

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**CATHERINE REGINA HARPER, on  
behalf of herself and those similarly  
situated, and JENNIFER ESSIG,**

**Plaintiffs,**

**v.**

**PROFESSIONAL PROBATION  
SERVICES, INC., THE CITY OF  
GARDENDALE, ALABAMA, a  
municipal corporation, and KENNETH  
GOMANY, in his official capacity as  
Judge of the Gardendale Municipal  
Court,**

**Defendants.**

**CIVIL ACTION NO.  
2:17-CV-1791-UJB-AKK**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into between the following parties (“the Parties”): Plaintiff Catherine Regina Harper (“Plaintiff”) and Defendants the City of Gardendale and Kenneth Gomany, in his official capacity as Judge of the Gardendale Municipal Court (collectively, “Defendants”).

**Recitals**

Whereas on October 23, 2017, Plaintiff filed the above-captioned action in the U.S. District Court for the Northern District of Alabama against Defendants challenging the legality of the contract (the “Contract”) entered into between the

City of Gardendale and Judge Kenneth Gomany of the Gardendale Municipal Court and Professional Probation Services, Inc. (“PPS”);<sup>1</sup> and

Whereas Defendants aver that they acted legally and lawfully at all times relevant to Plaintiffs’ claims in this lawsuit; and

Whereas, it is the desire of the Parties to resolve the above-captioned litigation; and

Whereas, Plaintiff agrees to dismiss this litigation against Defendants, according to the terms and conditions set forth in this Agreement;

The Parties enter into the following Agreement:

### **Agreement**

In consideration of the mutual execution of this Agreement and the releases and promises made in the Agreement by the Parties, the Parties agree as follows:

1. **Standing Order re PPS reporting:** The Gardendale Municipal Court has entered a Standing Order, attached as **Exhibit A**, directing all persons previously assigned to probation through PPS to stop reporting to PPS, to cease making payments of outstanding fines, costs, and fees to PPS, and to begin reporting directly to the Court as of November 1, 2017. The Gardendale Municipal Court agrees to keep this Standing Order posted and in effect for 180 days from the date of this agreement.
2. **Cancellation of PPS Contract:** The Contract between the Gardendale Municipal Court and PPS was cancelled effective November 14, 2017.
3. The Gardendale Municipal Court has directed PPS to post a notice in its office stating that anyone assigned to PPS through the Gardendale Municipal Court should go to the Gardendale Municipal Court to receive instructions on how to pay off their existing fines and costs.
4. **Recall of Warrants Related to PPS Review Hearings:** The Gardendale Municipal Court has rescinded all warrants related to review hearings for

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<sup>1</sup> PPS is not a party to this Settlement Agreement.

those previously on PPS probation issued since November 1, 2015 and will continue to review to determine if any such warrants exist from prior to this time and will rescind those also. The City will not consider these warrants as valid failure to appear warrants for any purpose, including for purposes of determining whether an individual is eligible for unsecured bail. The Gardendale Municipal Court has also mailed notice to any last known address contained in the Municipal Court's records to each such person instructing them to appear no later than March 2, 2018 in substantially the same form as the notice in paragraph 5. The Gardendale Municipal Court will take no actions to compel attendance by executing warrants for or arresting such persons until after June 30, 2018.

5. **Notice of Cancellation of PPS Contract:** The Gardendale Municipal Court has posted a notice, attached as **Exhibit B** to this Agreement, inside and outside of its Courtroom, in a conspicuous location, stating that persons previously assigned to PPS should stop reporting to PPS as of November 1, 2017, and should instead report to the Municipal Court Clerk to receive instructions on how to pay off their existing fines and costs before January 1, 2018. The notice further instructs that persons previously assigned to PPS who have not paid off their fines and costs by January 1, 2018, may request a payment plan by appearing in any regular court session before March 30, 2018, or requesting a court date from the clerk at which to request a payment plan. The Gardendale Municipal Court agrees to keep this notice posted for 180 days from the date of this agreement.
6. Those individuals who were previously on PPS probation and active will be or have been mailed a copy of either the order reference in Paragraph 1 or the notice referenced in Paragraph 5, to any last known address contained in the Municipal Court's records and/or records provided by PPS. By April 30, 2018, Defendants will provide Plaintiffs' Counsel with a list of individuals who have not yet returned to Court, and the addresses where Defendants have mailed these individuals the order/notice, at the address specified in Paragraph 24.
7. **Future contracts for probation-related services:** Within 1 year of the execution of this Agreement, Defendants agree not to enter into a new contract (or any other agreement) with any entity or division offering

probation-related or money-collection-related services related to its Municipal Court that charges individuals subject to the probation or money-collection practices a fee for those services.

8. After the first year of the execution of this Agreement, the City of Gardendale agrees that if it elects to enter into a new contract (or any other agreement) with any entity offering probation-related or money-collection-related services for cases in its Municipal Court within four (4) years of the execution of this Agreement, the City of Gardendale will provide notice (the "Contract Notice") to Plaintiffs' Counsel. The Contract Notice shall be mailed to Plaintiffs' Counsel by first-class mail at the address provided in Paragraph 24 (or by any other method that will arrive to the specified address in Paragraph 24 within two business days), and via email . The Contract Notice shall be mailed to Plaintiffs' Counsel no later than sixty days prior to the City of Gardendale's City Counsel taking final action to approve said contract. The Contract Notice shall clearly state that the Notice is in relation to "*Harper, et al. v. PPS, et al.*, No. 17-CV-1791 (N.D. Ala.)." The Contract Notice shall include a copy of the contract (or any other agreement) that the City of Gardendale is considering. The Contract Notice shall be provided to Plaintiffs' Counsel at the address specified in Paragraph 24.
9. The Parties agree that the City of Gardendale, within four (4) years of the execution of this Agreement, may not enter into a new contract for probation-related or money-collection-related services related to its Municipal Court for at least 60 days after the notice required in the previous paragraph is provided. The Parties contemplate that if any Party can establish that the specified notice was not provided, the remedy should be specific performance enjoining the new contract for probation-related or money-collection-related services for a 60-day period.
10. **Warrant Amnesty Week:**
  - a. The Gardendale Municipal Court will designate one week during which individuals with outstanding arrest warrants for failure to comply with a subpoena, summons, or order to appear in the Municipal Court may appear at the Municipal Court to receive a new hearing date, and the formal notice thereof, and clear any

warrants related to failure to appear, rather than being arrested. The Amnesty Week shall occur between July 1, 2018 and January 1, 2019.

- b. The Warrant Amnesty Week will be publicized through a press release provided to local media outlets at least seven (7), but not more than twenty-one (21), days before the scheduled amnesty days. The press release will be posted on the Municipal Court Clerk's window and front door of the courthouse, and on the Municipal Court's website during the same timeframe. The press release mentioned herein will contain the following sentences: "No person who appears at the Municipal Court for the Amnesty Week will be jailed for non-payment or for a warrant for failing to appear. The Court will provide you with a new court date and an opportunity to pay your fine and court costs. If you are not sure if you have a current warrant for failure to appear, you can call the clerk's office at (205) 631-7155."
  - c. Counsel for Plaintiffs will be notified at least one week before the start of the Warrant Amnesty Week, and a copy of the press release will be sent to counsel for Plaintiffs at least one week before the Warrant Amnesty Week.
  - d. The Parties agree that if any Party can establish that a Party did not comply with this provision, the remedy should be specific performance.
11. **Probation Credit**: For those persons who were on PPS probation as of October 23, 2017, the City and Municipal Court, by March 31, 2018, will remit outstanding fines and costs still owed in their open cases in an amount of 50 % of any fees paid directly to and retained by PPS. The remitted amounts will be applied as a credit on the balance due. The name of each individual who will have money remitted and the amount of that remittance is attached as **Exhibit C**.
12. **Court Procedures**: The Gardendale Municipal Court has entered the attached Standing Order Adopting Policies and Procedures ("Procedures"), attached as **Exhibit D** to this Agreement. The Parties

agree that Defendants and their officers, employees, and agents will be instructed to comply with these Procedures.

