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COMMONWEALTH OF VIRGINIA

Compensation Board

P.O. Box 710
Richmond, Virginia 23218-0710

July 7, 2015

MEMORANDUM

TO: Commonwealth's Attorneys
FROM: Robyn M. de Socio, Executive Secretary
RE: FY15/16 Fines and Fees Reporting Process

The Code of Virginia, §19.2-349, requires the Department of Taxation and the Compensation Board to annually report to the Governor and the General Assembly the total of fines, costs, forfeitures, penalties and restitution assessed, collected, and unpaid and those which remain unsatisfied. Additionally, Commonwealth's Attorneys must complete a signed policy statement each year, and identify each year their elected collection method for delinquent accounts.

With this correspondence, the Compensation Board is seeking your submission of the signed FY16 policy statement and FY16 delinquent accounts collection method election form. A subsequent communication this month will begin the data collection portion of the annual reporting requirement for FY15 assessments and collections of delinquent fines and costs.

Commonwealth's Attorneys utilizing collection agents. This correspondence is copied to collection agents.

New Guidelines and Form for Contracts. Please note that the attached Guidelines and Form for Contracts is NEW, including updated provisions to comply with action taken by the General Assembly limiting compensation for Treasurers who contract to collect delinquent court fines and costs, and allowing receipt by the Department of Motor Vehicles of delinquent amounts owed by a debtor upon agreement with the Executive Secretary of the Supreme Court of Virginia. New contracts, utilizing the new Form for Contracts, will be necessary between all Commonwealth's Attorneys and collection agents for FY16 to comply with legislative action and the new Guidelines, to be established effective July 1, 2015 or as soon as possible thereafter. Note that for Commonwealth's Attorneys presently utilizing the Department of Taxation as the collection agent, staff of the Department of Taxation has indicated they will be preparing and mailing a new contract for FY16 for your review and execution.

The FY16 Policy Statement and the FY16 Election Form are due by July 24, 2015. Any future changes to collection agent and/or initiation of a new contract during the year must also include the sending of a new Election Form to the entities noted on the Form.

All Commonwealth's Attorneys. Please review the documents attached to this email or at http://www.scb.virginia.gov/forms/cas_fines_and_fees_packet.pdf and complete with your signature, date, printed name and locality:

1. FY16 Policy Statement for Fines and Fees: Commonwealth's Attorney;
2. FY16 Election for Collection Method of Fines and Fees: Commonwealth's Attorney;
3. Supreme Court Guidelines and Model Form for Contract for the Collection of Unpaid Fines, Costs, Forfeitures, and Penalties by Private Contractors (dated July 1, 2015); and
4. Code of Virginia, §19.2-349; §58.1-3958; Chapter 665, 2015 Acts of Assembly, Item 70. Paragraph I.

Fax both completed forms to Bill Fussell at (804) 371-0235 not later than Friday, July 24, 2015. A fax cover sheet has been provided for your convenience. If you have any questions or need additional information, please contact Bill Fussell at (804) 225-3475 or william.fussell@scb.virginia.gov or me at (804) 225-3439 or robyn.desocio@scb.virginia.gov.

Thank you for your assistance.

cc: Charlene Rollins, Customer Service Manager
Bill Fussell, Senior Fiscal Technician
Laurie Hicks, Office of the Auditor of Public Accounts
Jane S. Chambers, Director, Commonwealth's Attorneys' Services Council
Nancy Parr, President, Virginia Association of Commonwealth's Attorneys
Kathy Lohr, Department of Taxation
Karl Hade, Supreme Court of Virginia
Treasurer, Arlington County
Treasurer, Fauquier County
Treasurer, Loudoun County
Treasurer, Stafford County
Treasurer, City of Falls Church
Treasurer, City of Hampton
Treasurer, City of Virginia Beach
Ballato Law Firm
David S. Hudson
Fines Management, LTD
Newsome Law Office
Quadros and Associates
Parrish and Lebar
Poole Mahoney PC
Wallace S. Covington, III

FY16 Policy Statement for Fines and Fees: Commonwealth's Attorneys Form

Locality Code: _____

Policy and Procedure

Code of Virginia Pursuant to § 19.2-349, Code of Virginia, a Commonwealth's Attorney is required to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The Commonwealth's Attorney must follow collection guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court in association with the Department of Taxation and Compensation Board.

If the Commonwealth's Attorney does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation. The Commonwealth's Attorney provides for compensation of outside collection agents on a contingency fee basis out the proceeds of the amounts collected (except Treasurers not being compensated on a contingency fee basis as of January 1, 2015, compensated by the added fee to cover administrative cost provided for in Code § 58.1-3958).

The Department of Taxation and the Compensation Board shall establish procedures to be followed by court clerks, Commonwealth's Attorneys, other state agencies or local government entities and any private attorneys or collection agents. The Department of Taxation and the Compensation Board shall report annually to the Governor and the General Assembly the total fines, costs, forfeitures and penalties assessed, collected, and unpaid and those which remain unsatisfied by each circuit or district court.

