

**SUPPLEMENT TO STIPULATED SETTLEMENT AGREEMENT
AND RETENTION OF JURISDICTION**

THIS, Supplement to the Stipulated Settlement Agreement and Retention of Jurisdiction (hereinafter “Supplement”) is made by and among Counsel for the City of Biloxi (“Biloxi” or “the City”) and John Miller (“Miller”); Counsel for Judge James Steele (“Steele”); and Counsel for Qumotria Kennedy (“Kennedy”), Richard Tillery (“Tillery”), and Joseph Anderson (“Anderson”), (hereinafter referred to individually and collectively as “Plaintiffs”). Biloxi, Miller, Steele, Kennedy, Tillery, and Anderson are from time to time referred to hereinafter individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties entered into a Stipulated Settlement Agreement and Retention of Jurisdiction (the “Agreement”), dated the 15th day of March, 2016, to settle the cause of action styled *Kennedy, et al v. City of Biloxi, et al*; in the United States District Court for the Southern District of Mississippi; Civil Action No. 1:15-cv-00348-HSO-JCG;

WHEREAS, paragraph 31 of the Agreement requires the Parties “to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of [the] Agreement”;

WHEREAS, Counsel for Biloxi and Miller provided several status reports on and after August 18, 2016 concerning implementation of the Agreement;

WHEREAS, Counsel for the Parties have discussed measures to improve implementation of the Agreement through one in-person meeting, a telephonic meeting, and numerous correspondence sent my mail and email since August 18, 2016;

NOW, THEREFORE, Counsel, acting on behalf of the Parties, agree to the following in order to give full force and effect to the basic terms and intent of the Agreement:

1. Recitals. The recitals set forth above are incorporated herein by reference. The use of any capitalized term not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.

2. Compliance Hearings.

a. The Order Setting Compliance Hearing, which is attached as Exhibit A (Form One) to the Agreement, is hereby amended and replaced by the form labeled Order Setting Compliance Hearing attached hereto as Exhibit 1 (Form One).

b. In order to give full force and effect to Paragraph A(1)(b) of the Agreement, it is agreed that the Biloxi Municipal Court will provide defendants with at least twenty-one (21) days-notice of any Compliance Hearing date.

3. Advisement of Rights. The Biloxi Municipal Court Advisement of Rights and Obligations for Legal Financial Obligations and Community Service, which is attached as Exhibit A (Form Two) to the Agreement, is hereby replaced by the Biloxi Municipal Court Advisement on Payments and Community Service, attached hereto as Exhibit 1 (Form Two).

3. Notice of Change of Address. The Notice of Change of Address form, which is attached as Exhibit A (Form Two A) to the Agreement, is hereby replaced by the form labeled Notice of Change of Address attached hereto as Exhibit 1 (Form Three).

4. Affidavit of Indigence. The Affidavit of Indigence, which is attached as Exhibit A (Form Three) to the Agreement, is hereby replaced by the form labeled Affidavit of Indigence, which is attached hereto as Exhibit 1 (Form Four).

5. LFO Inability to Pay Guide. The LFO Inability to Pay Guide, which is attached as Exhibit A (Form Four) to the Agreement is replaced by the form labeled Affidavit of Indigence, which is attached hereto as Exhibit 1 (Form Four).

6. Bench Card. The Bench Card, which is attached as Exhibit B to the Agreement, is hereby revised to incorporate changes to the documents identified above and the revisions addressed in this Supplement. The amended Bench Card is attached hereto as Exhibit 2.

a. Counsel for the Parties have discussed current technological impediments to the Biloxi Municipal Court's post-sentencing issuance of a written statement to each defendant that itemizes the total amount of fines, fees, court costs, assessments and restitution owed. Counsel for the Parties shall continue to discuss improvements that would permit the Court to provide each defendant with such a statement after sentencing, and to provide such information on any subsequent Orders Setting a Compliance Hearing in the case.

7. Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service. The Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service, which are attached as Exhibit A to the Agreement, are hereby revised to incorporate the improvements addressed in this Supplement. The revised Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service are attached hereto as Exhibit 1.

a. The revised Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service include a form concerning the Compliance Hearing Ability to Pay Inquiry and Determinations, which is attached hereto as Exhibit 1 (Form Five).

8. Bonds. In order to give full force and effect to Paragraph 9 of the Agreement, it is agreed as follows:

Secured Money Bonds will not be used to detain persons arrested for any violation that may be prosecuted by Biloxi in its Municipal Court absent an examination by the Biloxi Municipal Court of the defendants' substantial risk of non-appearance and ability to pay. People arrested will be released on a Recognizance Bond or an Unsecured Bond as soon as practicable after booking unless:

a. The Biloxi Municipal Court finds, based on information in the record and by a preponderance of the evidence, that the defendant has willfully failed to appear, or otherwise willfully violated one or more of the conditions of his or her Recognizance bond, without good cause, in which case the Court may revoke bond and detain the person until his or her case reaches disposition, or may release the individual subject to additional non-financial conditions; or

b. The Biloxi Municipal Court makes a finding, based upon information in the record, that secured money bail is the only pretrial release option that will adequately assure the defendant's presence at trial, and makes a finding on the record that the defendant is able to pay.