13. **Notice of Changes to Court Procedures:** Defendants have no current expectation that said **Exhibit D** will be materially altered by the Municipal Court Judge (who serves by appointment of the City for a renewable term provided by statute). Nonetheless, changes in the law or experience (among other reasons) could cause parts of the Procedures to change. To the extent that the Procedures are altered, rescinded, or replaced in any material respect within two (2) years of the execution of this Agreement, the Gardendale Municipal Court will provide notice (the “Procedures Notice”) to Plaintiffs’ Counsel. The Procedures Notice shall be mailed to Plaintiffs’ Counsel by first-class mail or by any other method that will arrive to the specified address within two business days, and via e-mail. The Procedures Notice shall be mailed to Plaintiffs’ Counsel no later than 30 days prior to the Gardendale Municipal Court Judge taking action to alter, rescind, or replace the Procedures. The Procedures Notice shall clearly state that the Notice is in relation to “*Harper, et al. v. PPS, et al.*, No. 17-CV-1791 (N.D. Ala.).” The Procedures Notice shall include a copy of the revised procedure (or any other Order altering, rescinding, or replacing the Procedures) that the Gardendale Municipal Court is considering. The Procedures Notice shall be provided to Plaintiffs’ Counsel at the address specified in Paragraph 24.
14. **Dismissal:** The Parties shall file with the Court within five (5) days of the execution of this Agreement a Joint Motion to Dismiss Pursuant to Federal Rules of Civil Procedure Rule 41 (a)(1)(A)(ii), as agreed upon by the Parties and attached hereto as **Exhibit E**.
15. **Mutual Releases**
  - a. **By Plaintiff:** Except for any violations that arise from a breach of this Agreement, Plaintiff, on her behalf and on behalf of her successors, heirs, and assigns, hereby releases, remises, and forever discharges Judge Kenneth Gomany, in his official capacity as Judge of the Gardendale Municipal Court, and his successors, heirs, and assigns, and the City of Gardendale, and its subsidiaries,

divisions, affiliates, and agents, including all city officials and municipal officers, from all claims, suits, actions, charges, demands, judgments, costs, and executions present and future, known or unknown, both legal and equitable in any manner arising out of the above-captioned litigation.

- b. **By Defendants:** Except for amounts owed by Plaintiff for fines, court costs, or restitution (subject to any credit available under Paragraph 11 of this Agreement), and/or any violations that arise from a breach of this Agreement, Judge Kenneth Gomany, in his official capacity as Judge of the Gardendale Municipal Court, and on behalf his successors, heirs, and assigns, and the City of Gardendale, on its behalf and on behalf its subsidiaries, divisions, affiliates, and agents, release, remise, and forever discharge Plaintiff from all claims, suits, actions, charges, demands, judgments, costs, and executions present and future, known or unknown, both legal and equitable in any manner arising out of the Lawsuit.
- 16. **Fees:** Each Party shall be responsible for each party's own attorneys' fees and expenses in connection with the above-captioned litigation. The Parties waive any claim for costs or fees, including, but not necessarily limited to, attorneys' fees, arising from this case, and no enforcement action or future related action shall be used to reinstate any claim for costs or fees arising from this case.
  - 17. The Parties, including their counsel, hereby waive any claim for costs or fees, including, but not necessarily limited to, attorneys' fees, arising from any effort to enforce any provision of this Agreement.
  - 18. **Binding Effect of Agreement:** This Agreement is enforceable by, and binding upon, any one or more of the Parties and their respective successor and assigns, and no other individual or entity.
  - 19. **Duration of the Agreement:** This Agreement shall remain in effect for five (5) years from the final date of execution.
  - 20. **Modifications to the Agreement:** This Agreement, including the attachments hereto, is the entire, final, and complete agreement of the

Parties relating to the subject of this Agreement, and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives relating thereto. No amendment or modification of this Agreement shall be effective unless through a written agreement signed by all Parties hereto.

21. **Severability**: If any provision of this Agreement is held to be invalid or unenforceable, all remaining provisions will continue in full force and effect.
22. **Counterparts of the Agreement**: This Agreement may be executed in multiple counterparts, all of which shall be deemed originals, and with the same effect as if all Parties had signed the same document. All of such counterparts shall be construed together with and shall constitute one Agreement, but in making proof, it shall only be necessary to produce one such counterpart (with multiple copies of the signature pages to show signatures, as needed). A facsimile transmission or photocopy shall be as valid and enforceable as an original.
23. **Remaining Defendants Not a Party to this Agreement**: Notwithstanding anything else stated in this Agreement, Plaintiffs may continue to pursue their claims against any other Defendant and this Agreement is not a settlement or release of any other Defendant not a party to this Agreement.
24. **Notices**: Except as otherwise stated in this Agreement, any communications or notices to be provided to legal counsel for the Parties pursuant to this Agreement will be sent in writing via email and by mail, via commercial overnight delivery service, to the attention of the persons identified below (or as the signatories may subsequently direct in writing):

Plaintiffs' Counsel:

**MAILING ADDRESS**

EJP Deputy Legal Director  
ATTN: Harper, *et al.* v. PPS, *et al.*  
Southern Poverty Law Center



400 Washington Avenue  
Montgomery, AL 36104

**EMAIL ADDRESS**

EJPSettlement@splcenter.org

Defendants' Counsel:

**MAILING ADDRESS**

Will Hill Tankersley  
Balch & Bingham LLP  
1901 Sixth Avenue North, Suite 1500  
Birmingham, AL 35203

**EMAIL ADDRESS**

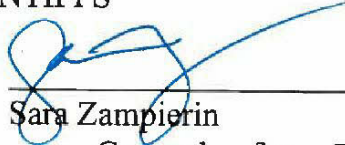
WHT@balch.com

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.]

The Parties and their counsel, by their signatures below, have executed this Agreement and agree to be bound by it.


PLAINTIFFS

DATED: 2/28/18, 2018

  
Sara Zampierin

Counsel for Plaintiff Catherine  
Regina Harper

DATED: 02/27, 2018


  
Catherine Regina Harper, Plaintiff

THE CITY OF GARDENDALE, ALABAMA

DATED: 3-5-18, 2018

By:   
Stan Hogeland  
Mayor, City of Gardendale

DATED: 3-6-2018, 2018

By:   
Will Hill Tankersley  
Counsel for The City of Gardendale

KENNETH GOMANY, GARDENDALE MUNICIPAL COURT JUDGE

DATED: 3/5, 2018

By: Kenneth Gomany  
Kenneth Gomany  
Gardendale Municipal Court Judge

DATED: March 5, 2018

By: R. Warren Kinney, III  
Richard Warren Kinney, III  
Counsel for Kenneth Gomany

IN THE CITY OF GARDENDALE MUNICIPAL COURT

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**ORDER MODIFYING TERMS OF PROBATION UNDER SUPERVISION OF  
PROFESSIONAL PROBATION SERVICES, INC. ("PPS")**

Pursuant to Ala. Code § 15-22-52 and Rule 27.2 of the Alabama Rules of Criminal Procedure, and having duly notified the prosecutor, it is hereby **ORDERED** that, effective **November 1, 2017**, each and every term of probation supervised by **Professional Probation Services, Inc. ("PPS")** shall be **MODIFIED** as follows:

Each Defendant previously sentenced to a term of probation supervised by PPS shall:

- (1) cease reporting to PPS for supervision during the period of his or her probation; and
- (2) cease making any payments to PPS for any amounts owed for fees, fines, courts costs, and/or restitution as previously ordered by the Court and/or directed by PPS.

Nothing in this order revokes, modifies or terminates any obligation by Defendants to continue to:

- (3) make payments for Interlock devices; and
- (4) pay fines and fees due to be paid to the City of Gardendale.

From this point forward, payments for any outstanding balance for fines, court costs, or restitution (including, but not limited to, fees for the Interlock devices) shall be made payable to "The City of Gardendale Clerk of the Municipal Court" and delivered (by mail or in person) to the City of Gardendale Clerk of the Municipal Court, or on-line at <https://gardendaleal.govtportal.com>.

If any Defendant lacks the ability to pay his or her outstanding balance of fines, court costs, or restitution (exclusive of fees assessed by PPS) in full by **January 1, 2018**, the

Defendant is hereby **ORDERED** to appear before this Court during any regular court session (held the first and third Fridays of each month at beginning at 8:30 a.m.) and request to make payments in specified installments in accordance with a payment schedule, which **SHALL** take into account the Defendant's ability to pay.

Thereafter, if any Defendant is unable to make payments in accordance with a proposed payment schedule, the Defendant should voluntarily appear in Court at the earliest practicable opportunity and request that the payment schedule be modified to accommodate his or her ability to pay.

Municipal Court Magistrate Sherry Baggett is hereby **DIRECTED** to send a copy of this Order to each and every Defendant with an active probation under PPS supervision, and to post a copy of this Order in a prominent place at the Gardendale Municipal Court for a period of ninety (90) days following entry thereof. Likewise, until further notice PPS is directed to post a copy of this Order at the PPS office(s) servicing Gardendale Municipal Court, so that every Defendant with an active probation under PPS supervision can easily see it.

