

STIPULATED SETTLEMENT AGREEMENT AND RETENTION OF JURISDICTION

This Stipulated Settlement Agreement and Retention of Jurisdiction (hereinafter “Agreement”) is made by and among the City of Biloxi (“Biloxi” or “the City”), John Miller (“Miller”), and Judge James Steele (“Steele”); and Qumotria Kennedy (“Kennedy”), Richard Tillery (“Tillery”), and Joseph Anderson (“Anderson”), (hereinafter referred to individually and collectively as “Plaintiffs”), on behalf of himself and each of his respective heirs, successors, and assigns. Biloxi, Miller, Steele, Kennedy, Tillery, and Anderson are from time to time referred to hereinafter individually as a “Party” and collectively as the “Parties.”

WHEREAS, each of the named Plaintiffs allege that they were incarcerated—Plaintiff Kennedy for five nights from July 30, 2015 to August 4, 2015; Plaintiff Anderson for seven nights from December 27, 2012 to January 3, 2013; and Plaintiff Tillery for fifty nights in April, July and September 2014—in the Harrison County Adult Detention Center because of inability to pay fines, state assessments, fees, court costs, or restitution (collectively, “legal financial obligations” or “LFOs”) imposed by the Biloxi Municipal Court (“Biloxi Municipal Court”) for traffic or misdemeanor offenses, but allegedly were not afforded ability-to-pay hearings or informed of their right to request counsel prior to being jailed, and were not provided court-appointed counsel as indigent people facing possible incarceration for failure to pay LFOs (the “Incidents”);

WHEREAS, Plaintiffs filed a Complaint on October 21, 2015 in the United States District Court for the Southern District of Mississippi, commencing a proposed class action lawsuit entitled *Kennedy, et al., v. The City of Biloxi, Mississippi et al.*, Civil Action No. 1:15-cv-00348-HSO-JCG (the “Lawsuit”), against Biloxi, Miller, Steele, and Judicial Corrections Services, Inc. (“JCS”), which seeks declaratory and injunctive relief, as well as compensatory

damages for the named Plaintiffs, and alleges violations of Plaintiffs' rights to due process and equal protection of the law under the Fourteenth Amendment to the U.S. Constitution, and right to freedom from unreasonable searches and seizures under the Fourth Amendment as a result of Defendants Biloxi, Miller, and Steele's alleged policies, practices, and customs that allegedly exhibited deliberate indifference to Plaintiffs' rights and directly led to Plaintiffs' jailing for failure to pay LFOs they could not afford;

WHEREAS, on October 21, 2015, Plaintiffs Kennedy and Tillery filed a motion pursuant to Federal Rule of Civil Procedure 23(b)(2) seeking the certification of two proposed classes defined as follows: (1) all people who currently owe, or in the future will owe, fines, fees, court costs, or restitution in Biloxi Municipal Court cases (the "Main Class"); and (2) all indigent people who currently owe, or in the future will owe, fines, fees, court costs, or restitution in Biloxi Municipal Court cases (the "Indigent Class");

WHEREAS, it is the desire of the Parties to resolve all disputes as between and among them and to settle the Lawsuit;

WHEREAS, the Lawsuit shall be dismissed with prejudice as to Defendants Biloxi, Miller, and Steele, expressly on the basis of no finding and no admission of liability, fault, wrongdoing, or responsibility for any of the claims in the Lawsuit, any such liability, fault, wrongdoing, or responsibility being expressly denied by Defendants Biloxi, Miller, and Steele; and

WHEREAS, the Mayor and City Council of Biloxi by resolution adopted December 29, 2015, have increased the budget for the City of Biloxi's Legal Department, which includes operation of the Biloxi Municipal Court, in the additional amount of Two Hundred Fifty-Three Thousand Twenty-Four Dollars (\$253,024) for Fiscal Year 2016 and Three Hundred Forty-Four

Thousand Twenty-Four Dollars (\$344,024) on an annual basis for subsequent fiscal years, in order to facilitate the additional duties that the City is voluntarily agreeing to perform according to the terms of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration passing between the Parties, and intending to be legally bound hereby, it is agreed:

DEFINITIONS

The Definitions contained herein shall only apply to this Agreement and shall not apply to any other agreement, nor shall the terms defined herein be used as evidence, except with respect to this Agreement, of the meaning of any of them.

A. “Claim” shall mean any past, present or future claim, notice, demand, request, inquiry, order, action, right, count, cause of action, lawsuit, cross-complaint, counter-complaint, administrative proceeding, arbitration, mediation, order, judgment, statutory or regulatory obligation, settlement, request for information or allegation of any kind, character or nature arising from or related to the Incidents, whether known, unknown, suspected or unsuspected, whether at law or in equity, and whether sounding in constitutional law, tort, contract, equity, nuisance, trespass, negligence, strict liability or any constitutional, statutory, regulatory, common law or foreign law cause of action of any kind whatsoever, including those which were or could have been asserted in the Lawsuit.

