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OPEN RECORDS DIVISION

OFFICE OF COURT ADMINISTRATION

RQ-0396-GA

CARL REYNOLDS
Administrative Director

September 12, 2005

By Certified Mail, Return Receipt Requested

FILE # ML-44405-05

I.D. # 44405

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Opinion Regarding Collection of Certain Court Payment Obligations

Dear Attorney General Abbott:

The 79th Texas Legislature recognized the importance of expanding collections of court-ordered payments in criminal cases by enacting Article 10 of Senate Bill 1863. The bill requires cities with populations of 100,000 or more, and counties with populations of 50,000 or more, to implement collections programs based in part on the Office of Court Administration's court collections program. OCA seeks your opinion regarding the obligation of a defendant who was on community supervision to pay court costs, fees, and fines when the period of supervision has expired but the defendant has not been discharged by the court. This opinion request is similar to RO-0376-GA.

Article 42.12 of the Texas Code of Criminal Procedure addresses the discharge of a criminal defendant from community supervision, as follows:

"Sec. 10. (a) Only the court in which the defendant was tried may grant community supervision, impose conditions, revoke the community supervision, or discharge the defendant

"Sec. 20. (a) . . . Upon the satisfactory fulfillment of the conditions of community supervision, and the expiration of the period of community supervision, the judge, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the community supervision period and shall discharge the defendant. If the judge discharges the defendant under this section, the judge may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation,

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complaint, information or indictment against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted”

The explicit wording of the statute indicates that only a judge may discharge a defendant from community supervision and that a judge is in fact required to do so by means of an order when the defendant has fulfilled the conditions of community supervision and the period of community supervision has expired. However, clerks from across the State have informed OCA that judges typically do not sign discharge orders. Usually, local supervision officers will administratively release defendants upon the expiration of the designated community supervision period, whether or not they have fulfilled the conditions of community supervision, and the defendants no longer report to a supervision officer.

Many of these defendants have failed to pay the fines, fees and court costs they were ordered to pay as a condition of community supervision. County collections officials wish to continue their collection efforts with these defendants, but some county attorneys are advising them that the defendants no longer owe the county and state for fines, fees and court costs because they are no longer on community supervision.

County collections officials understand that Section 20 provides that a defendant who is judicially discharged from community supervision is released from all penalties and disabilities resulting from his or her crime (including, presumably, a requirement to pay fines, fees and court costs). But county collections officials do not believe that defendants who are simply administratively released from community supervision by local supervision officers have truly been discharged from community supervision. Accordingly, the county collections officials believe that such defendants are still responsible for paying the fines, fees and court costs they were required to pay as a condition of community supervision.

As administrative director of the Office of Court Administration, I respectfully request your opinion as to whether defendants who have been administratively released (but not judicially discharged) from community supervision and who have failed to pay the fines, fees and court costs they were ordered to pay as a condition of community supervision are still responsible for paying those fines, fees and court costs.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl Reynolds', written over a horizontal line.

Carl Reynolds
Administrative Director