

**IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA**

ADMINISTRATIVE ORDER NO. 2010-26

IN RE: PROBATION

**TECHNICAL NOTIFICATION LETTER AND NOTICE TO APPEAR
FOR CERTAIN QUALIFYING VIOLATIONS OF FELONY
PROBATION OR COMMUNITY CONTROL**

WHEREAS, §948.06(1), *Florida Statutes*, provides for the use of a technical notification letter and a Notice to Appear procedure for violations of felony probation or community control in certain circumstances, in lieu of a warrant for the arrest of the probationer or community controlee; and

WHEREAS, there is a need for a uniform procedure within the circuit for judges who opt into participating in the processes discussed herein; and

WHEREAS, a pilot project conducted in Okaloosa County pursuant to Administrative Order 2009-13 evaluated the efficiency and effectiveness of the Notice To Appear process for qualifying violations of probation or community control and expedited modification or termination of such supervision and entry of a final judgment for outstanding monetary obligations remaining as the period of supervision is about to expire; and

WHEREAS, the pilot project resulted in increased efficiencies in the processing of qualifying violations of probation or community control and fewer instances of probation officers, community control officers, assistant state attorneys, clerks of court, sheriffs' department warrant offices and deputy sheriffs, and judges having to handle files and process violation of probation or violation of community control reports, affidavits, and warrants, and conduct necessary hearings, and

WHEREAS, in undertaking the pilot project, forms were developed which substantially contributed to maximizing efficiencies of the processes used, and

WHEREAS, some judges in the circuit may desire to retain authority to determine whether to participate in the statutory process authorized as stated above, and

WHEREAS, the processes and forms developed during the pilot project have proved effective in implementing the processes discussed herein, and

WHEREAS, this order establishes procedures and approves the use of forms to be used for Technical Notification Letters and for the use of both a Notice to Appear and an expedited procedure for modification or termination of supervision and entry of a final judgment for outstanding monetary obligations relating to probation or community control for any First Circuit Judge who responds to a request from the Department of Corrections whether the Judge opts into the program. Therefore, it is hereby

ORDERED:

1. **TECHNICAL NOTIFICATION LETTERS.** In lieu of an arrest warrant the Department of Corrections (hereinafter "**DOC**") may report to the assigned Judge alleged violations of probation or violations of community control by a Technical Notification Letter (hereinafter "**TNL**") when an offender has:

- (a) failed to report to the probation officer as directed, and there is no reason to believe the offender has absconded;
- (b) failed to be truthful to the probation officer;
- (c) failed to follow instructions of the probation officer;
- (d) failed to obtain permission prior to moving from an approved residence;
- (e) failed to obtain permission prior to leaving approved employment;
- (f) failed to comply with the terms of curfew;
- (g) failed to obtain permission prior to leaving the county;
- (h) failed to make restitution payments;
- (i) failed to pay court costs, fines and fees as ordered;
- (j) failed to perform required community service;
- (k) committed a noncriminal ordinance violation; or
- (l) undergone a drug screen and received positive results.

2. The **TNL** shall contain the following options for the assigned Judge's determination:

- _____ No further action required. Continue to supervise.
- _____ Additional action required - provide detailed Violation Report, Affidavit and Warrant.
- _____ **OTHER ACTION OR INSTRUCTIONS:**

Judge's Signature and Date: _____

3. If the Judge agrees the alleged violation does not require action by the Court, the **TNL** shall be forwarded to the Clerk of the Circuit Court for filing in the court file and a copy to the **DOC**. If the Judge determines the alleged violation requires further review by the Court, the Judge shall return the **TNL** to the **DOC** with

instructions to either submit a Violation Report, Affidavit and Warrant as permitted by statute.