**DONE** and **ORDERED** on this the 1<sup>st</sup> day of November, 2017.

  
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MUNICIPAL COURT JUDGE  
CITY OF GARDENDALE

## **NOTICE REGARDING PROBATION SUPERVISION BY PROFESSIONAL PROBATION SERVICES, INC. (“PPS”)**

- As of **November 1, 2017**, any person who previously was placed on probation under the supervision of Professional Probation Services, Inc. (“PPS”) is **no longer required to report to PPS** and **should not make any additional payments to PPS** for court-ordered fines or costs.
- Persons previously placed on PPS-supervised probation are still required to pay **to the Court** any outstanding balance of fines or court costs imposed by the Court — **not including any of the monthly supervision fees charged by PPS.**
- From this point forward, payments should be made **directly to the Municipal Court** — **not to PPS.** Certified checks or money orders should be made payable to “The City of Gardendale Clerk of the Municipal Court,” and delivered by mail or in person. Payments may also be made in person with cash or debit/credit cards.
- Any person who is unable to pay the full outstanding balance of fines and court costs by **January 1, 2018** may request a payment plan, which will take into account each person’s ability to pay.
- Any person who wishes to request a payment plan should either appear in Court at any regular court session (on the first and third Fridays of each month) or may contact the Municipal Court clerk to request a court date, at which time they may request to be placed on a payment plan.
- Any person who previously was ordered to appear for an in-court “review hearing” should appear before the court as scheduled, and may request a payment plan at that time.
- **No person will be arrested for failure to pay or failure to appear (either in Court or at PPS)** if he or she appears in Court to request a payment plan before **March 30, 2018**, either voluntarily or at a “review hearing” as previously ordered by the Court or as directed by PPS.
- No employee or representative of PPS will be asked to speak in any review hearings or other in-court hearings about any person’s outstanding balance of fines and costs or compliance with the terms of probation.

PPSI	NAME	PPS FEES PAID	CREDIT TO BE APPLIED
99991014744	Adams, Stephen Scott	10.00	5.00
99991014713	Addie, Belinda Faye	0.00	0.00
99991014538	Anderson, Sean Christopher	200.00	100.00
99991014412	Armstrong, Gregory Bernard	240.00	120.00
99991014553	Armstrong, Lauren Elyse	40.00	20.00
99991014554	Armstrong, Tristan Blayne	40.00	20.00
99991014732	Arrington, Tynisha Nicole	40.00	20.00
99991014001	Atchley, Zachary Ray	520.00	260.00
99991014058	Austin, Ronald Lee Jr.	390.00	195.00
99991014701	Auston, Jacob Neal	40.00	20.00
99991013827	Bahena, Mariana	480.00	240.00
99991014678	Bailey, Aaron Lethaniel	0.00	0.00
99991014445	Ballard, Derrick Dorrell Jr	240.00	120.00
99991014282	Barber, Jason Keith	280.00	140.00
99991014571	Barnes, Deuntae Jamal	120.00	60.00
99991014642	Barnett, Donald Zachary	0.00	0.00
99991014415	Bazzano, Veronica Kay	240.00	120.00
99991014608	Beasley, Chris Ashley	120.00	60.00
99991014268	Beasley, Dalton	305.00	152.50
99991014332	Benford, Delana	280.00	140.00
99991014630	Bennett, Emily Ann	80.00	40.00
99991014698	Berry, Delorien Mary	40.00	20.00
99991014127	Berry, Richard Kyle	400.00	200.00
99991013748			
99991014141	Best, Carolee	520.00	260.00
99991013872	Best, Terrence Joseph	150.00	75.00
99991013985	Birkhimer, Eric Brandon	200.00	100.00
99991014706	Bloodworth, Brandon Lee	40.00	20.00
99991014322			
99991014717	Boutwell, Wendy	40.00	20.00
99991013819	Bradberry, Marshall David	240.00	120.00
99991013551	Brown, April Shenay	0.00	0.00
99991014676	Brown, Brooklyn Renae	0.00	0.00
99991014576	Brown, Javon Marquise	120.00	60.00
99991014395	Bryant, Cory Allen	200.00	100.00
99991014560	Bullock, Nina Marie	160.00	80.00
99991014568	Burchfield, Paul Swafford	120.00	60.00
99991013414			
99991013889	Burr, Leandra Jones	120.00	60.00
99991014367	Calhoun, Derrick Lenard	280.00	140.00
99991014164	Calhoun, Marcus Dewayne	360.00	180.00
99991014406	Cargo, Casey Blake	240.00	120.00
99991014242	Carlton, Troy Alexander	360.00	180.00
99991014584	Carroll, James Michael	120.00	60.00
99991014547	Carter, Darjae Elizabeth	160.00	80.00
99991014501	Casey, Caprice Tyecece	160.00	80.00
99991014699	Castillo, Jose Antonio	40.00	20.00
99991014702	Cato, Douglas Chadwick	0.00	0.00
99991014350	Chastine, Lasheena Star	0.00	0.00
99991014376	Chatman, Deandre M	170.00	85.00



PPSI	NAME	PPS FEES PAID	CREDIT TO BE APPLIED
99991014624	Cheatam, Tovarris Orron	80.00	40.00
99991014438	Clay, Thomas William	240.00	120.00
99991013911	Clayton, Thomas Lee	40.00	20.00
99991014092	Clayton, Zachary Heath	360.00	180.00
99991013945	Clifton, Reinalda Margarita	520.00	260.00
99991014126	Colburn, William Cecil	400.00	200.00
99991014403	Cole, Delana Brown	240.00	120.00
99991014745	Cole, Jeremy Dewayne	0.00	0.00
99991014671	Cole, Samantha Alexandria	80.00	40.00
99991013705	Coleman, Ashley Nicole	600.00	300.00
99991013987	Coleman, Catherine Jacquese	480.00	240.00
99991014232	Coleman, Eric Quade	360.00	180.00
99991014386	Collins, Orlander Pierce	280.00	140.00
99991014270	Connell, Joshua Allen	280.00	140.00
99991014522	Conner, Kyle Steven	160.00	80.00
99991014407	Cook, Jason Wayne	240.00	120.00
99991014683	Cook, Mark Kent	40.00	20.00
99991014721	Cook, Melvin	40.00	20.00
99991014399	Cornelius, Hunter Danell	240.00	120.00
99991014741	Counce, Robert Levi	0.00	0.00
99991014740	Coupland, Ashley Karen Free	40.00	20.00
99991014714	Crawford, Jamal James	0.00	0.00
99991014574	Crawford, Joshua Andrew	120.00	60.00
99991014711	Crenshaw, Keshayla Meshone	40.00	20.00
99991014168	Crew, Jacob Harold	360.00	180.00
99991014731	Crisler, William Nelson Jr.	40.00	20.00
99991014722	Crumpton, Larico Antione	40.00	20.00
99991014651	Cummings, Kenneth Cole	80.00	40.00
99991014743	Dailey, Terry Lee	40.00	20.00
99991014606	Daniel, Bradley Chase	120.00	60.00
99991013665	Daniel, Latanja Patrice	720.00	360.00
99991014433	Daniels, Tyrone	120.00	60.00
99991014476	Davidson, Ashlei Rae	200.00	100.00
99991014131	Davis, Derrick Lee	0.00	0.00
99991014725	Davis, Lonnie	40.00	20.00
99991014325	Davis, Tammy Louise	240.00	120.00
99991014479			
99991014686	Davis, Wyteria Shydell	40.00	20.00
99991014627	Davis, Zakary Allan	80.00	40.00
99991014091	Davison, Darius Terrun	440.00	220.00
99991012979	Deanecelli, Shawn Langston	40.00	20.00
99991014675	Doran, Victoria Lee	40.00	20.00
99991014507	Dorsey, Clarence	160.00	80.00
99991014394	Dubose, Monteco Kimaun	240.00	120.00
99991014281	Elkins, Jessica Leigh	320.00	160.00
99991014652	Embry, Megan Ryan	80.00	40.00
99991014617	Estis, Delaney Ray Jr	80.00	40.00
99991013490	Faulkner, Ashley Nicole	840.00	420.00
99991014509	Fields, Corey Jonathan	80.00	40.00
99991014625	Fields, Quinton Deel	80.00	40.00

