



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-036

July 15, 2016

The Honorable Ronald Caldwell
State Senator
120 CR 393
Wynne, AR 72396

Dear Senator Caldwell:

This is my opinion on your questions about the allocation of partial payments to court costs, restitution, and fines in district and circuit courts. You ask how payments are allocated among those three items; whether payment by one method or another changes the allocation; whether the court may change the allocation; and whether a city or county may change the allocation.

RESPONSE

In my opinion, pursuant to Arkansas Code Annotated § 16-10-209(5)(F)(i) (Supp. 2015), partial payments in *district court* are allocated to court costs, then to restitution, then to fines. But because no similar statute exists governing *circuit courts*, a *circuit court* has discretion to specify the allocation of payments to court costs, restitution, and fines.

The method of making a partial payment does not change the prevailing allocation, although certain payment methods may involve additional items to be deducted from the payment before the allocation is made. For example, installment fees (for those paying in installments) and transaction fees (for those paying by credit or debit card) may be deducted prior to allocating the payment among the statutory categories.

There appears to be one way a district court can comply with Arkansas Code Annotated § 16-10-209(5)(F)(i) but effect a practical alteration of the allocation order. Specifically, a district court may make one or more items payable

immediately (for example, restitution) while permitting the other(s) to be paid in installments over time (for example, court costs). To the extent a district court permits the items to be paid in installments, the court has no express authority to alter the allocation set by statute.¹

Cities and counties may not change the allocation set by statute with respect to district court or by the court itself with respect to circuit court.

DISCUSSION

Question 1 – How are partial payments in district and circuit courts allocated among court costs, restitution, and fines?

Fines, court costs, and restitution are all payable immediately unless the court grants permission for payment within a specified time or in specified installments.²

Arkansas Code Annotated § 16-10-209(5)(F)(i) provides that, in district courts, partial payments are allocated to court costs until they have been paid in full, then to restitution until paid in full, then to fines.

No similar statute governs allocations in circuit court. In my opinion, a circuit court may specify in its discretion an allocation of payments with respect to a particular defendant. The court's order likely will indicate expressly or by implication in which order the obligations are to be satisfied. In the event a circuit court order does not specify or imply an allocation, the officials responsible for applying a payment would not, in my view, be acting unreasonably to follow the statutory district court allocation.

Question 2 – Does the method of payment change the allocation?

The making of a partial payment by some method other than cash does not, in my opinion, change the appropriate allocation among fines, court costs, and

¹ Because there is no law specifying the allocation in circuit court, such courts have discretion to specify the allocation in each case. There is, in other words, no specified allocation to alter.

² See Ark. Code Ann. §§ 5-4-202(b) (Repl. 2013), 5-4-205(e)(1) (Supp. 2015).

restitution. There may, however, be amounts in payment of other items to be deducted from a particular partial payment.

For example, when fines are payable by installments, two monthly installment fees of \$5.00 each are assessed and presumably are deducted from the payment before the remainder is allocated among fines, court costs, and restitution.³

Additionally, transaction fees may be imposed on offenders paying by credit or debit card.⁴ These fees are also presumably deducted from the payment before the remainder is allocated among fines, court costs, and restitution.

Question 3 – May a court alter the allocation?

In my opinion, there is one way a district court may, in essence, alter the allocation of installment payments. A district court may comply with the requirements of Arkansas Code Annotated § 16-10-209(5)(F)(i) while, as a practical matter, altering the statutory allocation by ordering that one or more of court costs, restitution, and fines be paid immediately and the other(s) be paid in installments over time. For example, a district court could order restitution to be paid immediately, but court costs to be paid in installments over time.

However, this is the only way to effect an alteration of the statutory allocation requirements. Specifically, there appears to be no express provision of law permitting such alteration to the extent the court permits all categories to be paid in installments. The statute described above that sets forth the district court allocation implies that a district court may not change the specified allocation.⁵

Question 4 – May a city or county change the allocation?

In my opinion, the answer to this question is “no.” Current law provides that “[a] municipal or county governing body that adopted ... legislation before July 1, 2013, to provide an alternative method of installment payment allocation as then

³ See Ark. Code Ann. § 16-13-704(b) (Supp. 2015).

⁴ See Ark. Code Ann. §§ 16-13-706(b) (Supp. 2015), 16-92-118(d), (e) (Supp. 2015).

⁵ Because there is no law specifying the allocation in circuit court, such courts have discretion to specify the allocation in each case. There is, in other words, no specified allocation to alter.

authorized by state law shall remain in effect until repealed.”⁶ This provision clearly implies that – while local governments previously were empowered to alter the allocation and that ordinances adopted under that power may continue in effect – local governments are no longer authorized to alter the allocation of installment payments.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁶ Ark. Code Ann. 16-10-209(5)(F)(iii).