Pursuant to Chapter 665, 2015 Acts of Assembly, delinquent amounts owed shall have added to them an increase rate fee of seventeen percent, to reflect the costs associated with employing or contracting with agencies or individuals for collections, unless such rate would exceed the collection agent's fees for collection, in which case the increase rate fee shall equal the collection agent's fees for collection. The increase rate fees are also paid on a contingency basis out of the proceeds of the amounts collected.

Policy Prompt payment of fines and fees are ordered by the Court as a form of punishment for an offense committed, as well as a legitimate source of revenue for the locality and the Commonwealth. A Commonwealth's Attorney must take all measures under law to ensure that all fines, costs, penalties, forfeitures, and restitution as ordered by the Court are paid in full.

Procedure A Commonwealth's Attorney must:

- Annually choose a collection method by completing and signing an *Election for Collection Method of Fines and Fees: Commonwealth's Attorney* and return by fax to the Compensation Board; and
- Annually receive assessment and collection totals from his collection agent and file a report with the Compensation Board using the *Collection of Fines and Fees Form*.

Effective Date This policy was effective July 1, 2003 and amended on July 18, 2007, July 1, 2013, July 1, 2014, and July 1, 2015. Unless otherwise noted, it shall remain in effect until further amended. Any recommended amendments to this policy shall be communicated to and are subject to review by the Compensation Board.

Certification

I am in compliance with the requirements of § 19.2-349, Code of Virginia, Chapter 665, 2015 Acts of Assembly, Item 70. Paragraph I. and the Supreme Court Guidelines and Model Form for Contracts for the Collection of Unpaid Fines, Costs, Forfeitures, and Penalties by Contractors, dated July 1, 2015.

Printed Name of Commonwealth's Attorney

Locality

Signature of Commonwealth's Attorney

Date

Commonwealth's Attorney: Please complete form fully, provide printed name of officer and locality, sign and date form. Fax to the attention of Bill Fussell, Compensation Board (804) 371-0235, not later than Friday, July 24, 2015.

FY16 Election for Collection Method of Fines and Fees: Commonwealth's Attorney

Locality Code: _____

In compliance with § 19.2-349, Code of Virginia, I elect the following as the collection method for delinquent fines, costs, penalties, and forfeitures and restitution for each court in my locality:

- Column A Indicate if the Department of Taxation, In-House program, city/county Treasurer, private attorney, or private collection agent collects delinquent fines and fees for each of your courts; list contact information.
- Column B For all collection methods (except the In-House program) please provide month and year of contract or Memorandum of Understanding.
- Column C For all collection methods please provide the collection fee percentage (excludes restitution) or the fee amount for administrative cost for Treasurers not contracting on a contingency basis as of January 1, 2015.
- Column D For all collection methods please provide the increase rate of 17% of the amount owed for outstanding fines **unless the Collection Commission Rate is less than 17%. If the Collection Commission Rate (column C) is less than 17%, then the Increase Rate and the Fee for Collection Services Percentages should match** (the increase rate where Treasurers were not contracting on a contingency basis as of January 1, 2015 should be 0%). Please note this is not considered compensation due the contractor except for restitution.

FY16

| Court | Collection Method | Contract or MOU | | |
|-------------------------------|--|--|---|--|
| | A: CHOOSE ONLY ONE PER COURT: <ul style="list-style-type: none"> • Department of Taxation • In-House Program • Private Attorney (provide name/contact) • Private Collection Agent (provide name/contact) • City / County Treasurer or other Official Provide Name and Contact Information: | B: Contract Date Month & Year: | C: Fee for Collection Services (Collection Commission Rate) Percentage: | D: Increase Rate Fee applied to delinquent amounts (Increase Rate) Percentage: |
| SAMPLE | <i>County Treasurer - Jane G. Doe 804-555-1234; jane.doe@treasurer.gov</i> | <i>Jul 2015</i> | <i>21%</i> | <i>17%</i> |
| Circuit | | | | |
| General District | | | | |
| Juvenile & Domestic Relations | | | | |
| Combined | | | | |

Printed Name of Commonwealth's Attorney _____

Locality _____

Signature of Commonwealth's Attorney _____

Date _____

Please forward a copy of the Election for Collection Method Form to the following no later than Friday, July 24, 2015:

- i. Circuit, District, Juvenile and Domestic Relations Courts of your Locality
- ii. Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219
FAX: (804) 371-5034
- iii. Department of Taxation
P. O. Box 2402
Richmond, VA 23218-2402

Commonwealth's Attorney: Please complete form fully, provide printed name of officer and locality, sign and date form. Fax to the attention of Bill Fussell, Compensation Board (804) 371-0235, not later than Friday, July 24, 2015. Provide copies to above listed agencies (by fax where listed) no later than Friday, July 24, 2015.