9. Publication and Dissemination of Procedures. On or before November 1, 2016, Biloxi shall publish and disseminate the revised Biloxi Municipal Court Procedures on Legal Financial Obligations and Community Service, including all revised forms attached thereto, to all personnel of, or under the control of, the City of Biloxi involved in the imposition and/or collection of LFOs imposed by the Biloxi Municipal Court, including permanent and temporary Biloxi Municipal Court Judges, Biloxi Municipal Court staff, Biloxi public defenders and other defense counsel appointed to represent indigent people in Biloxi Municipal Court proceedings, Biloxi prosecutors, Biloxi Police Department staff, employees of private companies, if any, involved in the supervision of Biloxi Municipal Court probationers, or in the collection of legal financial obligations imposed by the Biloxi Municipal Court. This publication and dissemination shall include prominent placement of the Advisement of Rights on Payments and Community Service in the Biloxi Municipal Court located at 170 Porter Avenue in Biloxi, Mississippi, in the Biloxi Municipal Court courtroom in the Harrison County Adult Detention Center, and on the City of Biloxi website.

10. Changes to the City of Biloxi website. As of the date of this Agreement, Biloxi shall remove the following language from its website,

<http://www.biloxi.ms.us/departments/municipal-court/> Payment of Money and Community

Service:

Payment of fines, state assessments, fees, court costs, and restitution. If you plead guilty or are convicted of a misdemeanor, the Biloxi Municipal Court may impose fines, state assessments, fees, court costs, and/or restitution (“legal financial obligations” or “LFOs”). If you are found NOT GUILTY, the Court will NOT impose an LFO. You may pay the full amount of any LFO imposed upon you for a misdemeanor offense on the day of sentencing. If you are unable to pay in full on sentencing day, the Biloxi Municipal Court may place you on a Payment Plan administered by the Clerk of Court. The Court shall consider your ability to pay when setting the payment schedule.

The U.S. Constitution requires safeguards when collecting LFOs. No person shall be imprisoned for nonpayment of LFOs solely because they are unable to pay. A person may ONLY be jailed for nonpayment of a fine, fee, court cost, state assessment, or restitution following a court hearing where the Court considers the person’s ability to pay, efforts to secure resources, and alternatives to incarceration, and concludes, based on specific evidence, that the person **willfully failed to pay, failed to make sufficient efforts to secure money to pay, or that no adequate alternatives to incarceration exist.**

Your Rights. Any person who has not paid an LFO according to the terms of a Payment Plan has the right to a Compliance Hearing and the right to be represented by legal counsel for defense against possible incarceration for nonpayment of an LFO. If you are indigent, you also have a right to court-appointed counsel at no cost. The **Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service** seek to protect these rights and set forth the procedures the Court will follow.

Your Duty. It is your duty to keep the Biloxi Municipal Court informed of your mailing and residence address. As soon as reasonably possible after a change in your mailing and/or residence address, you should complete the Notice of Change of Address and deliver it to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530, by one of the following means:

(1) U.S. Mail, (2) hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or (3) email to coacourt@biloxi.ms.us. You may access the Notice of Change of Address form at <http://www.biloxi.ms.us/ChangeOfAddressForm.pdf>.

On or before November 1, 2016, Biloxi shall replace the aforementioned language on its website with the following text:

Payment of Money and Community Service

The Biloxi Municipal Court may require you to pay money if you plead guilty or are convicted of an offense. If you are found NOT GUILTY, the Court will NOT require you to pay money.

The Court will consider your ability to pay when setting the amount of money you owe and any payment schedule. If you cannot afford to pay, the Court may require you to do work to help the community instead.

You may pay the full amount that you owe on sentencing day. If you are unable to pay in full, the Court may place you on a Payment Plan. The Court will consider your ability to pay when setting the payment schedule.

YOUR RIGHTS: If you receive a notice that you owe money to the Court or did not complete community service, you have the following legal rights:

You have the right to a court hearing before the court can jail you.

The court will NOT put you in jail if you are not able to pay.

You MUST appear in court. You could be jailed if you do not.

You have the right to have a lawyer help you at the hearing.

A lawyer can help you avoid jail.

A lawyer can help you explain that you do not have the money to pay or could not complete community service.

You have the right to ask the Judge to appoint a lawyer to help you at the hearing.

You can ask the Judge to make you pay nothing for the lawyer.

AT THE COURT HEARING:

The Judge will decide whether you can pay.

If you cannot pay, the Judge will decide whether you can pay less or nothing at all, whether you can pay later, and whether you can work to help the community instead of paying.

If you were not able to complete community service, the Judge will decide whether to require fewer hours or provide another alternative.

The Judge may decide that you did not pay even though you had the money. The Judge may decide that you did not work for the community even though you were able. Only then, may the Judge sentence you to jail.

YOUR DUTY:

You MUST appear in court on the date set on the notice.

FAILURE TO APPEAR may result in your arrest.

You must keep the Court informed of your mailing and residence address.

As soon as reasonably possible after a change in address, you should complete the Notice of Change of Address and deliver it to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530, by one of the following means:

- (1) U.S. Mail,
- (2) hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or
- (3) email to coacourt@biloxi.ms.us.

You may access the Notice of Change of Address form by clicking [here](#).

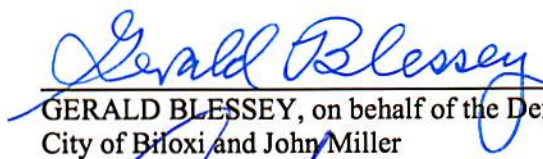
In the aforementioned text, the "here" shall be hyperlinked to the document attached hereto as Exhibit 1 (Form Three).

11. Ratification of Agreement; Counterparts. Except as modified by the provisions hereof, the Agreement shall remain in full force and effect, fully enforceable as provided therein. This Supplement may be executed in one or more counterparts, all of which

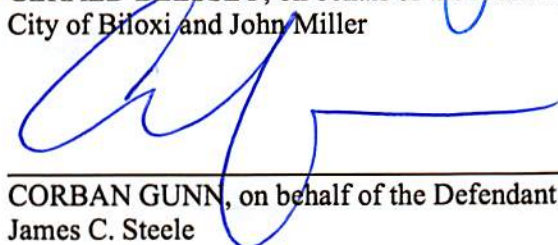
shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by and delivered to each of the parties.

