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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Callie T. Dietz
Administrative Director of Courts
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Montgomery, Alabama 36104-3741

Fees -- Restitution Recovery Fund -- Pro
Rata Payments -- District Attorney's
Fund -- Funds

The statute does not authorize distribution of the whole of the 30 percent collection fee unless the whole of the unpaid sums due are collected. For partial collections, a partial collection fee is earned and may be distributed only in proportion to the sums actually collected, i.e., a pro rata distribution.

Based on the example and pursuant to the statute that provides for division of this collection fee between the district attorney's fund and the clerk's fund, the district attorney's fund is entitled to 75 percent of this 23.08 percent, or 17.31 percent of any sums collected, and the clerk's fund is entitled to 25 percent of this 23.08 percent, or 5.77 percent of any sums collected.

Dear Ms. Dietz:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

In the event of a referral for an unpaid restitution award, cost, fine, fee, or other monetary assessment or award and the collection of less than the whole amount of any of these unpaid sums, does the statute authorize distribution to the district attorney's fund and clerk's fund of the entire fee that would be due if the entire sum was collected, or does it authorize distribution to these funds of only a pro rata share of the partial sums collected?

For example, where there is an unpaid \$1000 restitution award that is referred to a district attorney's recovery division and the court then adds an additional \$300 collection fee, if the district attorney thereafter collects only \$300 of the total \$1300 amount due, is the district attorney authorized to pay the entire \$300 over to the district attorney's and circuit clerk's funds, or is the district attorney authorized to pay to these funds only a pro rata share of the sums actually collected, i.e., $300/1300$ or 23.08 percent of the \$300 that was actually collected?

FACTS AND ANALYSIS

Section 12-17-225.4 of the Code of Alabama¹ provides that, upon referral for collection of an unpaid restitution award, cost, fine, fee, or

¹Section 12-17-225.4, provides, in its entirety, as follows:

After a matter has been transferred to a district attorney under Section 12-17-225.2, a court shall assess a collection fee of 30 percent of the funds due which shall be added to the amount of funds due. Any amount collected pursuant to this division shall be distributed as follows:

(1) Seventy-five percent of the collection fee shall be distributed to the county district

other monetary assessment or award to the restitution recovery division of a district attorney's office, the court "shall assess a collection fee of 30 percent of the funds due which shall be added to the amount of funds due." ALA. CODE § 12-17-225.4 (2006). This section further provides

attorney's fund to be expended for lawful purposes for the operation of the office of the district attorney. Funds provided to the district attorney by this division shall not reduce the amount payable to the district attorney under any local act or general act or reduce or affect the amounts of funding allocated by law to the budget of the district attorney. The funds shall be audited as all other state funds are audited.

(2) Twenty-five percent of the collection fee shall be distributed to the circuit clerk's fund which shall be kept and maintained by the circuit clerk in a separate account to be used for the operation of the office of the clerk to include, but not be limited to, equipment purchases, education, and other office related expenses including personnel. Funds retained by the circuit clerk shall not reduce the amount payable to the circuit clerk under any local act or general act or reduce or affect the amounts of funding allocated by the Administrative Office of Courts to the budget of the circuit clerk. The funds shall be audited as all other state funds are audited.

The Legislature may, by local law, adjust the distribution in this section.

The remainder of the fees, fines, penalties, charges, court costs, and bail bond forfeitures after the deduction for collection shall be disbursed as provided by law on a monthly basis.

(3) This division shall not affect the right of the office of the district attorney to proceed with the prosecution of any violation as currently provided by law.

that, upon collection of any such unpaid sums, the district attorney shall distribute 75 percent of this added collection fee to the district attorney's fund and 25 percent of this collection fee to the circuit clerk's fund.

The statute authorizes the district attorney to distribute only a pro rata share of the recovery to these funds if less than the whole amount of the entire unpaid sum due (original unpaid sum, plus the statutory 30 percent collection fee) is collected. The Legislature clearly anticipated that there would be instances in which less than the full amount due would be collected by the district attorney, i.e., the second sentence of section 12-17-225.4 provides that "[a]ny amount collected pursuant to this division shall be distributed as follows . . ." *Id.* (emphasis added).

Because there is no provision in the statute clearly evincing an intention to give a priority to the district attorney's fund or clerk's fund or to allow or permit these funds to be paid first or "off the top" of any partial recovery, a pro rata distribution is the only equitable way to distribute portions of a partial recovery to all parties. To construe the statute otherwise would, in instances where only a portion of the sum due was collected, allow the distribution of a collection fee that was based not on the collection actually obtained, but upon the collection of the entire amount due despite the fact that no such collection was made.

Such an interpretation of the statute—that the whole of the 30 percent collection fee is earned and may be distributed regardless of the fact that little or nothing more than a sum equaling this 30 percent fee is actually collected—in addition to being without textual support in the statute, contrary to common sense and the practice of private collection firms, would create a disincentive for a district attorney to attempt collection of any sums beyond those equal to the 30 percent collection fee.

The statute does not authorize distribution of the whole of the 30 percent collection fee unless the whole of the unpaid sums due are collected. For partial collections, a partial collection fee is earned and may be distributed only in proportion to the sums actually collected, i.e., a pro rata distribution.

CONCLUSION

The statute does not authorize distribution of the whole of the 30 percent collection fee unless the whole of the unpaid sums due are collected. For partial collections, a partial collection fee is earned and may

be distributed only in proportion to the sums actually collected, i.e., a pro rata distribution.

QUESTION 2

In the event that the answer to the first question is that district attorney's recovery divisions are entitled to distribute to the district attorney's funds and clerk's funds only a pro rata share of any sums they collect under section 12-17-225.4 of the Code of Alabama, how is the pro rata share calculated?

FACTS AND ANALYSIS

Section 12-17-225.4 provides that, upon referral of certain unpaid fees and fines to a district attorney's restitution recovery division, the court "shall assess a collection fee of 30 percent of the funds due which shall be added to the amount of funds due." *Id.* Thus, the new sum due after referral becomes 100 percent of the original sum due, plus an additional 30 percent sum added by the court.

To calculate the percentage to be collected that this 30 percent collection fee comprises of the whole sum, it is again useful to return to the example used previously and assume that an unpaid \$1000 restitution award is referred to a district attorney's recovery division, and the court then adds an additional \$300 collection fee.

If the district attorney thereafter collects the whole of the new total of \$1300 due, the district attorney is entitled to a \$300 collection fee. Reducing this fee to a percentage of the whole, the district attorney's pro rata share of the collection is $300/1300$ or 23.08 percent of the total \$1300 collected. This same percentage—23.08 percent—should likewise be applied to calculate the sums that may be distributed to the district attorney's and clerk's funds from any partial recovery of unpaid restitution awards, costs, fines, fees, or other monetary assessments or awards.

Pursuant to the statute that provides for division of this collection fee between the district attorney's fund and the clerk's fund, the district attorney's fund is entitled to 75 percent of this 23.08 percent, or 17.31

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percent of any sums collected, and the clerk's fund is entitled to 25 percent of this 23.08 percent, or 5.77 percent of any sums collected.

CONCLUSION

Based upon the example and pursuant to the statute that provides for division of this collection fee between the district attorney's fund and the clerk's fund, the district attorney's fund is entitled to 75 percent of this 23.08 percent, or 17.31 percent of any sums collected, and the clerk's fund is entitled to 25 percent of this 23.08 percent, or 5.77 percent of any sums collected.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

TK/BFS

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