



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

Office of the Director  
Judge John W. Smith  
Director

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July 14, 2009

PRELIMINARY MEMORANDUM

To: Clerks of Court

From: John W. Smith, Director

Re: Change in Default Priorities for Restitution to Victims in Criminal Cases

**Immediate Change:** As a result of a recent article in *The News and Observer*, it has come to our attention that in some cases restitution to some victims which should have defaulted to first priority in the NCAOC's Financial Management System (FMS) in which clerks entered bill of costs, was assigned a lower priority by the default settings in FMS. The default setting in the software is being changed tonight, July 13, 2009, and will be effective for all bill of costs entered on July 14, 2009 and forward. This should occur whether the case is a Victims Rights Act case or not.

**Cases to Which Change Applies:** This first priority default should be used only for the actual victims of the crime for which the defendant was convicted: that is, the person assaulted, the person defrauded, or the owner of the property stolen. Others to whom restitution may have been ordered (hospitals, insurance companies, or other entities suffering secondary losses) should remain at the lower default settings unless otherwise ordered by the sentencing judge.

**Application to Pending Cases With On-going Payments:** If a victim for whom the restitution priority was not set as first priority brings that fact to the attention of the clerk in writing and payments will be disbursed in the future, we request that the entries be modified to reflect a first priority for future disbursements unless the record affirmatively reflects that a different priority was specifically ordered by the court.

**Application to Closed Cases and Completed Disbursements:** If payments made in the past have already been disbursed, no adjustments should be made to those past disbursements at this time. If a victim brings to your attention that payments were made by a probationer and applied in a priority other than victim restitution first, it presently appears that reallocations of previously disbursed funds will require a hearing and a court order. This should be based on a written motion. We are studying this issue and working with the Attorney General to see if a more appropriate procedures exist, but each case is so fact-specific that no general instructions can be provided at

this time, other than to seek a hearing before the sentencing judge to determine what action, if any, should be taken. We, or the Attorney General, will provide further guidance as our final policy memorandum takes shape.

**Judicial Issues:** For judges who are confronted with this problem, we are preparing a separate memorandum.

**Background:** The priority previously established evolved over many years, and there is no single statute designating the appropriate priorities for all of the possible disbursements of court payments by a probationer. Legislative committees had been informed of the ambiguities and informed of the consequences of our previous default order of arranging disbursements in 2004, and they took no action to modify it. This was done when the present listing of priorities was programmed into the FMS. It is arguable that the previous decision on priorities was a reasonable construction of the statutes, but it appears persuasive to me that victims of crimes should have absolute priority unless the legislature specifically directs otherwise or a sentencing judge orders otherwise. Therefore, this change is effective immediately.

**Your Suggestions and Observations are Appreciated:** We apologize for any inconvenience this immediate policy change may cause, and we appreciate any suggestions as to how to more easily effectuate this change in policy. Please feel free to contact me or anyone on our staff about any further questions or unintended consequences caused by this change. We will try to have a comprehensive memorandum on priorities out soon.