Signatures on following page

IN WITNESS WHEREOF, Counsel for all Parties have caused this Supplement to the Agreement to be executed by their own signature .


GERALD BLESSEY, on behalf of the Defendants
City of Biloxi and John Miller

Date Sept. 27, 2016


CORBAN GUNN, on behalf of the Defendant
James C. Steele

Date Sept. 27, 2016

NUSRAT CHOUDHURY, on behalf of the Plaintiffs
Qumotria Kennedy, Joseph Anderson and Richard Tillery

Date _____

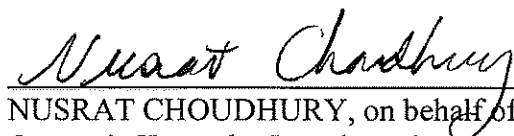
IN WITNESS WHEREOF, Counsel for all Parties have caused this Supplement to the Agreement to be executed by their own signature .

GERALD BLESSEY, on behalf of the Defendants
City of Biloxi and John Miller

Date _____

CORBAN GUNN, on behalf of the Defendant
James C. Steele

Date _____



NUSRAT CHOUDHURY, on behalf of the Plaintiffs
Qumotria Kennedy, Joseph Anderson and Richard Tillery

Date September 27, 2016

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

No person shall be imprisoned solely because she/he lacks the resources to pay a fine, state assessment, fee, court cost, or restitution (collectively, “legal financial obligation” or “LFO”), or because she/he is unable to perform any required community service.

A person alleged to have not paid an LFO has the right to an ability-to-pay hearing and the right to have legal counsel present for representation to defend against possible incarceration for failure to pay. An indigent person facing possible incarceration for LFO nonpayment has an affirmative right to representation by court-appointed counsel at no cost in LFO collection proceedings.

To protect these and other rights, all Biloxi and private company personnel, if any, involved in LFO collection and evaluation of performance of community service imposed by the Biloxi Municipal Court shall abide by the following policies and procedures.

I) FIRST APPEARANCE - APPOINTMENT OF COUNSEL

The Court may appoint counsel to represent an indigent defendant charged with a misdemeanor offense punishable by confinement. The Court shall determine indigence for purposes of appointing counsel by using the attached **Affidavit of Indigence** (Form Four) and by considering any other relevant factors.

When the Court determines that representation is required at the plea, trial, sentencing, or post-sentencing stage, it must appoint counsel to represent an indigent defendant, unless there is a knowing, voluntary, and intelligent waiver of the right.

II) SENTENCING

Counsel

A defendant is entitled to representation by counsel prior to the Court’s decision to impose a sentence of incarceration or probation for the collection of a fine, state assessment, fee, court cost, or restitution—absent a knowing, voluntary, and intelligent waiver of the right to counsel, as confirmed by an on-the-record colloquy with the Court. If the Court contemplates imposing incarceration or probation on an unrepresented defendant, or wishes to preserve its right to impose a jail sentence in the future, on an unrepresented defendant, the Court must conduct an indigence determination by using the attached **Affidavit of Indigence** (Form Four), and by considering any other relevant factors, to evaluate whether the defendant is entitled to court-appointed counsel at no cost.

It is a best practice for the Court to assign a public defender or court staff to help the defendant complete the Affidavit of Indigence.

If the Court determines that the defendant is not indigent, it may provide the defendant a continuance to permit retention of counsel. If the defendant seeks to waive the right to counsel at sentencing, the Court must conduct a colloquy to determine that any waiver is knowing, voluntary, and intelligent.

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

Imposition of Sentence

The Court shall assess ability to pay at sentencing when setting the amount of any fine, fee, court cost, or restitution. The Court's decision to impose jail time shall not be influenced by any finding that the defendant lacks the resources to pay a fine, state assessment, or restitution.

When the Court imposes a sentence that includes an LFO, the Court shall:

- (1) determine whether the defendant can pay in full that day, or needs additional time;
- (2) set the terms of a Payment Plan by which LFO payments shall be made to the Biloxi Municipal Court Clerk, if the defendant cannot pay in full on sentencing day;
- (3) set forth the sentence, including any Payment Plan terms, in a written order indicating the final date by which LFOs must be paid;
- (4) set forth an itemized list of the amounts due for fines, fees, costs, assessments, and restitution; and
- (5) provide the defendant the attached **Advisement of Rights and Obligations on Payments and Community Service** (Form Two).

No person unable to pay LFOs in full on sentencing day will be charged additional fees, costs, or interest for being placed on a Payment Plan with the following exception: a surcharge may be imposed on a defendant who chooses to make an LFO payment by credit card or debit card.

Advisement of Defendant's Responsibility to Inform the Court of Mailing Address Changes

The Court shall advise the defendant of her/his duty to inform the Court of any future changes to the defendant's mailing address and that failure to attend any future Compliance Hearings due to non-receipt of a hearing notice by mail may result in the issuance of an arrest warrant for failure to appear.

As soon as reasonably possible after a defendant has a change of mailing address, the defendant shall deliver to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530 the **Notice of Change of Address** (Form Four). The defendant may deliver the notice by U.S. Mail, by hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or by email to coacourt@biloxi.ms.us. The Notice of Change of Address may be accessed at <http://www.biloxi.ms.us/ChangeOfAddressForm>.

III) COMPLIANCE HEARINGS

The Court shall set a Compliance Hearing, by using the attached **Biloxi Municipal Court Order Setting Compliance Hearing** (Form One) (the "Order"), for every person who is sentenced to LFOs and/or community service and who is alleged to have failed to meet the requirements of the Court's imposed sentence.