PPSI	NAME	PPS FEES PAID	CREDIT TO BE APPLIED
99991014615	Fitchett, Keith Lamarr Jr	80.00	40.00
99991014663	Fletcher, Miaya Aaliyah	80.00	40.00
99991014730	Folse, Christopher Lee	40.00	20.00
99991014551	Forman, Steven Anthony	160.00	80.00
99991014518	Forrest, Faizon Saul	160.00	80.00
99991014708	Foster, Michael Wayne	0.00	0.00
99991013859			
99991014679	Foster, Rashad Demon	320.00	160.00
99991014521	Freeman, Jonathan Daniel	120.00	60.00
99991014712	Freeman-Malone, Timothy Terrell	0.00	0.00
99991014737	Frost, Leslie Dawn	40.00	20.00
99991014646	Gibson, Lacey Marie	120.00	60.00
99991014536	Godwin, Brandie Fay	160.00	80.00
99991014384	Gohn, William Joseph	280.00	140.00
99991014667	Gonzalez, Ramino	80.00	40.00
99991013770			
99991013969	Goodwin, Gerald Wayne Jr.	640.00	320.00
99991014673	Gordon, Jaquan Keandre	80.00	40.00
99991013822	Graham, Amy Michelle	480.00	240.00
99991014641	Grandstaff, Jeffery	0.00	0.00
99991014572	Gulley, Bernadine Delois	40.00	20.00
99991014564	Gunter, Cassie Ann	120.00	60.00
99991014692	Hall, Louise	40.00	20.00
99991013262	Hallmark, Michael Dewayne	320.00	160.00
99991014464	Handy, Latory Shanta	200.00	100.00
99991014525	Hankins, Walter Eddie	120.00	60.00
99991014707	Hardin, John Wade Jr	0.00	0.00
99991014733	Hardin, Tiffany Palmer	0.00	0.00
99991014414	Harper, Catherine Regina	90.00	45.00
99991014677	Harper, Julian PT	0.00	0.00
99991014338	Harrell, Steven Lamar	280.00	140.00
99991014488	Harris, Christopher	200.00	100.00
99991014290	Harris, Rhonda Renea	320.00	160.00
99991014735	Harris, Rodney Jackson	40.00	20.00
99991014579	Hatcher, Wallace Arthur	120.00	60.00
99991014427	Hawkins, Miles Jamal	240.00	120.00
99991013887	Hawthorne, Falandez Larico	560.00	280.00
99991014697	Hayes, Patricia Ann	80.00	40.00
99991014193	Hilburn, Earl	360.00	180.00
99991014626	Hollis, Erin Beatty	80.00	40.00
99991014506	Holt, James Huel	160.00	80.00
99991014372	Hooks, Deryus Sentyl	280.00	140.00
99991011950			
99991013794	Howell, Stacey Kathleen	200.00	100.00
99991013390			
99991013784	Huckestein, Donald Wayne	440.00	220.00
99991014344	Hughes, Ashley Leighann	200.00	100.00
99991014337	Hughes, Harley Justin	320.00	160.00
99991014012	Hunt, Tarnesha Nakiel	360.00	180.00
99991014420	Jackson, Alisha Nicole	240.00	120.00

PPSI	NAME	PPS FEES PAID	CREDIT TO BE APPLIED
99991014570	Jackson, Khadijah Janita	120.00	60.00
99991014067	Jackson, Martell Darney	440.00	220.00
99991014040	Jarzen, Laura Jean	400.00	200.00
99991014649	Jenkins, Angela Danielle	80.00	40.00
99991014540	Jinright, Jammie Lee	160.00	80.00
99991014720	Johnson, Jasmine Michelle	40.00	20.00
99991014472	Johnson, Larry Jerome	200.00	100.00
99991013423	Johnson, Latoya Michelle	870.00	435.00
99991014727	Johnson, Symone Sharay	40.00	20.00
99991014269	Jones, Andrew	265.00	132.50
99991014687	Jones, CC Lavelle	40.00	20.00
99991014691	Jones, Christopher Eugene	40.00	20.00
99991014346	Jones, Kristal Jovon	200.00	100.00
99991014565	Jones, Rashawn Aaron	120.00	60.00
99991013821	Jones, Shannon Dion	520.00	260.00
99991014618	Jones, Tony Howard	80.00	40.00
99991013404			
99991013516	Jordan, David Dewayne	920.00	460.00
99991014289	June, Marcus Renard	240.00	120.00
99991014077	Kendall, Daniel Ray	320.00	160.00
99991014580	Kendall, Ladana Guthrie	120.00	60.00
99991014504	Kennedy, Dewayne	160.00	80.00
99991014656	Kennedy, KalaBeth	120.00	60.00
99991013777			
99991013890			
99991014389	Keplinger, Kelvin Keith	440.00	220.00
99991014669	Key, Timothy Scott III	80.00	40.00
99991014422	Kimbrough, Evan Dee	240.00	120.00
99991014008	Knight, Alicia Rechelle	480.00	240.00
99991014255	Lackey, Christopher Adam	320.00	160.00
99991014557	Lagrone, Kevin Lee	160.00	80.00
99991014205	Landreth, Malcolm Tyrone	240.00	120.00
99991014519	Lawson, Jeremy Charles	160.00	80.00
99991014359	Lawson, Patrice Denise	280.00	140.00
99991014305	Lee, Sabra Marshalle	320.00	160.00
99991014742	Legg, Jonah Alexander	40.00	20.00
99991014690	Lewis, Evan Blake	40.00	20.00
99991014295	Lockett, Johnny Lee Jr	320.00	160.00
99991013597	Lopez, Alfredo Gonzalez	760.00	380.00
99991014537	Lovelady, Joshua Allen	160.00	80.00
99991014695	Lucio, Tonya Lynn	40.00	20.00
99991014354	Lyon, Jeffrey Lee	280.00	140.00
99991014655	Maharrey, Ralph Burnen	80.00	40.00
99991014113	Mahon, David Wayne	0.00	0.00
99991014709	Malcolm, Julie Annette	40.00	20.00
99991014089	Manning, Christopher Ryan	440.00	220.00
99991014199	Marcum, David Randall	360.00	180.00
99991014636	Marshall, Amy M	120.00	60.00
99991014311	Masters, Cassie Shaye	320.00	160.00
99991014548	Mayfield, Morgan Paige	160.00	80.00

PPSI	NAME	PPS FEES PAID	CREDIT TO BE APPLIED
99991014682	Mayo, Eugene Curtis II	40.00	20.00
99991014090	McCay, Breanna Michelle	440.00	220.00
99991014639	McDonald, Harry Lamar	80.00	40.00
99991014326	McDonald, William Reid	320.00	160.00
99991013313	McInish, Cayci Gabrielle	280.00	140.00
99991014382	McKenzie, Kiaya Leigh	120.00	60.00
99991014637	McKinney, Kimberly Camille	80.00	40.00
99991014475	McKinney, Marcus Nadarius	200.00	100.00
99991014550	McKinney, Robert James Jr	160.00	80.00
99991014546	McLain, James Jason	160.00	80.00
99991014738	McNeal, Tiffany Wanchell	40.00	20.00
99991014726	Miller, Charles Cole	40.00	20.00
99991014436	Miller, Douglas Michael	240.00	120.00
99991014481	Miller, Joshua Edward	200.00	100.00
99991014172	Miller, Roger Dale	360.00	180.00
99991014650	Moore, Angelia Edge	80.00	40.00
99991014465	Moorer, Corey Lashawn	200.00	100.00
99991014257	Morgan, Roderick Hunter	320.00	160.00
99991014700	Moten, Marlon Kareem	40.00	20.00
99991014659	Nalls, Lemories II	80.00	40.00
99991014620	Nelson, Richard Pernell	80.00	40.00
99991014371	Nichols, Mary Elizabeth	80.00	40.00
99991014276	Niewiadomski, Joshua Lynn	320.00	160.00
99991014517	Nunn, Steven	120.00	60.00
99991014516	Nunn, Triveya Capece	160.00	80.00
99991014647	Oden, Jeannine	120.00	60.00
99991014710	Orazine, Daniel Quinton	40.00	20.00
99991014288	Page, Donnie Gene	40.00	20.00
99991014194	Pannell, James Homer	320.00	160.00
99991014426	Parks, Colson Clyatt	240.00	120.00
99991014729	Parrish, Allison Christine	40.00	20.00
99991014364	Pass, Jalisa Monique	280.00	140.00
99991014490	Patterson, Brittany Michelle	120.00	60.00
99991014747	Patterson, Brittany Michelle	0.00	0.00
99991014645	Patterson, John Albert	80.00	40.00
99991014728	Paxton, Jennifer Ann	40.00	20.00
99991014674	Pennington, Lea Bonnett	80.00	40.00
99991014718	Persall, Jessica Dawn	40.00	20.00
99991014379	Prewett, Brijin Deanna	280.00	140.00
99991014142	Pierce, Sarena Ranisha	120.00	60.00
99991014573	Price, Robert Lee	120.00	60.00
99991014654	Prince, Wyatt Kaywon	80.00	40.00
99991014244	Purser, Justin Oneal	360.00	180.00
99991014599	Rankins, Jordhan D	120.00	60.00
99991014423	Redmond, Robert Alexander	240.00	120.00
99991014723	Reed, Amanda June	40.00	20.00
99991014210	Reid, Nathan Robert	0.00	0.00
99991014577			
99991014613	Reid, Trisha Jean	120.00	60.00
99991014694	Reyes, Alfredo Neco	40.00	20.00

