



In the Supreme Court of Iowa

**In the Matter of Iowa Court)
Rules New Chapter 26—Rules)
for Installment Payment Plans) **Order**
and Other Court Collection)
Activities)**

The Iowa Supreme Court has approved a new Iowa Court Rules Chapter 26, Rules for Installment Payment Plans and Other Court Collections Activities. The provisions make permanent many of the interim procedures in place since July 2010, which were adopted in response to sweeping changes the Iowa legislature enacted regarding the state’s procedures for collecting debt obligations, including court fines and fees owed to the state. The new chapter 26 will be effective July 1, 2013, and will apply to all court debt as defined in Iowa Code section 602.8107(1). The July 2, 2010, interim procedures governing the collection of court fines and fees remain in effect through June 30, 2013.

In July 2010, the Iowa Supreme Court, upon recommendation of the judicial council, adopted interim provisions governing installment pay plans and other collection activities of the judicial branch. Also upon recommendation from the judicial council, the court appointed a statewide advisory committee to study the courts’ collections processes and make recommendations for improvements and for permanent rules. The Judicial Council Advisory Committee on Fine Collection Procedures, Practices, and Rules (advisory committee) comprised district court judges, district associate judges, magistrates, clerks of court, an assistant district court administrator, a

trial court supervisor, and a county clerk of court financial supervisor. It submitted a report to the court that included recommendations for permanent rules for court-ordered installment payment plans and other collections activities of the Iowa courts. Those recommendations have been updated to account for new legislation since the court issued its interim procedures.

The advisory committee conducted several meetings and considered and consulted with a variety of resources. The advisory committee reviewed applicable Iowa legislation and laws, researched collections procedures from other states across the country, and received input from the following: the Centralized Collection Unit of the Iowa Department of Revenue (CCU), the designated judicial branch private collection agency, the Polk County Attorney's Office, the Department of Corrections, and the Department of Transportation.

An overarching concern of the advisory committee was that the judicial branch is not well suited for the collections business. All collections work, such as tracking performance under payment plans, must be performed by employees in clerk's offices in addition to their regular duties. Judicial officers frequently lack reliable information on an individual's ability to pay court debt. While various other entities are engaged in the collection of court debt in Iowa, including CCU, county attorney offices, and the designated private collection agency, by law the judicial branch cannot collect a service fee for its collection-related services.

After careful consideration, the court has decided to adopt most of the advisory committee's recommendations. Generally speaking, the court believes these recommendations fairly balance the limited capacity and expertise of the judicial branch in this area and the goal of justly meeting the reasonable needs and expectations of the citizens of Iowa.

Prior to adopting the new chapter 26, the court solicited public comment on the committee's proposed rules for court-ordered installment pay plans and court collections activities. The court received numerous comments, including from magistrates, a district associate judge, clerks of court, county attorneys, Iowa Legal Aid, the State Public Defender, and the Ombudsman's office. The comments were thorough and thoughtful, and the court appreciates having the benefit of such careful discourse. The court also received a response to the comments from the advisory committee.

The comments have included the following criticisms of the proposed rules: (1) courts should have complete discretion in establishing payment plans with no limitations on length of plans or installment amounts; (2) payment plans and community service should be an option for court debts under the amount of \$300; (3) the new provisions should include references to county attorney debt collection activities; and (4) courts should not be in the business of administering any installment payment plans.

1. Court discretion in setting payment plans.

The advisory committee recognized, and the court agrees, that the current volume of work in the Iowa court system coupled with current staffing levels renders judicial branch involvement in collections activities problematic and inefficient. Iowa Code section 909.3, however, gives courts discretion to allow payment of court fines in installments.¹ The advisory committee

¹Iowa Code section 909.3, as amended by S.F. 2383, 4 Iowa Legis. Service 558 (West 2010), states the following:

909.3 Payment in installments.

1. All fines imposed by the court shall be paid on the day the fine is imposed, and the person shall be instructed to pay such fines with the office of the clerk of the district court on the date of imposition.
2. *a.* The court may, in its discretion, order a fine to be paid in installments.

recommended that court payment plans should be allowed at the judge's option but only for total court debt above \$300, with minimum installment payments of \$50, and a maximum duration of two years. This would not affect the availability of payment plans for court debt from other entities, such as CCU.