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

The **Order** (Form One) will be sent by regular U.S. Mail to the defendant's last known address with the **Advisement of Rights and Obligations on Payments and Community Service** (Form Two).

The **Order** (Form One) will provide the defendant with at least twenty-one (21) days-notice of the Compliance Hearing date and time.

If the Court will impose a jail sentence or wishes to preserve its right to impose a jail sentence in the future, the Court shall appoint counsel at no cost to represent an indigent defendant at a Compliance Hearing unless there is a knowing, voluntary, and intelligent waiver of the right to counsel. The Court shall determine indigence by using the attached **Affidavit of Indigence** (Form Four) and by considering any other relevant factors.

If the Court determines that the defendant is not indigent, it may provide the defendant a continuance to permit retention of counsel. The Court will document its finding that the defendant was, or was not, indigent and provide evidence in the record to support any finding of non-indigence.

For indigent defendants, the Court will document that a public defender was appointed for the defendant and appeared with the defendant at the Compliance Hearing or that the public defender was offered and that after the Court conducted a colloquy, the defendant knowingly, voluntarily and intelligently waived his/her right to an attorney.

Hearing Procedures and Standards

The Court must advise defendants of the following information set forth in the **Bench Card**:

1. all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or restitution;
2. all defendants' right to be represented by legal counsel for defense against possible incarceration for failure to pay LFOs;
3. indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in proceedings concerning nonpayment of LFOs;
4. that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing;
5. the type of information relevant to determining ability to pay;
6. the potential penalties if a defendant is found to have willfully failed to pay an LFO; and
7. that any waiver of the right to counsel or the right to court-appointed counsel must be knowing, voluntary, and intelligent.

The defendant must be given an opportunity to present evidence that the amount allegedly owed is not accurate, or is not in fact owed, if the defendant believes that the amount is not correct.

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

In Compliance Hearings the Court shall consider, and make findings on, the defendant's ability to pay, efforts to secure resources, and, if the defendant is found to be unable to pay, the adequacy of alternatives to incarceration.

The Court will document its actions, findings, and evidence in support of its findings, including the Court's decision on whether the defendant is able to pay LFOs or has willfully failed to pay, whether the defendant made adequate efforts to secure resources, and, if the defendant is found to be unable to pay, whether alternatives to incarceration are adequate to achieve the City's interests in punishment and deterrence.

Ability to Pay

To determine ability to pay, the Court shall use the **Affidavit of Indigence** (Form Four) and inquire on the topics set forth in the attached Compliance Hearing Ability to Pay Inquiry and Determinations (Form Five), as well as any other factors considered by the Court to be relevant.

Any determinations that the Court makes regarding ability to pay or willfulness of nonpayment shall be guided by the **Bench Card**, and applicable law.

If a defendant is represented, the Court shall provide the defendant with adequate time to privately confer with defense counsel on the issue of ability to pay prior to the Court's ability-to-pay inquiry.

During the hearing, the Court shall carefully consider the defendant's responses to each question before making any determination regarding ability to pay and whether nonpayment was willful. If a defendant is unable to provide the information requested by the Court during an ability-to-pay inquiry, the Court shall consider allowing the defendant (and, if applicable, counsel) additional time to gather information to respond to the Court's questions.

The Court shall find that a defendant is unable to pay LFOs when, in consideration of the totality of the circumstances, it finds that the payment of LFOs would impose substantial hardship on the defendant or the defendant's dependents, including children and elderly parents. There shall be a rebuttable presumption that a person is unable to pay LFOs upon a finding of at least one of the following factors:

1. the defendant's annual income is at or below 125% of the federal poverty level for his or her household size according to the current Federal Poverty Level ("FPL") chart;
2. the defendant is homeless;
3. the defendant is incarcerated; or
4. the defendant resides in a mental health facility.

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

Efforts to Secure Resources

In inquiring into, and making a determination on, the reasonableness of a defendant's efforts to acquire resources to pay LFOs, the Court shall consider the defendant's efforts to earn money, secure employment, and borrow money, as well as any limitations on the defendant's ability to engage in such efforts due to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors.

Alternatives to Incarceration

If the Court determines that a person is unable to pay fines, fees, court costs, restitution, or state assessments, it shall consider alternative methods of achieving the City's interest in punishment and deterrence as set forth in the **Bench Card**, and shall be guided by the Supreme Court's recognition that the government's "interest in punishment and deterrence can often be served fully by alternative means" to incarceration. *Bearden v. Georgia*, 461 U.S. 670, 671–72 (1983). These alternatives to incarceration shall include the following:

1. Reduction of the amount of fines, fees, court costs, and restitution imposed;
2. Waiver or Suspension of the fines, fees, court costs, and restitution imposed;
3. Community Service credit toward the discharge of fines, fees, state assessments, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
4. Extension of the amount of time for payment of the fines, fees, state assessments, court costs, and restitution imposed;
5. Completion of Approved Job Skills Training and Educational, Drug Treatment, Counseling and Mental Health Programs as an alternative or in addition to community service toward the discharge of fines, fees, state assessments, court costs, and restitution owed to Biloxi; and
6. Any other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Imposition of Jail

The Court may not impose jail for failure to pay an LFO without making at least one of the following **written findings based on evidence**:

1. the defendant's failure to pay was willful;
2. the defendant failed to make sufficient bona fide efforts to acquire the resources to pay; and/or

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

3. the defendant was unable to pay, despite having made sufficient efforts to acquire resources, but alternative methods for achieving punishment or deterrence, including a reduction or waiver of the fine or restitution, an extension of time to pay, community service, and completion of approved programs are not adequate.

