor will also request that the following language is included in the JCC: "It is further ordered that restitution monies be disbursed pro rata to those victims for whom the Clerk's office has current mailing addresses."
8. In the event of a pre-trial diversion agreement with criminal monetary penalties, the AUSA will submit to the Clerk of the Court a PS-4 form of order to obtain the judge's signature so that restitution can be collected, recorded and disbursed in a manner consistent with other judgments.
9. In all cases in which the court has forfeited assets of the defendant and the government intends to apply the forfeited assets to payment of the restitution order, the prosecutor shall timely petition the Department of Justice for approval to apply forfeited assets to the payment of restitution.
10. If a defendant has posted a cash bond as bail, and a fine or restitution imposed at sentencing is due and payable immediately, the prosecutor will file a Motion for Turnover at the sentencing hearing to transfer the defendant's interest in the bail toward payment of the monetary imposition.
28 U.S.C. § 2044.

11. In all cases when there is a supplemental, corrected or amended judgment entered or a revocation of probation or supervised release, the prosecutor will ensure that the criminal monetary penalties imposed in the original judgment are included in the new judgment or remain in effect in order to preserve collection authority.

12. After the entry of the JCC, the prosecutor will ensure that the FLU receives a copy of the JCC, PSR, Statement of Reasons and any financial information.

13. After entry of the JCC, the prosecutor will petition the court to amend or correct the JCC if it is determined that there is an error regarding the identity of any payees or victims, the amounts of loss, omission of forfeiture, or error in the description of forfeited assets.

14. The prosecutor will ensure that the FLU receives copies of all post judgment pleadings and/or documents that impact a defendant's obligation or ability to pay criminal monetary penalties, including amended or corrected judgments, orders that vacate a conviction, and orders that amend the amount of a fine or restitution.

15. If an appeal is taken, the prosecutor will oppose a request for a stay of fine or restitution pending appeal unless a bond is posted in the district court pursuant to Rule 38 of the Federal Rules of Criminal Procedure.

16. In all cases when the fine payment is to be deposited into a fund other than the Crime Victim Fund (e.g., Postal Service Fund, the Endangered Species Act Fund, or the Federal Water Pollution Control Act Fund), the USAO will ensure necessary notification forms are delivered to the Clerk's Office as soon as possible, on or after the date of sentencing, so that the Clerk's Office can deposit the payment to the appropriate statutory account.

Victim Witness Unit

17. Upon request, the Victim Witness Unit will assist the prosecutor in identifying victims and determining amounts of loss in a case.

18. Prior to sentencing, upon request from the USPO, the Victim-Witness Unit will provide the names of the victims to whom notification letters have been, or will be sent, regarding the defendant's conviction and sentencing date, and their opportunity to submit a Victim Impact Statement, until USPO has access to the Victim Notification System (VNS).¹

19. After sentencing, the Victim Witness Unit will send correspondence to victims notifying

¹As of the date of execution of this Memorandum of Understanding, the United States Probation Department and the Clerk's Office does not have access to the Victim Notification System (VNS). It is anticipated that the both USPO and the Clerk's Office will have access to VNS in the future.

them of the restitution ordered, including information regarding the victim's right to obtain an Abstract of Judgment from the Clerk's Office. The Victim Witness Unit will notify the victims/payees for whom they have current contact information for, that they should maintain current addresses with VW and/or update on the VNS. (This includes the standard VNS letter and/or a separate informational letter.)

20. Upon e-mail request from the Clerk's Office, the Victim-Witness Unit will provide the Clerk of the Court with a list of named payee information including addresses available at the time of the request.

21. The Clerk will notify the Victim Witness Unit if any of the addresses for non-government Payees are no longer valid. The VW staff will make a reasonable effort to locate the victims and forward to the clerk's office any updated information for that victim.

22. In the event the United States Probation Office and/or the Clerk's Office gain access to the Victim Notification System (VNS), the respective department will utilize VNS to obtain all available information prior to contacting VW.

Financial Litigation Unit (FLU)

23. The FLU will enforce "to the fullest extent of the law" all criminal monetary penalties, including non-federal restitution, all of which are enforceable for a period of 20 years plus any period of incarceration or until the death of the defendant. 18 U.S.C. § 3613(c).

24. Upon request, the FLU will provide the Clerk's Office and/or the USPO with interest computations and impositions of penalties on delinquent and defaulted debts in accordance with law.

25. While a defendant is being supervised by the USPO, the FLU will confer with the USPO to offer case-specific assistance utilizing the FLU's enforcement collection remedies, including garnishment, wage assignments, execution on property, debtor examinations, and installment payment orders for self-employed defendants.

26. FLU will maintain a list of the government agency payees for each case. If the Clerk's Office determines that it has insufficient information to make payment to a state or local government agency victim, upon e-mail request to FLU, FLU will assist the Clerk's Office and make a reasonable effort to locate the state or local government agency related to that cause.

D. RESPONSIBILITIES OF THE UNITED STATES PROBATION OFFICE

1. The Chief Probation Officer will select a Supervisory Probation Officer who will serve as the USPO's point-of-contact on all policy matters concerning the processing and collection of criminal monetary penalties.