The supreme court generally concurs in these recommendations. The court has determined, however, that limiting the duration of a payment plan to two years may work an undue hardship on some debtors who otherwise are making reasonable progress in paying down their debt. For this reason, and consistent with comments received, the court has modified the advisory committee's recommendation so that chapter 26 does not provide a time limitation on the duration of installment payment plans.

2. Payment plans and community service for court debt above \$300.

The advisory committee and the court have considered permitting installment payment plans or community service for debts below \$300. The advisory committee recommended and the court agrees that allowing installment payment plans for debts of less than \$300 could significantly add to the workload of already overly burdened clerks of court. Similarly, the resources required to monitor community service plans and the limited availability of such plans in some areas support adoption of a rule prohibiting utilization of community service for debts less than \$300. The \$300 minimum amount required for installment payment plans and community service also avoids having to administer these options for common, lower cost traffic infractions.

b. If the court orders the fine to be paid in installments, the first installment payment shall be made within thirty days of the fine being imposed. All other terms and conditions of an installment payment plan order pursuant to this section shall be established by rule by the judicial branch.

3. Scope of Chapter 26.

Rule 26.1 identifies the scope of chapter 26: The “provisions govern installment payment plans and other collection activities of the judicial branch.” Rule 26.1 also provides that chapter 26 procedures “apply to all court debt as defined in Iowa Code section 602.8107(1), and provide for the efficient and expeditious collection of court debt.” Chapter 26 does not address the role of CCU as set forth in Iowa Code section 602.8107(3) or county attorney efforts to collect delinquent debt addressed in section 602.8107(4).

All court debt not paid within 30 days of assessment, or within 30 days after the date it is due pursuant to an installment payment plan, is delinquent and must be assigned to CCU. Iowa Code section 602.8107(2)(d) & (3). Once a court debt is deemed delinquent for 60 days, which is at least 90 days from the date of assessment, then the county attorney may begin collection efforts on the delinquent debt. Iowa Code section 602.8107(4).

4. Efficient and expeditious collection of court debt.

The supreme court recognizes that many low or fixed income Iowans may struggle with the payment of any amount of court fine. Iowa law provides the court with discretion to order fines to be paid in installments to accommodate such cases. It is also true, however, that court ordered and administered installment payment plans are a burden on already stretched court resources and personnel. These court resources and personnel also provide other valuable services to court users, including those who may struggle to pay fines.

The challenge to the advisory committee, and for the court, was to find a balance of these competing realities. The court finds that the chapter 26 provisions comport with the existing statutory framework, provide judges a necessary degree of discretion, and strike a practical balance in the allocation of limited court resources and personnel.

The July 2, 2010, interim procedures governing the collection of court fines and fees remain in effect through June 30, 2013. New Chapter 26 of the Iowa Court Rules, Rules for Installment Payment Plans and Other Court Collections Activities, is effective July 1, 2013.

Dated this 4th day of June, 2013.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice

(New)

Chapter 26

Rules for Installment Payment Plans and Other Court Collection Activities

Rule 26.1 Scope. The following provisions govern installment payment plans and other collection activities of the judicial branch. These procedures shall apply to all court debt as defined in Iowa Code section 602.8107(1), and provide for the efficient and expeditious collection of court debt.

Rule 26.2 Installment payment plans.

26.2(1) A person shall be instructed to pay the court debt with the office of the clerk of court on the date of imposition of the court debt.

26.2(2) At sentencing or upon imposition of a fine, if a person establishes that the person does not have the financial means to pay the court debt in full on the date it is imposed, the judicial officer may order the person to pay the court debt in full within 30 days from the date it is imposed.