The Court may never impose jail solely because a defendant lacks the resources to pay a fine, fee, court cost, state assessment, or restitution.

Collections By Third Party Contractors

The Court may send a case to collections by a third-party contractor if a defendant has failed to make LFO payments in accordance with a Payment Plan and the Court has determined, after holding a Compliance Hearing in accordance with the procedures described herein, that:

1. the defendant has the ability to pay, but has refused or failed to pay the fine, fee, court costs, restitution, or state assessment owed; or
2. the defendant is unable to pay the LFO, but has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure resources in order to pay a fine, fee, court cost, state assessment or restitution.

In any civil execution, attachment, and/or wage garnishment proceeding to collect unpaid LFOs, the defendant is entitled to the exemptions and exclusions found in Miss. Code Ann. § 85-3-1.

IV. FAILURE TO APPEAR

If a defendant fails to appear for a Compliance Hearing after the Court has mailed twenty-one (21) days notice of the Compliance Hearing to the address provided by the defendant, and the defendant has not previously contacted the Court to request a new date, the Court may issue a *capias* for failure to appear. It is defendant's duty and responsibility to notify immediately the Municipal Court of any change in her/his address and to notify the Court of any request for adjournment.

All efforts must be made to serve the *capias* during business hours on a weekday.

If a person who is the subject of a *capias* turns himself/herself in, officers shall promptly escort the person to the Biloxi Municipal Court for a determination as to whether counsel is required and for recall of the *capias*. If a judge is not immediately available, Court staff shall provide in-person service of an Order Setting Compliance Hearing to appear at the next available Compliance Hearing date. The *capias* shall be recalled and the person will be released on an unsecured bond.

Upon arrest pursuant to a *capias*, the defendant should be promptly escorted to the Biloxi Municipal Court for a determination as to whether counsel is required and a Compliance Hearing pursuant to the procedures described above and in the Bench Card. If a judge is not immediately available to conduct a Compliance Hearing, the on-duty bond officer shall issue an unsecured bond.

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM ONE

BILOXI MUNICIPAL COURT
ORDER SETTING COMPLIANCE HEARING
170 Porter Avenue, Public Safety Building, First Floor, Biloxi, MS 39530

CASE NUMBER:

DEFENDANT NAME:

COMPLIANCE HEARING DATE:

TOTAL BALANCE DUE:

TOTAL COMMUNITY SERVICE OR PROGRAM HOURS REQUIRED:

YOU ARE HEREBY ORDERED to appear before the Biloxi Municipal Court at 9:00 o'clock a.m., on the _____ day of _____, 20____, to explain why you did not pay, complete community service and/or an approved program as required by the Biloxi Municipal Court.

You MUST appear on the date set forth above, if you have not responded before then.

The Court will NOT put you in jail if you appear and are NOT ABLE TO PAY.

FAILURE TO APPEAR may result in your arrest and a finding of contempt of Court.

At the hearing, you may ask the judge to appoint a free lawyer to help you.

If you cannot afford a lawyer, the judge will appoint a free lawyer to help you.

Please see the attached list of your rights and obligations.

Biloxi Municipal Court Judge

IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.

Attachments:

Form Two: Advisement of Rights Regarding Payments and Community Service
Form Three: Notice of Change of Address

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM TWO

BILOXI MUNICIPAL COURT
ADVISEMENT OF RIGHTS AND OBLIGATIONS ON PAYMENTS AND COMMUNITY SERVICE

The Court has required you to pay money or complete community service.
The amount you owe and when you must pay are listed on the Order given to you.

If you receive a notice that you **owe money to the Court** or **did not complete community service**, you have the following legal rights:

1) You have the right to a court hearing before being jailed for nonpayment.

You can explain that you already paid.
You can explain that you owe less than the amount the Court says you owe.
You can tell the Court how much money you have.
You can tell the Court how much you pay for rent, food, or other important things.
You can ask the Court to let you pay the money later.
You can ask the Court to let you do work to help the community instead of paying money.
You can ask the Court to make you pay less, or nothing at all.

2) You have the right to a court hearing before being jailed for not completing community service.

You can explain that you already completed community service.
You can explain why you could not complete it (e.g., work, transportation issues, caring for children).

3) You have the right to have a lawyer help you at the hearing.

A lawyer can help you avoid jail.
A lawyer can help you explain that you do not have money to pay OR cannot do community service.

4) You have the right to ask the Judge to appoint a lawyer to help you at the hearing.

The Judge will decide whether to appoint a lawyer for you.
You can ask the Judge to make you pay nothing for the lawyer appointed to help you.

5) Do you want a lawyer? When you arrive in Court, ask the Judge to appoint a lawyer to help you.

6) At the court hearing:

The Judge will decide whether you can pay.
The Judge will decide whether you tried to earn the money to pay.
The Judge will decide whether you could not earn money because you do not have transportation, need to care for your kids, or are disabled.

If you cannot pay, the Judge will decide whether you can pay less or nothing at all, can pay later, or can do work to help the community instead of paying.

The Judge may decide that you did not pay even though you had the money.
Only then, may the Judge sentence you to jail.

The Judge will decide whether you were unable to complete community service.

The Judge may decide that you did not work for the community even though you were able. Only then, may the Judge sentence you to jail.

EXHIBIT 1
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM FOUR

AFFIDAVIT OF INDIGENCE

In the Municipal Court of the City of Biloxi, Mississippi

CITY OF BILOXI

v.