CIRCUIT-WIDE PROCESS

4. For all First Circuit Judges electing to participate in the Notice to Appear process discussed herein, the following procedures are adopted for use in the Circuit Courts of the First Judicial Circuit, effective upon the effective date of this Administrative Order.
5. **AFFIDAVIT OF VIOLATION AND NOTICE TO APPEAR.** In lieu of an arrest warrant, the **DOC** may pursue alleged violations of probation or community control by an affidavit of violation and Notice to Appear.
6. If an affidavit and Notice to Appear is submitted to the assigned Judge:
 - (a) The **DOC** shall verify that the offender has never been convicted of committing and is not currently alleged to have committed a qualifying offense as defined in §948.06(8)(c), *Florida Statutes*, and is not a Violent Felony Offender of Special Concern as defined in §948.06(8)(b), *Florida Statutes*.
 - (b) The **DOC** shall make contact with the Judge's office to determine a date that shall be inserted in the Notice to Appear along with the time and place of the hearing on the violation. The procedure for scheduling the hearings on the notices to appear will not be mandated by this order. The **DOC** shall honor the calendaring requirements and arrangements of each judge in each division. The original Notice to Appear shall be forwarded to the judge with a hearing date stated, then returned to the **DOC** after it is signed by the Judge.
 - (c) The **DOC** shall serve the offender with a copy of the Notice to Appear indicating the date of service on the original Notice to Appear. The offender will sign the original Notice to Appear acknowledging receipt of a copy of the Notice to Appear.
 - (d) After service upon the offender, the **DOC** shall file the original and two copies of the Notice to Appear with the Clerk of Court who shall provide a copy to the State Attorney's Office (hereinafter "**SAO**"), and a copy to the attorney for the defendant, if represented.
 - (e) If the **DOC** is unable to serve the Notice to Appear upon the offender within a reasonable time before the date set for the Notice to Appear, the

DOC shall return the Notice to Appear to the assigned Judge with a warrant for the offender's arrest **or** with a written request to reschedule the Notice to Appear to a new date.

7. **MODIFICATION OR TERMINATION AND JUDGMENT FOR OUTSTANDING MONETARY OBLIGATIONS.** If the offender is complying with all conditions except the payment of monetary obligations including restitution, costs of supervision, court costs, fines and fees, and the **DOC** has determined the offender does not have the present ability to pay, the **DOC** may request that the Judge modify or terminate probation or community control and enter judgment(s) for the outstanding monetary obligations without a hearing. The offender shall sign a statement agreeing to the amount of the outstanding monetary obligations. The Judge may sign the order modifying or terminating supervision and enter the judgment(s), or the Judge may direct the **DOC** to prepare a Notice to Appear.
8. A request to modify to waive costs of supervision or enter judgment for outstanding costs of supervision may be made directly to the Judge without providing notice to the **SAO** as below provided.
9. The **DOC** shall provide notice of the request to modify or terminate and enter judgment(s) to the **SAO**. The notice shall provide a place for the **SAO** to consent or object. In addition, the notice shall provide that unless the **SAO** objects to the request within ten (10) calendar days from the date of the notice from the **DOC**, the **DOC** shall submit the request to the Court without further notice or hearing.
10. If the **SAO** objects to the request, the **DOC** shall submit the request together with the objection of the **SAO** and the matter shall be set for hearing on the next available VOP docket.
11. If no objection is made by the **SAO** the **DOC** shall submit to the Judge an order modifying or terminating supervision and judgment(s) for the outstanding monetary obligation. The request to the Judge must include a statement by the **DOC** that the **SAO** has been notified and the **SAO** has either consented or that ten (10) days has passed since the notification and no objection has been received from the **SAO**.
12. The **DOC's** Circuit Administrator for the First Judicial Circuit shall make a request, at least one time per year, of any Circuit Judge who is not participating in the program to determine whether the Judge opts into the program.
13. The Department of Corrections within the First Judicial Circuit shall use the forms attached hereto and made a part hereof for any probation or community control case qualifying for processing pursuant to this program.

14. This order shall apply to county court violation of probation proceedings, and the administrative judge in each county shall coordinate with the respective county's probation services entity, regardless of how it may be named, and with county judges to determine whether any county judge elects to opt into this program.
15. This order shall take effect June 1, 2010.

DONE AND ORDERED in Pensacola, Escambia County, Florida, this 17th day of May, 2010.

Signed by: Terry D. Terrell, Chief Judge

Attachment: Form Notice to Appear
Form Final Judgment for Fines, Costs & Additional Charges
Form Civil Restitution Lien

Conformed copies to:

All Judges, First Judicial Circuit
All Clerks, First Judicial Circuit
Honorable William Eddins, State Attorney
Honorable James Owens, Public Defender
Deborah Brown, Department of Corrections
Robin Wright, Trial Courts Administrator
The Summation, EscaRosa Bar Association for publication
Okaloosa Walton Bar Association Newsletter for publication
Escambia Corrections Bureau, Community Corrections Division
Judicial Correction Services, Okaloosa County
Santa Rosa County Probation
County Probation Department, Walton County

THIS ADMINISTRATIVE ORDER IS ACCOMPANIED BY ATTACHMENTS THAT ARE NOT COMPATIBLE WITH SCREEN READERS. IF YOU WISH TO OBTAIN A COPY OF THE ATTACHMENTS TO THIS ADMINISTRATIVE ORDER, PLEASE CONTACT COURT ADMINISTRATION AT 850-595-4400.