26.2(3) At sentencing or upon imposition of a fine, if a person establishes that the person does not have the financial means to pay the court debt in full within 30 days from the date it is imposed, the judicial officer may:

a. Instruct the person to contact the Centralized Collection Unit (CCU) to request a payment plan; or

b. Establish an installment payment plan pursuant to the rules contained in this chapter.

26.2(4) If the total amount of court debt due at the time of imposition is \$300 or less, a judicial officer shall not order an installment payment plan.

26.2(5) When ordering an installment payment plan, the judicial officer has discretion to require a down payment.

26.2(6) Except in cases involving a restitution plan of payment pursuant to Iowa Code section 907.8 or 910.7, a judicial officer shall:

a. Require the first payment to be due no later than 30 days from the date of imposition;

b. Structure the payments to be due once a month; and

c. Require the payments to be at least \$50 each month.

26.2(7) A judicial officer shall not order an installment payment plan for any court debt that is already deemed delinquent pursuant to Iowa Code section 602.8107(2)(d).

26.2(8) A judicial officer shall not waive or forgive any installment payments or continue or extend the due date for any installment payment.

26.2(9) If a person fails to make an installment payment within 30 days after the due date, the entire remaining debt shall be deemed delinquent and the judicial branch will immediately assign the entire remaining debt to CCU for additional collection procedures.

26.2(10) If a person is granted a court-appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person. Legal assistance shall include not only the expense of the public defender or an appointed attorney, but also the expense of transcripts, witness fees, expenses, and any other goods or services required by law to be provided to an indigent person entitled to an appointed attorney.

a. If the person receiving legal assistance is convicted in a criminal case, the court shall order the payment of the total costs and fees for legal assistance as restitution to the extent the person is reasonably able to pay, or the court shall order the performance of community service in lieu of such payments, in accordance with Iowa Code chapter 910.

b. If the person receiving legal assistance is acquitted in a criminal case or is a party in a case other than a criminal case, the court shall order payment of all or a portion of the total costs and fees incurred for legal assistance, to the extent the person is reasonably able to pay, after an inquiry that includes notice and reasonable opportunity to be heard.

c. After the judicial officer makes a rule 26.2(10) (a) or (b) determination, the judicial officer shall set forth in the sentencing order the amount the person is required to pay for legal assistance.

26.2(11) A judicial officer may modify an existing, nondelinquent installment payment plan to correct an error or omission regarding the amount of court debt defendant owes.

26.2(12) A judicial officer may combine a person's nondelinquent installment payment plans into a single installment payment plan or modify or restructure an existing, nondelinquent installment payment plan to include new court debts if the combined, modified, or restructured installment payment is at least \$50 a month.

26.2(13) A judicial officer shall not initiate court proceedings sua sponte as a means of collecting court debt. Once the court debt becomes delinquent 30 days after imposition or 30 days after an installment payment is due, the statutory procedures set forth in Iowa Code section 602.8107 govern.

Rule 26.3 Court debt collection procedures. Judicial officers shall comply with the following procedures with regard to court debt, whether or not subject to an installment payment plan: Except for collection orders, procedures, and arrangements that are the subject of a petition for judicial review, or a notice of bankruptcy from a federal court, a judicial officer shall not block, rescind, waive, modify, void, or stay any installment payment plan or other court debt collection agreement or procedure arranged, initiated, or enforced by a county attorney pursuant to Iowa Code section 602.8107(4) and Iowa Code section 321.210B, by CCU pursuant to Iowa Code section 602.8107(3), by a county treasurer pursuant to Iowa Code section 321.40(9), by the department of transportation pursuant to Iowa Code section 321.210A, by the department of revenue pursuant to Iowa Code section 8A.504, by the clerk of court pursuant to Iowa Code section 602.8103(6), or by a private collection agency approved by the state court administrator pursuant to Iowa Code section 602.8107(5). As used in this rule, court debt collection agreements and procedures include but

are not limited to garnishments, administrative levies, wage assignments, installment payment plans, executions, income tax offsets, driver's license suspensions, vehicle registration holds, professional licensure suspensions, and other procedures authorized by law.