Case No. _____

_____, Defendant

SECTION I. – IDENTIFICATION

Name – Last, First, Middle		Date of Birth	Spouse Full Name (if married)	
Home Address		City	State	Zip
Telephone Number	Driver's License Number		Social Security Number	
Number of People in Household	Employer		Occupation	
Employer Telephone Number	Employer Address		Length of Employment	

SECTION II. – ASSISTANCE BENEFITS

Do you or anyone in your household receive any public assistance benefits (SSI, food stamps, Section 8 housing, etc.)? ☐ Yes ☐ No

SECTION III. – INCOME/EXPENSE STATEMENT

MONTHLY GROSS INCOME	AMOUNT
Monthly Gross Income (before taxes)	\$ _____
Spouse's Monthly Gross Income	\$ _____
Other Earnings (Bonuses, Interest, etc.)	\$ _____
Contributions from Other People	\$ _____
Unemployment, Workers' Comp, Social Security, Retirement	\$ _____
Other Income	\$ _____
TOTAL MONTHLY INCOME	\$ _____

INCOME: \$ _____

EXPENSES: - \$ _____

DISPOSABLE INCOME \$ _____
 (Income left over after expenses)

MONTHLY EXPENSES	AMOUNT
Living Expenses	\$ _____
Rent/Mortgage	\$ _____
Total Utilities: Gas Electric, Water, etc.	\$ _____
Food	\$ _____
Clothing	\$ _____
Health Care / Medical	\$ _____
Loan Payments	\$ _____
Credit Card Payments	\$ _____
Educational / Employment Expenses	\$ _____
Other	\$ _____
Child Support / Alimony Payments	\$ _____
Exceptional Expenses	\$ _____
Transportation (car payment, insurance, etc.)	_____
TOTAL MONTHLY EXPENSES	\$ _____

EXHIBIT 1

BILOXI MUNICIPAL COURT PROCEDURES FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

SECTION IV. – LIQUID ASSETS

LIQUID ASSETS	AMOUNT
Cash on Hand / Bank (or available stocks, bonds, etc)	\$
Equity in Real Estate (value of property less what you owe)	\$
Equity in Personal Property (such as value of motor vehicles, stereo, furniture, jewelry, etc.)	\$
Other	\$
Do you own anything else of value?	\$
TOTAL LIQUID ASSETS	\$

SECTION V. - AFFIDAVIT

I am unable to pay court costs. I verify under penalty of perjury that the statements made in this affidavit are true and correct. I understand the Court may require verification of the information provided above. I agree to immediately report any change in my financial status to the court.

I authorize the Court or its representative(s) to obtain records or information pertaining to my financial status from any source in order to verify information provided by me.

I also understand and agree that the Court may mail important notices to me at the address I provided above and that I have a duty to immediately inform the Court of any change in my address. Failure to do so could result in my failure to receive important notices and lead to the issuance of a warrant for my arrest.

→ _____
Your Signature

Date

IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.

EXHIBIT 1

**BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE**

**BILOXI MUNICIPAL COURT
170 Porter Avenue, Public Safety Building, First Floor, Biloxi, MS 39530
COMPLIANCE HEARING DISPOSITION SHEET**

FORM FIVE

Defendant's Name: _____

Case Number: _____

Charge(s): _____

Total Amount Owed: \$ _____ **or Total Hours of Credit Remaining:** _____

1. The Public Defender ☐ was or ☐ was NOT appointed to represent the Defendant.
2. Public Defender's Name (if appointed) _____
3. The Defendant ☐ did or ☐ did NOT make a knowing, voluntary and intelligent waiver of the right to counsel.
4. The Defendant ☐ did or ☐ did NOT execute an Affidavit of Indigency.
5. The Defendant's monthly income ☐ is or ☐ is NOT below 125% of the relevant Federal Poverty Guideline for household size.
6. The Defendant ☐ is or ☐ is NOT homeless.
7. The Defendant ☐ is or ☐ is NOT incarcerated.
8. The Defendant ☐ does or ☐ does NOT reside in a mental health facility.
9. The Defendant ☐ has or ☐ has NOT experienced a change in circumstances since sentencing.
10. The Defendant ☐ did or ☐ did NOT contest the amount owed or remaining hours of credit.
11. Does the Defendant face limitations on the ability to earn money due to:
 - ☐ Lack of access to transportation or limitations on driving privileges?
 - ☐ Child care requirements?
 - ☐ Other relevant factors? _____

*For 2016, 125% of FPG is:
\$14,850 for an individual;
\$20,025 for a family of 2;
\$25,200 for a family of 3;
\$30,375 for a family of 4;
\$35,550 for a family of 5;
\$40,725 for a family of 6.*

EXHIBIT 1

**BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE**

12. The Court determines that the Defendant ☐ is able to pay or ☐ is NOT able to pay.
(Explain)

.....

.....

.....

13. The Court determines that the Defendant ☐ has or ☐ has NOT made sufficient bona fide efforts to secure the resources to pay LFOs or earn other credit. (Explain)

.....

.....

.....

14. The Court determines that the Defendant ☐ did NOT willfully fail to pay, or ☐ did willfully fail to pay and is therefore found to be in contempt of court.” (Explain)

.....

.....

.....

The Court orders:

- ☐ Reduction of the amount of fines, fees, court costs, and restitution imposed;
- ☐ Waiver or Suspension of the fines, fees, court costs, and restitution imposed;
- ☐ Community Service credit toward the discharge of fines, fees, state assessments, court costs, and restitution owed to Biloxi;
- ☐ Completion of Approved Job Skills Training and Educational, Drug Treatment, Counseling, and Mental Health Programs;
- ☐ Extension of the Amount of Time for payment; and/or
- ☐ Any Other Disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law. (Specify below)

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.....

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EXHIBIT 2

BENCH CARD

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

The U.S. Constitution and Mississippi law require safeguards when collecting fines, state assessments, fees, court costs, and restitution (collectively, “legal financial obligations” or “LFOs”).¹ All Biloxi Municipal Court (“BMC”) Judges shall abide by the procedures described below.