PPSI	NAME	PPS FEES PAID	CREDIT TO BE APPLIED
99991014315	Rice, Kelvin	200.00	100.00
99991014458	Rice, Kendall Jorell	200.00	100.00
99991014640	Rice, Raymonda Tamara	80.00	40.00
99991014724	Rice, Roderick J	40.00	20.00
99991013566	Rivera, Louis Enrique	720.00	360.00
99991014736	Robertson, Charles Dylan	40.00	20.00
99991014410	Robertson, William Edward	240.00	120.00
99991014454	Robinson, Karley Elise	240.00	120.00
99991014073	Rogers, Britney Nicole	320.00	160.00
99991014390	Rorex, Emily Michelle	240.00	120.00
99991014648	Rowaid, Talal Saleh-Abdo	0.00	0.00
99991014704	Rowland, Jason Alexis	40.00	20.00
99991014188	Russell, Amber Jo Powell	360.00	180.00
99991014383	Ryan, Tianna Marie	280.00	140.00
99991014227	Sanchez, Chalino	360.00	180.00
99991014670	Sanders, Catherine Rose	80.00	40.00
99991014301	Sanders, Kenyaki Lavosky	320.00	160.00
99991014480	Schmidt, Anthony Joseph	200.00	100.00
99991014474	Shelton, Ralph Edmond Jr	200.00	100.00
99991014307	Sidoti, Bethany Crane	320.00	160.00
99991014638	Simmons, Kelly Leigh	80.00	40.00
99991014545	Smiley, Markel Shaquille	160.00	80.00
99991014539			
99991014614	Smith, Christopher Randall	160.00	80.00
99991014374	Smith, Karen Renee	280.00	140.00
99991014623	Smith, Kim Shurley	120.00	60.00
99991014259	Smith, Steven Ray	320.00	160.00
99991014543	Smith, Teanna Alexis	160.00	80.00
99991014443	Smith, Todd Richardson	120.00	60.00
99991014459	Smoot, Lagarius Desean	240.00	120.00
99991014153	Sorenson, Robert Allen	400.00	200.00
99991014147	Stanley, Cynthia Joyce	440.00	220.00
99991014039	Steele, Jared Dewayne	440.00	220.00
99991014689	Stover, Leroy Wilbert II	40.00	20.00
99991013839			
99991014716	Stroger, Donza JR	0.00	0.00
99991014601	Sweatt, Randall Cole	120.00	60.00
99991014681	Tate, Elijah Ladarrius	40.00	20.00
99991013565	Taylor, Jerry Wayne	0.00	0.00
99991014471	Taylor, Zachary Allen	200.00	100.00
99991013874	Taylor, Zachary Colson	560.00	280.00
99991014256	Thibault, Raymond Bruce JR	160.00	80.00
99991014230	Thibodeaux, Kimberly Evesque	360.00	180.00
99991014225	Thomas, Nicholas Seth	360.00	180.00
99991014685	Thompson, David Wood	40.00	20.00
99991014319	Thompson, Pamela Nixon	360.00	180.00
99991014619	Thornton, Daniel	70.00	35.00
99991014468	Townsend, Michael Kristopher	200.00	100.00
99991014668	Trice, Lisa Barnett	80.00	40.00
99991014176	Tucker, Laura L.	360.00	180.00

PPSI	NAME	PPS FEES PAID	CREDIT TO BE APPLIED
99991014559	Turner, Larry Jerome	80.00	40.00
99991014634	Ussery, Jeanie Marie	80.00	40.00
99991014109			
99991014590	Vinieratos, Samuel John	320.00	160.00
99991014688	Walker, Carlos Corderious	40.00	20.00
99991014218	Wallace, Amanda Lauren	360.00	180.00
99991014672	Watson, Jeremy Seth	80.00	40.00
99991014342	Watts, Lauren Hailey	280.00	140.00
99991013765	Weldon, Aubrey Lamont	640.00	320.00
99991014428	Weldon, Richard Mason	240.00	120.00
99991014734	Wells, Tamera Latrice	0.00	0.00
99991014719	West, Alissa Leeann	40.00	20.00
99991014361	West, Kayla Samara	160.00	80.00
99991014531	Whidden, Christopher Ryan	40.00	20.00
99991014267	White, Crystal Yvonne	320.00	160.00
99991013702	White, Jennifer Lynne	680.00	340.00
99991014385	White, Kayla Michelle	160.00	80.00
99991014561			
99991014605	Whitten, Bryan Kelly	120.00	60.00
99991013818	Wiggins, Shanterica Shanice	600.00	300.00
99991014145	Williams, Brent Lamar	400.00	200.00
99991014404	Williams, Ebonie Alice	240.00	120.00
99991014388	Williams, Edmund Tavares	25.00	12.50
99991014563	Williams, Floyd Douglas	80.00	40.00
99991014653	Williams, Keanu James	80.00	40.00
99991014042	Williams, Steven Mac	320.00	160.00
99991014300			
99991014495	Wilson, Alex Jr	320.00	160.00
99991014703	Wilson, Everette Marquese	40.00	20.00
99991014693	Wilson, Kevin Ray	40.00	20.00
99991014456			
99991013344	Wilson, Ronald	320.00	160.00
99991014478	Winsett, Gary Branigan	200.00	100.00
99991013557			
99991014643	Winston, William Durrell	480.00	240.00
99991014360	Wright, Matthew Steven	280.00	140.00
99991014500	Yarbrough, Bethany Kay Roper	160.00	80.00

IN THE CITY OF GARDENDALE MUNICIPAL COURT

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**STANDING ORDER ADOPTING POLICIES AND PROCEDURES**

In accordance with the Court's authority "[t]o amend and control its process and orders so as to make them conformable to law and justice," the Court hereby adopts and enters the attached "Policies and Procedures" as a standing order of this Court. Ala. Code § 12-1-7(6); see also Ala. Code §§ 12-1-2; 12-14-50.

DONE and ORDERED on this the 25<sup>th</sup> day of February, 2018.

  
MUNICIPAL COURT JUDGE

# **MUNICIPAL COURT**

## **Of the City of Gardendale, Alabama**

### **I. Policies and Procedures Regarding Defendants' Right to Counsel**

When a criminal defendant's case is called before the Gardendale Municipal Court (the "Court"), the Court must inform a defendant who is charged with an offense punishable by a term of imprisonment of his right to counsel. The Court may elect to inform all defendants of such right collectively prior to proceeding against any particular defendant.<sup>1</sup>

A defendant may knowingly, intelligently, and voluntarily waive his or her right to counsel by executing a waiver form provided by the Court after determining, in open court, that the defendant has read, or has had read to him or her, the waiver form and understood the contents of the form.<sup>2</sup> This form shall be entered as part of the record.

A defendant may not be sentenced to a term of imprisonment, and the Court shall not suspend execution of a sentence of imprisonment and place a defendant on probation, without the defendant either being afforded a right to counsel or executing a knowing, intelligent, and voluntary waiver of his or her right to counsel.<sup>3</sup>

Upon request, the Court may, in its discretion, continue a proceeding to permit an unrepresented defendant to retain counsel.<sup>4</sup> If the Court determines that a defendant cannot afford to retain counsel, the Court may appoint a Public Defender or other legal counsel to represent the defendant,<sup>5</sup> or the Court may, in its discretion, refuse to appoint counsel for an indigent defendant charged with a misdemeanor if the Court determines that, regardless of the evidence presented, the maximum punishment for a charged offense will not include incarceration.<sup>6</sup>

### **II. Policies and Procedures for Imposition of Sentences, Fines, Court Costs and Restitution**

If the Court determines that, regardless of the evidence presented, the maximum punishment for a charged offense will not include incarceration,<sup>7</sup> the Court may: (1) pursuant to Alabama Rules

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<sup>1</sup> See *Brown v. State*, 695 So. 2d 153 (Ala. Crim. App. 1996).

<sup>2</sup> See *Chandler v. State*, 214 So. 2d 306 (Ala. 1968); *Boglin v. State*, 840 So. 2d 926 (Ala. Crim. App. 2002).

<sup>3</sup> See *Alabama v. Shelton*, 535 U.S. 654, 674 (2002) ("A defendant who receives a suspended or probated sentence to imprisonment has a constitutional right to counsel.") (alteration and quotation omitted); *Robinson v. State*, 649 So. 2d 1331 (Ala. Crim. App. 1994).

<sup>4</sup> Ala. R. Crim. P. 6.1(b).

<sup>5</sup> Ala. R. Crim. P. 6.1(a).

<sup>6</sup> Ala. R. Crim. P. 6.1, Committee Cmt.

<sup>7</sup> *Id.*



of Criminal Procedure 9.1, determine that a defendant's willful failure to appear constitutes a valid waiver of his right to be present and his right to counsel, if otherwise applicable; (2) accept a defendant's plea of guilty; and/or (3) impose an appropriate sentence upon a finding of conviction, the maximum punishment for which shall not include incarceration.