Rule 26.4 Community service. A judicial officer shall not order community service in lieu of monetary payment of court debt unless the judicial officer determines that community service will be prudent and effective for defendant and that the community service can be administered within existing court resources.

26.4(1) A judicial officer shall not order community service if defendant's total court debt is \$300 or less.

26.4(2) When defendant is not reasonably able to pay all or part of defendant's court debt, community service may be substituted in lieu of the following: monetary payment for fines; crime victim compensation program reimbursement; public agency restitution; court costs, including correctional fees approved pursuant to Iowa Code section 356.7; court-appointed attorney fees ordered pursuant to Iowa Code section 815.9, including the expense of a public defender; contribution to a local anticrime organization; or medical assistance program restitution.

26.4(3) A judicial officer shall not order community service in lieu of victim restitution.

26.4(4) All orders for community service in lieu of monetary payment of court debt shall require defendant to perform the number of hours of community service that are equal to the total amount of the court debt divided by the current minimum State of Iowa wage rate.

26.4(5) A judicial officer shall order a date by which defendant is to have completed the community service.

26.4(6) A judicial officer shall not order community service in lieu of monetary payment of court debt that is already deemed delinquent pursuant to Iowa Code section 602.8107(2)(d) because it has not been paid within 30 days

after it was assessed or within 30 days after the payment due date of an installment payment plan.

Rule 26.5 Supervised probation. If the judicial officer orders probation under Iowa Code chapter 907, defendant is subject to the conditions established by the judicial district department of correctional services subject to the approval of the court, including a restitution plan of payment. The probation plan of payment shall not incorporate any delinquent court debt obligations of defendant.

Rule 26.6 Form for installment payment plan order. A court-ordered installment payment plan shall be in substantially the following form.

Rule 26.6—Form 1: Installment Payment Plan Order

In the Iowa District Court for _____ County

<input type="checkbox"/> State of Iowa, <input type="checkbox"/> City of _____, Plaintiff, vs. _____, Defendant.	No. _____ Installment Payment Plan Order (Not to be used for court debt of \$300 or less.)
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Upon sentencing, **it is ordered** that Defendant shall pay any and all fines, surcharges, court costs, fees, victim restitution, and attorney fees as ordered in Defendant’s Judgment and Sentence dated the ____ day of _____, 20____.

Note: Attorney fees and other costs, if unavailable at the time of sentencing, may be more than the record reflects in the clerk’s office. Those amounts will be added to Defendant’s total amount of court debt when they become available and are subject to the same terms as specified below. Sheriff room and board fees, which are not included in the Installment Payment Plan Order, will be charged as a civil judgment for which Defendant is separately responsible.

Terms of Installment Payment Plan:

Defendant ____ (is) ____ (is not) required to make a down payment of \$_____ to the clerk of court’s office.

Defendant shall make a minimum payment of \$_____ per month (must be at least \$50), beginning the ____ day of _____, 20____ (no later than 30 days from the date of imposition), and on the same day of each month thereafter, to the clerk of court office.

Failure to Make Installment Payments:

Defendant is **notified** that if he or she fails to pay any monthly payment on the date and in the amount as listed above within 30 days of the date the installment payment is due, action regarding Defendant’s motor vehicle registration or suspension of Defendant’s driver’s license, or both, may be initiated. In addition, the total remaining court debt will be considered delinquent and sent to collection, and up to 25% may be added to the delinquent amount.

Order dated

Judicial Officer

Please notify the clerk of court of any change of address.

Note: This installment payment plan does not affect the State of Iowa’s procedure to intercept any state income tax refund or any vendor amounts due Defendant, or the clerk of court’s ability to intercept monetary amounts held by the clerk of court and payable to Defendant.