RIGHT TO COUNSEL

FIRST APPEARANCE:

When a person is brought before the Biloxi Municipal Court, and charged with a misdemeanor, the Court shall provide the defendant an opportunity to sign an **Affidavit of Indigence** stating that he or she is indigent and unable to employ counsel.²

It is a best practice for the Court to assign a public defender or court staff to help the defendant complete the Affidavit of Indigence.

The court shall use the **Affidavit of Indigence**, and any other relevant factors, to evaluate whether the defendant is entitled to counsel.

The court may appoint counsel to represent an indigent defendant charged with a misdemeanor punishable by confinement.³

When the court determines that representation is required at the plea, trial, sentencing, or post-sentencing stage of the proceedings, it must appoint counsel to represent an indigent defendant, unless there is a knowing, voluntary, and intelligent waiver of the right to counsel.⁴

SENTENCING:

A defendant is entitled to the assistance of counsel *before* being sentenced to incarceration or probation for the collection of a fine, fee, court cost, state assessment, or restitution, unless there is a knowing, voluntary and intelligent waiver of the right to counsel.⁵

If the Court contemplates imposing incarceration or probation on an unrepresented defendant, or wishes to preserve its right to impose a jail sentence or probation in the future, the Court must conduct an indigence determination by using the **Affidavit of Indigence**, and considering any other relevant factors, to evaluate whether the defendant is entitled to court-appointed counsel at no cost.

COMPLIANCE HEARING:

The court must inform every person charged with failure to pay an LFO of:

- (1) all defendants’ right to representation by legal counsel in any proceeding concerning nonpayment;
- (2) indigent defendants’ right to court-appointed representation at no cost when facing possible incarceration for failure to pay LFOs.

The Court must appoint counsel to represent indigent people who face the possibility of incarceration due to nonpayment of an LFO, including in Compliance Hearings and Probation Revocation Hearings, unless there is a knowing, voluntary, and intelligent waiver of that right.

WAIVER OF RIGHT TO COUNSEL:

The Court **may not** accept a written or oral waiver of any right to court-appointed counsel without FIRST informing the defendant of the nature of the charges, of the defendant’s right to be counseled regarding her/his plea, and the range of possible punishments, and ensuring that any waiver is knowing, intelligent, and voluntary.

If a defendant/probationer seeks to waive his or her right to counsel, the court must conduct a colloquy on the right to inform the defendant:

- (1) **that the indigent defendant has a right to a court- appointed attorney or public defender at no cost;**
- (2) **that any fee normally charged for representation by a court-appointed attorney shall be waived** for indigent defendants; and
- (3) the nature of the charges against the defendant, of defendants’ right to be counseled regarding his or her plea, and the range of possible punishments.

EXHIBIT 2

BENCH CARD

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs

SENTENCING:

The Court shall assess ability to pay when setting the amount of any fine, fee, court cost, or restitution.⁶ The Court should consider:

- (1) the defendant's financial resources and income;
- (2) the defendant's financial obligations and dependents;
- (3) the defendant's efforts and ability to find and engage in paid work, including any limitations due to disability or residence in a mental health facility;
- (4) outstanding LFO obligations in other cases or to other courts;
- (5) the length of the defendant's probation sentence, if any;
- (6) the goals of deterrence, retribution, and rehabilitation;
- (7) the Affidavit of Indigence; and
- (8) any other factor or evidence that the Court deems appropriate.

The Court shall also consider the ability to perform community service when setting any community service requirements.

Fines, Fees, Court Costs, and Restitution:

If the defendant is unable to pay, the Court should consider:

- (1) Reduction of the amount of fines, fees, court costs, and restitution imposed;
- (2) Waiver or Suspension of the fines, fees, court costs and restitution imposed;
- (3) Community Service credit toward the discharge of fines, fees, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
- (4) Extension of the amount of time for payment of the fines, restitution, fees, and court costs imposed;
- (5) Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- (6) Other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Mandatory State Assessments:

If the defendant is unable to pay, the Court should consider:

- (1) extending the defendant's time to pay;
- (2) requiring the defendant to perform community service to satisfy the state assessment fees;
- (3) requiring the completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- (4) imposing any other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

The Court may not reduce or suspend any mandatory state assessments, including those imposed under Miss. Code Ann. § 99-19-73.

Jail: The Court's decision to sentence a defendant to jail shall NOT solely be based on any finding that the defendant is unable to pay a fine, state assessment, court costs, fee, or restitution.

After setting the amount of any LFOs, and Community Service, and Program Requirements the Court shall:

- (1) Determine whether the defendant can pay LFOs in full, or needs additional time;
- (2) Set the terms of a Payment Plan by which LFO payments shall be made to the BMC Clerk, if the defendant cannot pay in full on sentencing day;
- (3) Set forth the sentence in a written order indicating the final date for payment of LFOs and performance of community service, any Payment Plan terms and the total amount of (1) fines, (2) restitution, (2) fees and costs, and (3) state assessments;
- (4) Provide the defendant the **Advisement of Rights Regarding Payments and Community Service** and the **Notice of Change of Address** form.

REPORT OF NONPAYMENT:

Warrants: The court shall not issue any warrant directing arrest for alleged LFO nonpayment absent a Compliance Hearing as described below.

The Court shall hold a Compliance Hearing for defendants who are sentenced to LFOs, community service and/or training, treatment, counseling and mental health programs and who are alleged to have failed to meet the requirements of the Court's sentence.

The Court shall provide at least 21-days notice of a Compliance Hearing through use of the **Biloxi Municipal Court Order Setting Compliance Hearing**. The Court shall also provide the **Advisement of Rights Regarding Payments and Community Service**, and the **Notice of Change of Address** form when providing notice of a Compliance Hearing.