Before accepting a defendant's plea of guilty, the Court shall inform the defendant of the possible minimum and maximum sentence that may be imposed for the charged offense.<sup>8</sup>

Before imposing a sentence of imprisonment as a consequence of a defendant's conviction or plea of guilty to a charged offense, the Court shall inform the defendant that he is entitled to receive credit for any time served in jail prior to sentencing in relation to the offense of conviction.<sup>9</sup>

Before imposing any fine and/or court costs as a consequence of a defendant's conviction or plea of guilty to a charged offense, the Court will consider the defendant's ability to pay the fine court costs, or restitution, including the defendant's ability to pay the fine and/or court costs at a later date, on an installment basis, or on other conditions to be fixed by the court.<sup>10</sup>

If a defendant expresses an inability to pay fines, court costs, or restitution as ordered by the Court, and the Court does not otherwise make allowance for such indigency, the defendant may submit an Affidavit of Substantial Hardship (Form C-10A), and the Court, in its discretion, may consider any testimony, evidentiary submissions, or statements in the Affidavit of Substantial Hardship Form regarding the defendant's ability to pay. If a defendant, after review of the defendant's financial circumstance, is determined by the Court to be unable to pay fines, court costs, or restitution within the prescribed time or as otherwise ordered by the Court, the Court may:

- (1) continue or modify the defendant's schedule of payments, at no additional cost to the defendant;
- (2) reduce the amount owed to an amount the defendant is able to pay, subject to the conditions, if any, imposed by the Court; or
- (3) order the defendant to be released from his or her obligation to pay the amount owed.

Ordinarily, court costs are assessed only upon the defendant's conviction;<sup>11</sup> however, the Court may determine, in its discretion and as authorized by statute, that in certain circumstances justice will best be served by entering either a judgment of dismissal or *nolle prosequi* conditioned upon

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<sup>8</sup> *Sampson v. State*, 605 So. 2d 846 (Ala. Crim. App. 1992).

<sup>9</sup> Ala. Code § 15-18-5; Ala. R. Crim. P. 26.9(b)(2).

<sup>10</sup> Ala. R. Crim. P. 26.11(b)(3) & (d).

<sup>11</sup> Ala. R. Crim. P. 26.11(c).

the defendant's payment of court costs.<sup>12</sup> Costs should be based solely on the most serious offense.<sup>13</sup> Costs need not be imposed in any case wherein the defendant serves an active jail sentence.<sup>14</sup>

If a defendant who is not placed on probation is ordered to pay any fines, court costs, or restitution, then payment shall be made to the clerk of court (or municipal court magistrate) or to the person designated by the Court.<sup>15</sup>

In no case shall an indigent defendant be incarcerated or receive a suspended sentence of imprisonment based solely on his or her inability to pay fines, court costs, or restitution.<sup>16</sup>

### **III. Policies and Procedures for Nonpayment of Fines, Court Costs, and Restitution**

If a defendant fails to pay fines, court costs, or restitution within the prescribed time or as otherwise ordered by the Court, the Court may:

- (1) sentence the defendant to a term of imprisonment until the amount owed, or any portion thereof, is paid,<sup>17</sup> provided that:
  - a. in no case shall an indigent defendant be incarcerated or receive a suspended sentence of imprisonment based solely on his or her inability to pay;<sup>18</sup>
  - b. no term of incarceration shall be imposed except upon a finding by the Court of the non-indigent defendant's willful failure to pay the amount owed, and provided that the term of incarceration shall not exceed: (i) ten (10) days if the amount owed does not exceed two hundred fifty dollars (\$250); (ii) twenty (20) days if the amount is greater than two hundred fifty dollars (\$250), but does not exceed five hundred dollars (\$500); (iii) thirty (30) days if the amount is greater than five hundred dollars (\$500), but does not exceed one thousand dollars (\$1,000); or (iv) four (4) days for every additional one hundred dollars (\$100) or fractional part thereof;<sup>19</sup>

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<sup>12</sup> Ala. Code § 12-19-150(a)–(b); Ala. Att'y. Gen. Op. 1992-257; Ala. Att'y. Gen. Op. 2002-236.

<sup>13</sup> Ala. Code § 12-19-150(c).

<sup>14</sup> Ala. Code § 12-19-150(b).

<sup>15</sup> Ala. R. Crim. P. 26.11(e).

<sup>16</sup> Ala. R. Crim. P. 26.11(i)(2).

<sup>17</sup> Ala. R. Crim. P. 26.11(h)(3) & (i)(1).

<sup>18</sup> Ala. R. Crim. P. 26.11(i)(2).

<sup>19</sup> Ala. R. Crim. P. 26.11(i)(1); Ala. Code § 15-18-62.

- c. the non-indigent defendant shall receive a credit toward the amount owed in the amount of \$20 for each day of incarceration for willful non-payment;<sup>20</sup>
  - d. a term of incarceration for a non-indigent defendant's willful non-payment shall not exceed one-third of the maximum term of imprisonment for the offense of conviction;<sup>21</sup> and
  - e. the total term of incarceration, including a jail sentence imposed for the non-indigent defendant's willful non-payment, as well as any sentence of imprisonment upon conviction for the charged offense, may not exceed the maximum term of incarceration authorized for the charged offense;<sup>22</sup>
- (2) reduce the amount owed to an amount the defendant is able to pay;<sup>23</sup>
  - (3) continue or modify the defendant's schedule of payments at no additional cost to the defendant;<sup>24</sup>
  - (4) accept a defendant's bond (with or without surety) in exchange for an extension of the prescribed time for payment for up to ninety (90) days, upon nonpayment of which execution may issue as upon judgments in state courts, provided that no defendant may be ordered to post a secured bond in excess of an amount a defendant is able to pay;<sup>25</sup>
  - (5) upon a finding that the defendant's nonpayment was willful, suspend the defendant's privilege to operate a motor vehicle in this state until the total amount of the imposed fines is paid, if the fines were imposed as a result of the defendant's conviction for violation of a traffic infraction, provided that the Court may enter an order authorizing the defendant to drive under certain conditions set forth in the order;<sup>26</sup>
  - (6) following a hearing and consistent with the notice and procedural requirements of Rules 33 and 33.1 of the Alabama Rules of Criminal Procedure, find the defendant in contempt of court for willful nonpayment of the amount owed and impose an additional fine not to exceed \$50.00 and/or a term of imprisonment not to exceed five

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<sup>20</sup> See Ala. R. Crim. P. 26.11(i)(1)(i) (requiring a minimum of \$15 credit for each day of incarceration).

<sup>21</sup> Ala. R. Crim. P. 26.11(i)(1)(iii)

<sup>22</sup> Ala. R. Crim. P. 26.11(i)(1)(iv).

<sup>23</sup> Ala. R. Crim. P. 26.11(h)(1).

<sup>24</sup> Ala. R. Crim. P. 26.11(h)(2).

<sup>25</sup> Ala. Code § 12-14-11; Ala. R. Crim. P. 7.6(d).

<sup>26</sup> Ala. R. Crim. P. 26.11(i)(3); Ala. Code § 12-14-10.

(5) days, with credit toward the amount owed in the amount of \$20 for each day of incarceration;<sup>27</sup>

- (7) order the clerk to issue execution for the amount owed, or any portion thereof, and order the City Prosecutor to institute appropriate proceedings or to take necessary action to collect unpaid fines, restitution, and costs, including execution of a writ of *fieri facias* commanding the sheriff to levy the judgment of the Court against the non-exempt personal and/or real property of the defendant for satisfaction of the amount owed;<sup>28</sup>
- (8) order that any cash bond personally posted by the defendant be applied to the balance owed with or without the defendant's consent, or, so long as the person who posted the bond consents in writing, that any cash bond posted by a third party be applied to the balance owed by the defendant; or
- (9) order the defendant to be released from his or her obligation to pay the amount owed.<sup>29</sup>

If the Court determines that a defendant is indigent and therefore lacks the ability to pay the amount owed for fines, court costs, or restitution, the Court may, in its discretion, enter an order pursuant to subsections (2), (3), (4), (7), (8), or (9), above. If the Court determines that a defendant is indigent and therefore lacks the ability to pay the amount owed for fines, court costs, or restitution, the Court may not enter an order pursuant to subsections (1), (5), or (6), above.

In the event that a defendant fails to pay fines, court costs, or restitution as ordered by the Court, the Court shall issue a Notice to Show Cause for Failure to Pay Fines, Costs, or Restitution,<sup>30</sup> requiring the defendant either to pay as directed or to appear in court and show cause why he or she should not be jailed or incarcerated for contempt of court or otherwise punished pursuant to and in accordance with Ala. R. Crim. P. 26.11 for failure to pay.

