ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS

RICHARD J. HUGHES
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P.O. BOX 037
TRENTON, NEW JERSEY 08625-0037

MEMORANDUM

Directive # 02-10

To: **Assignment Judges**
Municipal Court Presiding Judges
Municipal Court Judges
Trial Court Administrators
Municipal Division Managers
Municipal Court Directors and Administrators

From: **Glenn A. Grant, J.A.D.**

Subj: **Implementation of L. 2009, c. 317, Authorizing Municipal Courts to Provide Payment Alternatives**

Date: **March 2, 2010**

Legislation authorizing municipal courts to provide payment alternatives was enacted effective January 18, 2010. L. 2009, c. 317. This memorandum is intended to provide the municipal courts with guidance on implementation of that enactment.

Establishment of a Time-Payment Order

L. 2009, c. 317 (emphasis added) provides that "if a municipal court finds that a person does not have the ability to pay a penalty in full on the date of the hearing . . . , the court may order the payment of the penalty in installments for a period of time determined by the court." Thus, for the court to establish a time-payment plan under this statute, the municipal court judge is required to first make a finding that the defendant is unable to pay the full amount on the date of the hearing.

By memorandum of November 20, 2003 directed to Municipal Court judges, then Administrative Director Richard Williams indicated that the "Financial Questionnaire to Establish Indigency - Municipal Courts" (Financial Questionnaire) should be used "in determining the indigency status of defendants . . . for payment of fines in installments." That policy remains unchanged. A completed Financial Questionnaire will contain the financial information that a judge needs in order to be able to make a reasoned decision

as to whether the defendant has an ability to pay a penalty in full or whether to grant defendant a time payment.

Additionally, judges also should continue to follow the long-established practice of considering the federal poverty guidelines as one factor in determining whether a defendant has the ability to pay fines and penalties in full on the day of the hearing. The most recently distributed guidelines (copy attached) suggest in that regard that defendants earning up to 250% of the federal poverty guidelines be considered for time-payment orders. Updated guidelines for 2010 will be issued by this office in the spring.

Payment Alternatives After Default

The new statute also includes provisions to cover the situation where an individual defaults on a previously ordered time-payment because the individual does not have the ability to pay. In those situations the court is provided a number of options. The statute specifically provides as follows:

> If a person defaults on any payment and a municipal court finds that the defendant does not have the ability to pay, the court may:
>
> (1) reduce the penalty, suspend the penalty, or modify the installment plan;
> (2) order that credit be given against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default;
> (3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;
> (4) order the person to perform community service in lieu of payment of the penalty; or
> (5) impose any other alternative permitted by law in lieu of payment of the penalty. [L. 2009, c. 317, § 1.]

The two situations in which a defendant shall be considered to be in default are (a) if defendant's driver's license has been suspended after a failure to pay (N.J.S.A. 2B:12-31(a)(2)), or (b) if a warrant has been issued for defendant's arrest after a failure to pay.

These payment alternatives may only be used under this statute after a defendant defaults on an already established time-payment order. They may not be used at a defendant's initial sentencing hearing. Moreover, the court may resort to the payment alternatives only after a finding that the defendant does not have the ability to pay. Just as when determining whether to establish a time-payment order, a

determination of ability to pay should be based on the financial information on a current Financial Questionnaire completed by the defendant. Also as with time-payment order determinations, the judge in determining ability to pay should consider, as one factor, whether defendant's income is less than 250% of the federal poverty guidelines (again, see the attachment).

In addition, these payment alternatives may not be used to reduce, revoke or suspend payment of restitution or of the $250 surcharge assessed for operating a vehicle in an unsafe manner under N.J.S.A. 39:4-97.2(f). L. 2009, c. 317, § 1.

With specific regard to the court's ability to revoke the unpaid portion of the penalty (subsection 3 above), a judge before implementing this particular alternative must make one of two additional findings. The judge must find either that "the circumstances that warranted the imposition [of the penalty] have changed" or that it would be unjust to require defendant to pay. The judge must place on the record the facts upon which these findings are based. See R. 1:7-4(a).

If a judge wishes to implement a payment alternative for only a portion of the outstanding balance, then the judge should merely designate the lump sum dollar amount that is to be reduced, revoked or suspended, without indicating which individual fines, penalties or assessments are to be affected. For example, a judge could order that defendant's time-payment order is reduced by $100. The judge should not specify that $50 is reduced from VCCO and $50 from the fine. Any future payment of the remaining portion of the penalty will be disbursed consistent with N.J.S.A. 2C:46-4.1.

As with all changes of sentence, the implementation of any of the payment alternatives must be made in open court on notice to the defendant and the prosecuting attorney. R. 7:9-4.

Any questions regarding this directive should be directed to Assistant Director Debra A. Jenkins, Municipal Court Services Division, at 609-984-8241.

G.A.G.

attachment
cc: Chief Justice Stuart Rabner
AOC Directors and Assistant Directors
Lawrence Walton, Municipal Court Services Division
Steven Somogyi, Municipal Court Services Division
Carol A. Welsch, Municipal Court Services Division
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

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As distributed by May 14, 2009 memo from the Administrative Director.

2009
Income Eligibility Guidelines for Establishing Time Payments

Data reflect 250% of the Federal poverty guidelines as defined by the U.S. Department of Health and Human Services

Household Size	One	Two	Three	Four	Five	Six	Seven	Eight
Annual Gross Income	$27,075.00	$36,425.00	$45,775.00	$55,125.00	$64,475.00	$73,825.00	$83,175.00	$92,525.00
Monthly Gross Income	$ 2,256.25	$ 3,035.42	$ 3,814.58	$ 4,593.75	$ 5,372.92	$ 6,152.08	$ 6,931.25	$ 7,710.42
Weekly Gross Income	$ 520.67	$ 700.48	$ 880.29	$ 1,060.10	$ 1,239.90	$ 1,419.71	$ 1,599.52	$ 1,779.33

* If the household size exceeds eight, add $9,350.00 gross income per year, $779.17 per month, or $179.81 per week for each additional member of the household.

Source data:

Poverty Guidelines updated by the U.S. Department of Health and Human Services, published in the *Federal Register, Vol. 74, No.14, January 23, 2009, pp. 4200.*