Pre-Sentencing

2. The USPO will consult with the prosecutor in the event the USPO restitution determinations differ from those provided by the prosecutor.
3. The USPO will notify the court within 10 days of the sentencing hearing when a victim's losses are not ascertainable so that the court can determine whether to set a date within 90 days after the sentencing for final determination of the losses.
4. The USPO will provide notice to all identified restitution victims, unless the USPO confirms that the USAO has already provided such notice. The notice will include: The offense of conviction; the amount subject to restitution as determined by the USAO; time to submit a declaration to the USPO concerning the amount of losses; the scheduled date, time and place of the sentencing hearing; and the availability of a lien in favor of the restitution victim.
5. When appropriate, the USPO will recommend to the court immediate payment of criminal monetary penalties, a payment due date, and/or a payment schedule for all criminal impositions. 18 U.S.C. §3572(d)(1) and (2).
6. In the event of a pre-trial diversion agreement involving criminal monetary penalties, USPO will monitor compliance with that agreement.

Post-Conviction

7. Upon request, the supervising PO will ask the defendant to complete a Department of Justice Financial Statement, and will provide a copy of the completed financial statement to the FLU.
8. The USPO will routinely share with the FLU all financial information provided by the defendant or as developed by the USPO, including employment information. The USPO will notify FLU of an established payment plan and changes to an existing payment plan, and will regularly consult with the FLU in all cases that have outstanding criminal monetary penalties.
9. In instances where the defendant has not complied with payment agreements or is attempting to conceal income, assets, or his/her ability to pay, the USPO will request that FLU use its enforcement remedies in these cases.
10. The USPO will advise the FLU of all cases where the court alters a condition of probation or supervised release concerning a defendant who owes a criminal fine or restitution. The USPO will send the FLU copies of all probation/supervised release orders modifying, revoking, transferring and/or terminating supervision.
11. The USPO will confer with the prosecutor to develop petitions requesting revocation

hearings for failure to pay outstanding penalties, and will seek the prosecutor's assistance when planning a revocation hearing for failure to pay criminal monetary penalties. The USPO will share all evidence developed to support the revocation action and develop plans and strategies for documenting a defendant's failure to make bona fide efforts to pay outstanding penalties.

12. The USPO will provide written notification to the FLU within 30 days of the transfer of supervision and/or jurisdiction of a defendant who has outstanding criminal monetary penalties.

13. The USPO will provide written notification to the FLU six months prior to the expiration of supervision when all, criminal monetary penalties have not been satisfied. Such notification will include the defendant's last known residence address and the name and address of the defendant's employer.

E. RESPONSIBILITIES OF THE UNITED STATES DISTRICT COURT CLERK'S OFFICE

1. The Clerk's Office will maintain a system to collect, receipt, process, and disburse all criminal fines, restitution and special assessments, regardless of the sentencing date.

2. Absent extraordinary circumstances, the Clerk's Office will provide receipt and payment reports to the FLU and the USPO on a weekly basis. The Clerk's Office will also provide the FLU and the USPO monthly reports of all cash bonds posted.

3. The Clerk's Office will endeavor to support the use of the most current form of the JCC in criminal sentencing in this district.

4. Pursuant to the MVRA, the Clerk's Office will, upon request by a restitution victim, prepare an Abstract of Judgment which, upon recording in accordance with state law, will be a lien on the property of any defendant ordered to pay restitution.

5. The Clerk's Office will ensure any victim information regarding victims other than their names, will remain confidential and not become part of the public record.

6. The Clerk's office will make all initial disbursements based on information in its files.

7. The Clerk will notify the Victim Witness Unit if any of the addresses for non-government payees are no longer valid so that VW may make reasonable efforts to locate the victim.

8. The Clerk will notify FLU if any of the additional contact information is needed for state and local government agency payees/victims so that FLU may make reasonable efforts to locate the victim.

9. The Clerk will contact the Administrative Office for the United States Courts (AOUSC) for federal government agency payee information.

10. The Clerk Office will update its files to reflect any and all updated information received by the Victim Witness Unit, FLU and the AOUSC.

11. The Clerk's Office will apply payments in the following order: (1) special assessment; (2) restitution to all victims, including restitution interest (all non-federal payees will be paid first before compensation providers are paid and the federal government will be paid last) and the Clerk's office will refer to the judgment to verify whether the court has determined priority order or percentage order of payment in the judgment when there are multiple payees); (3) fine principal; (4) community restitution; (5) fine interest (6) penalties; (7) costs, including costs of prosecution and court costs.

F. DISTRIBUTION

Prior to execution by the parties, a draft copy of the Memorandum of Understanding will be provided to the Chief United States District Judge for review and concurrence. Upon execution of this document, each of the signatories to this Memorandum of Understanding will make a copy available to the appropriate personnel within their respective offices to ensure all employees are aware of this agreement.

G. ADMINISTRATION

1. This Memorandum of Understanding may be amended by written agreement of the parties.
2. The parties are aware of the Memorandum of Understanding (MOU) between the Department of Justice and the Administrative Office of the United States Courts (AOUSC) for the Analysis of Policies and Procedures for Criminal Debt Data Management in the United States District Courts which was effective March 14, 1997.

3. The parties agree to meet annually, or as needed, for joint training on collection of criminal debts, and to discuss modification to these Joint Guidelines resulting from changes in intra-office policies and procedures, changes in inter-office relationships, changes in federal statutory law, or other reasons.

Authorizing Signatures;

Date: July 7, 2008

/s/ David Capp
DAVID CAPP
United States Attorney

Date: June 25, 2008

/s/ Stephen R. Ludwig
STEPHEN R. LUDWIG
United States District Clerk

Date: July 2, 2008

/s/ Derek Plants
DEREK PLANTS
Chief United States Probation/
Pretrial Services Officer