In the event the defendant fails to comply with this Notice, either by making payment as directed or by appearing in court on date specified date, the Court shall issue a Citation for Contempt.<sup>31</sup>

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<sup>27</sup> Ala. Code § 12-14-31(a); Ala. R. Crim. P. 33.

<sup>28</sup> Ala. R. Crim. P. 26.11(k); *see also* 36A C.J.S. Fines § 16, By execution of property (“After a fine has been imposed by the sentence of the court, it is regarded as in the nature of a debt of record due the State, and ordinarily it may be enforced by execution against defendant’s property both at common law and under a statute.”)

<sup>29</sup> Ala. R. Crim. P. 26.11(h)(5).

<sup>30</sup> Form C-87, Notice to Show Cause for Failure to Pay Fines, Costs, or Restitution.

<sup>31</sup> Ala. Code § 12-14-31(a); Form 55 – Citation for Contempt.

In the event the defendant fails to appear for the contempt hearing on the date specified in the Citation for Contempt, the Court shall issue an Arrest Warrant<sup>32</sup> in order to secure the defendant's presence at the contempt hearing.

If a defendant who previously was placed on probation fails to pay fines, costs, or restitution as ordered by the Court as a condition of probation, then the Court shall issue a Summons to Appear for Revocation Hearing.<sup>33</sup>

If the defendant fails to appear pursuant to the Summons, then the Court may issue a second (and any further subsequent) Summons to Appear for Revocation Hearing, or the Court may issue a Warrant for the Probationer's Arrest.<sup>34</sup>

#### **IV. Policies and Procedures for Establishing a Payment Schedule for Indigent Defendants**

If the Court determines that a defendant lacks the ability to pay the amount owed for fines, court costs, or restitution immediately after pronouncement of the sentence, the Court may permit the defendant to make payments in specified installments in accordance with a payment schedule, which shall take into account the defendant's ability to pay.

The Court's determination of a defendant's ability to pay may be based on the defendant's self-reported ability to pay. A defendant, however, will be ordered to make minimum payments of at least twenty-five dollars (\$25) per month. If the person demonstrates he or she cannot pay the minimum \$25 monthly payment, the Court may waive this minimum monthly amount, either at this hearing or a subsequent review hearing, and order the person to pay a lower amount.

While the Court shall refrain from arbitrarily imposing a payment schedule without regard to a defendant's ability to pay, the Court is free to inquire as to the defendant's ability to make payments in accordance with a proposed payment schedule.

If a defendant is ordered to make minimum monthly payments, then the Court shall set a date for a review hearing ninety (90) days thereafter, in order to review the defendant's compliance with the payment plan ordered by the court, and his or her continued ability to pay. The defendant shall be provided with notice of the date and time for the review hearing at the defendant's court appearance when the payment plan is ordered by the Court. The notice shall also inform the defendant that their ability to pay will be discussed at this hearing, and that they should come prepared to discuss and, if able, present documentation about why they were unable to make their monthly payments.

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<sup>32</sup> Ala. Code § 12-14-32; Form C-65(a) – Alias Warrant for Arrest – Failure to Appear.

<sup>33</sup> Form 51 – Order and Summons to Appear for Revocation Hearing.

<sup>34</sup> Ala. Code § 12-14-13(1); Ala. R. Crim. P. 27.4(b); Form C-65(b) - Warrant of Arrest – Probationer.

A defendant shall be excused from attending any review hearing if he or she has made minimum monthly payments for the three (3) consecutive months preceding the scheduled review hearing (or otherwise has paid the equivalent amount prior to the scheduled review hearing). Any defendant excused from the review hearing will receive notice of the date and time for any subsequent review hearing at the time he or she makes the payment that results in excusal from the current review hearing.

If a defendant has not made three (3) consecutive minimum monthly payments (or paid the equivalent amount) prior to the scheduled review hearing, or if a defendant does not appear for the scheduled review hearing, then the Court, in its discretion, may do any of the following (or any combination thereof):

- (1) schedule additional periodic review hearings every 30, 60, or 90 days thereafter, for a period not to exceed two (2) years from the date of the defendant's adjudication;
- (2) modify the defendant's payment plan to conform with the defendant's ability to pay;
- (3) upon a finding of indigence, remit the balance of fines and costs (but not restitution) owed by the defendant; or
- (4) issue a Citation for Contempt, pursuant to the provisions of Section VIII.C. herein, and order the defendant to appear for a hearing and to show cause why he or she should not be found in contempt of court for failure to pay fines, costs, or restitution as ordered by the Court or to appear in Court as ordered.

The Court shall take appropriate steps to inform a defendant that if he or she is unable to make payments in accordance with a proposed payment schedule, the defendant should voluntarily appear in Court at the scheduled review hearing and request that the payment schedule be modified to accommodate his or her ability to pay.

The Court, in its discretion, may modify a defendant's payment schedule at any time upon evidence and a determination that the defendant's circumstances have materially changed. Absent the acquiescence of the defendant, the Court shall not increase the installment payments of the defendant without notice, an opportunity for hearing, and reasonable access to counsel.

## **V. Policies and Procedures Regarding Probation**

The Court may suspend execution of a defendant's sentence and place the defendant on probation for varying periods of time, not to exceed two years.<sup>35</sup>

The Court will not require defendants to pay any probation supervision fees.

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<sup>35</sup> Ala. Code § 12-14-13(a).

The Court shall determine and may, at any time, modify the terms or conditions of a defendant's probation, and may require the probationer to comply with the following or any other conditions:<sup>36</sup>

- (1) To make reparation or restitution to any aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court;
- (2) To attend defensive driving schools, alcohol countermeasure programs, or courses where available;
- (3) To support his or her dependents to the best of his or her ability;
- (4) To avoid injurious or vicious habits;
- (5) To avoid persons or places of disreputable or harmful character;
- (6) To report to the probation officer or other person designated by the judge;
- (7) To permit the probation officer (or other person designated by the judge) to visit him at his home or elsewhere; and/or
- (8) To work faithfully at suitable employment as far as possible.

The Court may extend the defendant's period of probation at any time, for good cause, provided that in no case shall a defendant remain on probation for a period in excess of two years.<sup>37</sup>

#### **VI. Policies and Procedures Regarding Termination of Probation**

If the defendant's term of probation is not extended by order of the Court prior to its expiration, the period of probation shall expire in accordance with the terms imposed by the Court's sentencing order, provided that the probationer remains in compliance with the terms or conditions of his or her probation throughout the prescribed term.<sup>38</sup>

Regardless of whether a defendant remains in compliance with the conditions of his or her probation throughout the prescribed term, any period of probation imposed in connection with a sentence entered by the Court shall terminate as a matter of law two years from the date of sentencing.

Any person whose period of probation is terminated as a matter of law two years from the date of sentencing shall, upon such termination, be excused from further compliance with the terms or

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<sup>36</sup> Ala. Code § 12-14-13(d).

<sup>37</sup> Ala. R. Crim. P. 27.3(a); Ala. Code § 12-14-13(g).

<sup>38</sup> Ala. R. Crim. P. 27.3(c).

conditions of his or her probation, including the payment of any fines, fees,<sup>39</sup> or costs payable to his or her probation officer (or other person designated by the judge) in connection with his or her probation.

Upon successful completion of the prescribed period of probation, whether or not extended by order of the Court, the Court shall order the probationer to be discharged, and the clerk of court (or municipal court magistrate) shall, upon request, furnish the probationer with a certified copy of the order of discharge.

The defendant's liability for any fine, costs, restitution, or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.<sup>40</sup>

## **VII. Policies and Procedures Regarding Revocation of Probation**

In the event a defendant fails to comply with the terms of his or her probation, including (but not limited to) his or her failure to pay fines, court costs, or restitution within the prescribed time and as directed by the Court, the defendant's probation officer (or other person designated by the judge, or, in the event of nonpayment, the person to whom payment is to be made) shall notify the defendant, the City Prosecutor, and the Court within 30 days of the defendant's noncompliance or nonpayment.

Upon receipt of such notice, or if the City Prosecutor or a defendant's probation officer (or other person designated by the judge) has reasonable cause to believe that the probationer has violated a condition of his or her probation, he or she may petition the Court to initiate proceedings to revoke a defendant's probation, or the Court may, on its own motion, initiate revocation proceedings.<sup>41</sup>

If the Court, in its discretion, determines that there is reasonable cause to believe that the probationer has violated a condition of his or her probation, the Court (and only the Court) may order the defendant to appear and to show cause why the defendant's probation should not be revoked and why the original suspended sentence should not be imposed as a result of the specified violation(s).<sup>42</sup>

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<sup>39</sup> Consistent with the procedures above, defendants shall not be required to pay any fees to the City for probation supervision, but may be charged reasonable fees by the DVIP or CRP/CRO, or for services, such as classes, provided that no defendant who is unable to pay will be charged such fees, upon a finding by the Court that the defendant is indigent following his or her submission of an Affidavit of Substantial Hardship.