EXHIBIT 2

BENCH CARD

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs (continued)

COMPLIANCE HEARING:

Compliance Hearings will be audio recorded. In the event audio recording equipment is temporarily not working, the Court shall ensure that the case record includes: 1) the evidence submitted by the defendant, and 2) written documentation of the Court's findings, supporting evidence, and colloquy concerning ability to pay, efforts to secure resources, alternatives to incarceration, and the right to counsel.

Hearing Procedures and Standards

The Court must advise defendants of:

- (1) all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or restitution;
- (2) all defendants' right to be represented by legal counsel for defense against possible incarceration for failure to pay LFOs;
- (3) indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in proceedings concerning nonpayment of LFOs;
- (4) that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing;
- (5) the type of information relevant to determining ability to pay; and
- (6) the potential penalties if a person is found to have willfully failed to pay an LFO.

The Court must provide defendants an opportunity to present evidence that the amount allegedly owed is not accurate or not in fact owed if the defendant believes the amount is not correct.

As part of determining whether the failure to pay was willful and whether incarceration can be imposed, the Court shall:

1. **Inquire into, and make a determination on, ability to pay LFOs**, by considering the totality of the circumstances, including the defendant's income, assets, debts, other LFO obligations, and any other information the Court deems appropriate. The Court shall use the **Affidavit of Indigence** to conduct this inquiry.

The Court shall find that a defendant is unable to pay LFOs when, in consideration of the totality of the circumstances, it finds that the payment of LFOs would impose substantial hardship on the defendant or the defendant's dependents, including children and elderly parents. The Court shall make a rebuttable presumption that a person is unable to pay LFOs when:

- a. the defendant's annual income is at or below 125% of the federal poverty level for his or her household size according to the current Federal Poverty Level ("FPL") chart;
- b. the defendant is homeless;
- c. the defendant is incarcerated; and/or
- d. the defendant resides in a mental health facility.

2. **Inquire into, and make a determination on, the reasonableness of a defendant's efforts to acquire resources to pay LFOs**.

The Court shall take into account efforts to earn money, secure employment and borrow money, as well as any limitations on the defendant's ability to engage in such efforts due to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors.

3. If the Court determines that a defendant is unable to pay, **the Court will consider and make a determination on the adequacy of alternatives to incarceration for nonpayment of fines or restitution**, including:

- a. Reduction of the amount of fines, fees, court costs, and restitution imposed;
- b. Waiver or Suspension of the fines, restitution, fees, and court costs imposed;
- c. Community Service credit toward the discharge of fines, fees, state assessments, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
- d. Extension of the amount of time for payment of the fines, restitution, fees, state assessments, and court costs imposed;
- e. Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- f. Imposing other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Judges shall be guided by the Supreme Court's recognition that the government's "interest in punishment and deterrence can often be served fully by alternative means" to incarceration.⁷

The Court will document its actions and findings and evidence in the record supporting its findings.

EXHIBIT 2

BENCH CARD

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs (continued)

IMPOSING JAIL FOR FAILURE TO PAY

The Court may impose incarceration following a Compliance Hearing if it makes one of the following findings, supported by evidence:

- (1) a defendant has willfully refused to pay the fine, fee, court cost, state assessment, or restitution when she/he has the means to pay;
- (2) a defendant has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure resources in order to pay the fine; or
- (3) the defendant is unable to pay, despite making sufficient efforts to acquire the resources to pay, and alternative methods for achieving punishment or deterrence are not adequate.⁸

THIRD PARTY COLLECTIONS

The Court may send a case to collections by a third-party contractor if a defendant has failed to make LFO payments in accordance with a Payment Plan and the Court has determined, after holding a Compliance Hearing in accordance with the procedures described herein, that:

- (1) the defendant has the ability to pay, but has refused to pay the LFO(s) owed; or
- (2) the defendant is unable to pay the LFO, but has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure the resources in order to pay a fine, fee, court cost, state assessment, or restitution.

In any civil execution, attachment, and/or wage garnishment proceeding to collect unpaid LFOs, the defendant is entitled to the exemptions and exclusions found in Miss. Code Ann. § 85-3-1.

Collecting Fines, Fees, State Assessments, Court Costs, and Restitution

Permitted Methods of Collection

- Voluntary Payment
- Payment Plan Administered by Court
- Community Service (except restitution owed to a party other than Biloxi)
- Execution of Civil Judgment
- Collection by Third Party Contractors following Compliance Hearing and Court determination as described above.

Impermissible Methods of Collection

- Imposing Jail at Sentencing
- Issuance of Failure-to-Pay Warrants Upon Report of Nonpayment
- Forfeiture of Confiscated Money
- Imposing “pay or stay” sentence

¹ *Bearden v. Georgia*, 461 U.S. 670, 672 (1983) (“If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court *must* consider alternative measures to punishment other than imprisonment.”) (*Emphasis added*); Miss. Code Ann. §§ 21-23-7; 25-32-9; 63-1-53; 99-15-26; 99-37-11.

² Miss. Code Ann. § 25-32-9.

³ Miss. Code Ann. §§ 21-23-7; 25-32-9

⁴ Miss. Code Ann. § 25-32-9.

⁵ *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).

⁶ *Bearden v. Georgia*, 461 U.S. 660, 669–70 (1983) (“[W]hen determining initially whether the State’s penological interests require imposition of a term of imprisonment, the sentencing court can consider the entire background of the defendant, including his employment history and financial resources.”).

⁷ *Bearden v. Georgia*, 461 U.S. 670, 671–72 (1983).

⁸ *Id.* at 668–69.