

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.

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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.

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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.

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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.

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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

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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 escort the person 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 the Bench Card.

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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

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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.

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FORM THREE

NOTICE OF CHANGE OF ADDRESS

The undersigned defendant hereby gives notice to the Biloxi Municipal Court of the following change of my residential and, if different, mailing addresses:

.....
Print Full Name Date of Birth

.....
Previous Residential Address

.....
New Residential Address

.....
Previous Mailing Address

.....
New Mailing Address

.....
Telephone Number

.....
Email Address (if any)

SIGNATURE

DATE

**RETURN THIS FORM TO THE OFFICE OF THE BILOXI MUNICIPAL COURT CLERK AT 170
PORTER AVENUE, BILOXI, MISSISSIPPI 39530 EITHER BY HAND-DELIVERY, BY U.S. MAIL,
OR BY EMAIL TO coacourt@biloxi.ms.us.**

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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 assistant 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	\$ _____

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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.