<sup>40</sup> Ala. Code § 15-18-8(e).

<sup>41</sup> Ala. R. Crim. P. 27.4(a)(1).

<sup>42</sup> Ala. R. Crim. P. 27.4(a)(2).



A defendant's probation cannot be revoked without notice of the requested probation revocation in accordance with Alabama Rule of Criminal Procedure 3.4 and a hearing in accordance with Alabama Rule of Criminal Procedure 27.6, where the defendant must have the opportunity to present evidence in his or her own defense.<sup>43</sup>

In order to secure the presence of the probationer at a hearing regarding revocation of probation, the Court may issue a summons to the defendant or, in its discretion, the Court may issue a warrant for the defendant's arrest.<sup>44</sup>

If the probationer appears before the Court pursuant to a warrant, the probationer shall be entitled to bail in accordance with the Court's Standing Order Regarding Bail Procedures, entered December 13, 2017.<sup>45</sup>

Upon appearance before the Court pursuant to a warrant, the probationer shall be informed of the charged probation violation(s), the date of the revocation hearing, his or her right to counsel, if applicable, and his or her right to testify and present witnesses and other evidence on his or her behalf and to cross-examine any adverse witnesses.<sup>46</sup>

If the summons issued by the Court provides the probationer with sufficient notice of the charged violations and the evidence to be relied upon for purposes of revocation; and if the Court ensures that the probationer understands the rights to which he is entitled at a probation revocation hearing, such as the right to counsel, where applicable, and to present evidence in his or her defense, then, upon his or her initial appearance before the Court, the probationer may waive the right to a formal hearing on revocation and the right to counsel, if applicable, provided that the probationer admits that he or she has violated a term or condition of probation after being informed by the Court of the nature of the alleged probation violation, the right to testify and to present witnesses and other evidence, and that, if the alleged violation involves a criminal offense for which the probationer has not yet been tried, the probationer may still be tried for that offense and that any statement made by the probationer at the present proceeding may be used against the probationer at a subsequent proceeding or trial.<sup>47</sup>

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<sup>43</sup> Ala. R. Crim. P. 27.6, Committee Cmt. (citing Ala. Code § 15-22-54); *see also Armstrong v. State*, 312 So. 2d 620, 622–23 (Ala. 1975) (setting forth “the requirements and guidelines which must be met for minimal due process to be accorded the probationer . . . before his probation can be revoked”).

<sup>44</sup> Ala. R. Crim. P. 27.4(b); Ala. Code § 12-14-13(i).

<sup>45</sup> Ala. Code § 15-13-109.

<sup>46</sup> Ala. R. Crim. P. 27.6(c)(1)–(3).

<sup>47</sup> *See* Ala. R. Crim. P. 27.5(b); 27.6(c).

If the Court, in its discretion, determines that the defendant's probation should be revoked, the Court shall make a written statement of the reasons for revoking probation and the evidence relied upon by the Court in making that determination.<sup>48</sup>

If revocation proceedings are initiated as a result of a probationer's failure to pay fines, court costs, or restitution as directed by the Court, then the Court shall inquire into the probationer's ability to pay prior to making a final determination on revocation.

In no case shall a defendant be incarcerated, receive a suspended sentence of imprisonment, or have his or her probation revoked based solely on an inability to pay fines, court costs, or restitution.

## **VIII. Miscellaneous Policies and Procedures**

### ***A. Assignment of Defendants to Probation and Court Referral Officer Program or Domestic Violence Intervention Program***

If the Court assigns a defendant to supervision by the Court Referral Officer Program (CRO) or the Domestic Violence Intervention Program (DVIP), the CRO or DVIP program shall be the only entity evaluating and monitoring the defendant or charging the defendant a supervision fee, except that a defendant may be required to periodically appear before the Court for a review hearing to evaluate and ensure the defendant's compliance with the DVIP and/or CRO program.<sup>49</sup>

The Court must waive any DVIP/CRO fees if the defendant has already been found indigent pursuant to these procedures, or, if later found indigent by the Court based on the defendant's indication of an inability to pay.<sup>50</sup>

### ***B. Foreign Language Translators***

In accordance with Alabama law<sup>51</sup> and the Alabama Administrative Office of the Courts Guidelines for Foreign Language Interpreters, the Court will provide a certified translator to defendants who do not speak English or who do not adequately understand the English language.

### ***C. Contempt Charges***

Except as provided by Alabama Rule of Criminal Procedure 33.2 relating to instances of "direct contempt" (as defined by Ala. R. Crim. P. 33.1(b)(1)), the Court may not find a person in

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<sup>48</sup> Ala. R. Crim. P. 27.6(f).

<sup>49</sup> Ala. Op. Atty. Gen. No. 2003-151.

<sup>50</sup> Ala. Code §§ 12-23-7; 12-23-18.

<sup>51</sup> Ala. Code § 15-1-3.

contempt without a hearing held after a citation of the charge is given.<sup>52</sup> The citation of the charge shall:

- (1) Be in writing and state that the person to whom it is directed is cited for contempt of court;
- (2) Order that the person cited appear before the court to show cause why he or she should not be found in contempt of court as charged or should not be punished or incarcerated as provided by law;
- (3) State the essential facts constituting the contempt cited; and
- (4) Specify the time and place of the hearing.<sup>53</sup>

The hearing shall be set so as to allow a reasonable time for the preparation of the defense. The contemnor shall be afforded the opportunity to present exculpatory evidence and evidence of mitigating and extenuating circumstances, shall be entitled to subpoena witnesses on his or her behalf, and shall be entitled to be represented by counsel as provided in Alabama Rules of Criminal Procedure Rule 6.<sup>54</sup>

A person cited with a contempt charge for failure to appear shall not be arrested unless the contempt citation is accompanied by an arrest warrant.<sup>55</sup>

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<sup>52</sup> Ala. R. Crim. P. 33.3(a).

<sup>53</sup> Ala. R. Crim. P. 33.3(b)

<sup>54</sup> Ala. R. Crim. P. 33.3(d).

<sup>55</sup> Ala. R. Crim. P. 33.3(c); *see also* Ala. R. Crim. P. 3.1, 3.2,

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**CATHERINE REGINA HARPER, on )  
behalf of herself and those similarly )  
situated, and JENNIFER ESSIG, )**

**Plaintiffs, )**

**v. )**

**PROFESSIONAL PROBATION )  
SERVICES, INC., THE CITY OF )  
GARDENDALE, ALABAMA, a )  
municipal corporation, and KENNETH )  
GOMANY, in his official capacity as )  
Judge of the Gardendale Municipal )  
Court, )**

**Defendants. )**

**CIVIL ACTION NO.  
2:17-CV-1791-UJB-AKK**

**JOINT MOTION TO DISMISS CLAIMS AGAINST DEFENDANTS  
KENNETH GOMANY AND THE CITY OF GARDENDALE**

Plaintiffs Catherine Regina Harper and Jennifer Essig (“Plaintiffs”) and Defendants the City of Gardendale and Kenneth Gomany, in his official capacity as Judge of the Gardendale Municipal Court, having reached a settlement agreement to resolve the issues in this matter, hereby move the Court to dismiss the City of Gardendale and Judge Gomany as parties to this action, without prejudice pursuant to Rule 41(a)(1)(A)(ii). As a basis for this motion, the Plaintiffs, the City of Gardendale, and Judge Gomany state as follows:

1. In their Complaint, Plaintiffs challenge the legality of the contract entered into between the Defendants City of Gardendale and Professional Probation Services, Inc. (PPS), and request declaratory and injunctive relief against the City of Gardendale and Judge Gomany enjoining enforcement of the City's contract with PPS. These are the only claims for relief alleged against Judge Gomany and the City of Gardendale.

2. Judge Gomany and the City of Gardendale deny Plaintiffs' allegations.

3. Plaintiffs and Defendants Judge Gomany and the City of Gardendale have reached a settlement agreement that fully resolves their dispute as it relates to Plaintiffs' claims against the City of Gardendale and Judge Gomany.

4. Accordingly, the Plaintiffs and Defendants the City of Gardendale and Judge Gomany jointly and respectfully request that the Court dismiss all claims against the City of Gardendale and Judge Gomany without prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, with Plaintiffs and the City of Gardendale to bear their own costs related to these claims.<sup>1</sup>

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<sup>1</sup> Plaintiffs are not dismissing any of their claims against Defendant Professional Probation Services, Inc.

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon the following this the \_\_\_\_\_ day of February, 2022:

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/s/ \_\_\_\_\_

One of the Attorneys for  
[PLAINTIFFS/DEFENDANTS]