

STATE OF TENNESSEE

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Opinion No. 12-52

Payment of Fines in Installments

QUESTIONS

1. If a defendant is ordered by a court to pay a certain amount in fines on an installment plan pursuant to Tenn. Code Ann. § 40-24-101(a) and remits a payment to the clerk's office, is the clerk required to apply that money to litigation taxes and court costs in satisfaction of those debts before applying it to the fine assessed?

2. If the defendant abides by the installment payment plan, can a court "show cause" the defendant for failure to promptly pay the fine?

OPINION

1. Yes. Tennessee Code Annotated § 40-24-105(a) requires that moneys paid into court be allocated first to litigation taxes, then to costs, and last to fines.

2. No.

ANALYSIS

When a defendant who has been assessed litigation taxes, court costs, and fines in a criminal case is unable to pay the entire amount, the court can establish a plan for payment by installments. Tenn. Code Ann. §§ 40-24-101(a), -105(b)(4). Tennessee Code Annotated § 40-24-105 provides the following allocation formula for moneys paid into court:

the first moneys paid in any case shall first be credited toward payment of litigation taxes and once litigation taxes have been paid, the next moneys shall be credited toward payment of costs; then additional moneys shall be credited toward payment of the fine.

Tenn. Code Ann. § 40-24-105(a).

Unpaid litigation taxes, costs, and fines may be collected in the same manner as a judgment in a civil action. *Id.* When a defendant willfully fails to pay a fine "as directed," Tenn. Code Ann. § 40-24-104(a), the court may enforce the order assessing the fine by contempt, but

no person may be imprisoned for failure to pay litigation taxes or costs, Tenn. Code Ann. § 40-24-105(a).

Because Section 40-24-105(a) expressly sets forth the manner in which partial payments are to be allocated, trial courts are not free to alter the allocation by order or to “show cause” a defendant for failure to promptly pay the fine. Courts have considerable discretion, however, in ordering both the amount of payments and the dates on which they fall due. *See* Tenn. Code Ann. § 40-24-101(a)(3). In the example cited in the request, the court has ordered a payment plan with respect to fines only, although the defendant apparently has unpaid litigation taxes and court costs as well. Such circumstances might give rise to confusion where the defendant complies with the plan but the payments under it are allocated by operation of law to taxes and costs. Courts can avoid this confusion by issuing payment orders that also address litigation taxes and court costs pursuant to Tenn. Code Ann. § 40-24-105(b)(4).

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