FAX

FY15/16 Fines and Fees

| | |
|-------------------------|---|
| Date: | _____ |
| To: | Bill Fussell Compensation Board 102 Governor Street Suite 120 Richmond, VA 23219 |
| Phone: | (804) 225-3475 |
| FAX: | (804) 371-0235 |
| Number of Pages: | <input type="text"/> Including Cover sheet |

| | |
|-----------------------|--------------------------------|
| From: | Commonwealth's Attorney |
| Name: | _____ |
| Contact Name: | _____ |
| Locality: | _____ |
| Locality Code: | _____ |
| Phone: | _____ |
| FAX: | _____ |

Contents of FAX includes the following completed, signed and dated forms (note both required, but may be submitted separately):

- FY16 Policy Statement for Fines and Fees: Commonwealth's Attorney (due no later than July 24, 2015)
- FY16 Election for Collection Method of Fines and Fees: Commonwealth's Attorney (due no later than July 24, 2015)

Please provide Contact Name and Phone Number in the office of the Commonwealth's Attorney for questions regarding these forms.

Code of Virginia, § 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; duties of Department of Taxation.

A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § [19.2-354](#), the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced 30 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the penalties and provisions of § [18.2-186.3](#).

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ [58.1-520](#) et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § [58.1-3958](#).

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § [19.2-354](#). Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § [19.2-354](#) shall be subject to the delinquent tax collection provisions of Title 58.1. The Department of Taxation and the State Compensation Board shall establish procedures to be followed by clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or collection agents and may employ private attorneys or collection agencies, or engage other state agencies to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Department of Taxation and the State Compensation Board shall annually report to the Governor and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and unpaid and those

which remain unsatisfied or do not meet the conditions of § [19.2-354](#) by each circuit and district court. The report shall include the procedures established by the Department of Taxation and the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures established by the Department of Taxation and the State Compensation Board.

(Code 1950, § 19.1-341.2; 1960, c. 366; 1975, c. 495; 1979, c. 469; 1983, cc. 415, 499; 1988, cc. 742, 750, 770, 852; 1991, c. 202; 1992, c. 623; 1993, c. 269; 1994, cc. 841, 945; 2001, c. 414; 2003, c. 262; 2006, c. 359; 2007, c. 551; 2012, c. 615.)

Code of Virginia, § 58.1-3958. Payment of Administrative Costs, etc.

The governing body of any county, city or town may impose, upon each person chargeable with delinquent taxes or other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed 20 percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed \$30 for taxes or other charges collected subsequent to 30 or more days after notice of delinquent taxes or charges pursuant to § [58.1-3919](#) but prior to the taking of any judgment with respect to such delinquent taxes or charges, and \$35 for taxes or other charges collected subsequent to judgment. If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be \$150 or 25 percent of the cost, whichever is less; however, in no event shall the fee be less than \$25.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § [58.1-3980](#), so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Code 1950, § 58-1020.1; 1982, c. 620; 1984, c. 675; 1991, c. 271; 1994, c. [932](#); 1995, c. [395](#); 1997, c. [496](#); 1998, c. [648](#); 1999, c. 389; 2000, cc. 389, 453; 2003, c. 170.

Chapter 665, 2015 Acts of Assembly (2015 Appropriation Act). Item 70. Compensation Board. Financial Assistance for Attorneys for the Commonwealth.

I. In accordance with the provisions of § 19.2-349, Code of Virginia, attorneys for the Commonwealth may employ individuals, or contract with private attorneys, private collection agencies, or other state or local agencies, to assist in collection of delinquent fines, costs, forfeitures, penalties, and restitution. If the attorney for the Commonwealth employs individuals, the costs associated with employing such individuals may be paid from the proceeds of the amounts collected provided that the cost is apportioned on a pro rata basis according to the amount collected which is due the state and that which is due the locality. If the attorney for the Commonwealth does not undertake collection, the attorney for the Commonwealth shall, as soon as practicable, take steps to ensure that any agreement or contract with an individual, attorney or agency complies with the terms of the current Master Guidelines Governing Collection of Unpaid Delinquent Court-Ordered Fines and Costs Pursuant to Virginia Code § 19.2-34 9 promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court, the Department of Taxation, and the Compensation Board ("the Master Guidelines"). Notwithstanding any other provision of law, the delinquent amounts owed shall be increased by seventeen (17) percent to help offset the costs associated with employing such individuals or contracting with such agencies or individuals. If such increase would exceed the contracted collection agent's fee, then the delinquent amount owed shall be increased by the percentage or amount of the collection agent's fee. Effective ~~January 1, 2016~~ *July 1, 2015*, as provided in § 19.2-349, Code of Virginia, *treasurers not being compensated on a contingency basis as of January 1, 2015 and other local government entities shall be prohibited from being compensated on a contingency basis but shall be instead compensated administrative cost pursuant to § 58.1-3958, Code of Virginia. Treasurers currently collecting a contingency fee shall be eligible to contract on a contingency fee basis until June 30, 2018. Effective July 1, 2015, any treasurer collecting a contingency fee shall retain only the expenses of collection, and the excess collection shall be divided between the state and the locality in the same manner as if the collection had been done by the attorney for the Commonwealth.* The attorneys for the Commonwealth shall account for the amounts collected and the fees and costs associated with the collections consistent with procedures issued by the Auditor of Public Accounts.