B. “Settlement Sum” shall mean Seventy-Five Thousand and no/100ths Dollars (\$75,000.00).

A. POLICY CHANGES

1. Procedures for Legal Financial Obligations and Community Service. Biloxi shall

adopt and implement the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service, attached hereto as Exhibit A, and made part hereof, which furthers the protection of: (a) defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of LFOs; (b) defendants' right to freedom from unreasonable seizures; (c) defendants' right to be represented by counsel in LFO collection proceedings; and (d) indigent defendants' right to court-appointed counsel to defend against possible incarceration for failure to pay LFOs.

a. Payment Plans. Whenever a person sentenced to an LFO cannot pay the LFO in full on sentencing day, the Biloxi Municipal Court may collect the LFO through a payment plan administered by the Clerk of Court pursuant to the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service. Biloxi agrees to have no minimum for the amount that the Biloxi Municipal Court may order for monthly payments, and to charge no extra fees, costs, or interest upon unpaid LFOs owed by a defendant 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.

b. Compliance Hearings. The Biloxi Municipal Court shall set a Compliance Hearing for every person who is alleged to have failed to meet the requirements of the Court's imposed sentencing using the Biloxi Municipal Court Order Setting Compliance Hearing, attached hereto as Exhibit A (Form One). The Order will provide the defendant with thirty (30) days notice of the Compliance Hearing date. At all Compliance Hearings concerning nonpayment of LFOs, the Biloxi Municipal Court shall inquire into the defendant's ability to pay and efforts to secure resources, and if the Court finds that the defendant is unable to pay, it shall consider the adequacy of alternatives to incarceration. The Biloxi Municipal Court shall have a default procedure of audio recording Compliance Hearings. In the event audio recording

equipment is temporarily not working, the Court shall ensure that the following is documented in writing: (i) the evidence submitted by the defendant concerning ability to pay and efforts to secure resources, (ii) the Court's findings and evidence to support those findings, and (iii) the Court's colloquy concerning ability to pay, efforts to secure resources, alternatives to incarceration, and the right to counsel.

c. Forms and Advisement of Rights. Whenever the Biloxi Municipal Court provides notice of a Compliance Hearing date, it shall also provide the hearing subject a Biloxi Municipal Court Advisement of Rights and Obligations for Legal Financial Obligations and Community Service, attached hereto as Exhibit A (Form Two), and an LFO Inability to Pay Guide, attached hereto as Exhibit A (Form Four).

d. Bench Card. Whenever the Biloxi Municipal Court seeks to impose LFOs or whenever the nonpayment of LFOs or completion of community service will be addressed in a Biloxi Municipal Court hearing, the Biloxi Municipal Court Judge shall follow applicable law, the procedures set forth in the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service (Exhibit A), and the Bench Card, attached hereto as Exhibit B. In particular, the Biloxi Municipal Court Judge must advise hearing subjects of the following rights and information set forth in the Bench Card: (i) all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or restitution; (ii) all defendants' right to be represented by legal counsel for defense against possible incarceration for failure to pay LFOs; (iii) indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in proceedings concerning nonpayment of LFOs; (iv) that any waiver of the right to counsel or the right to court-appointed counsel must be knowing, voluntary, and intelligent; (v) the types of information relevant to

determining ability to pay; (vi) the potential penalties that may be imposed if a defendant is found to have willfully failed to pay a fine, fee, court cost, state assessment, or restitution; and (vii) that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing.

e. Determination of Ability to Pay. Whenever the Biloxi Municipal Court is determining the amount of LFOs, establishing an LFO Payment Plan, or addressing the nonpayment of LFOs in a hearing, the Court shall conduct an inquiry regarding the person's ability to pay. 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 this inquiry, the Court shall use the Affidavit of Indigence, attached hereto as Exhibit A (Form Three), and inquire into the topics listed on the LFO Inability to Pay Guide (Form Four), as well as any other factors considered relevant by the Court. The Court shall also carefully consider the person's responses to each of the questions before making any determination, including a determination regarding ability to pay and whether nonpayment is 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. Any determinations that the Court makes regarding ability to pay or willfulness of nonpayment shall be guided by the Bench Card and shall be in accordance with applicable law, including *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983).

f. Alternatives to Incarceration for Fines, Fees, Court Costs, Restitution, and State Assessments. If the Court determines that a defendant is unable to pay fines, fees, court costs, state assessments, or restitution, Biloxi Municipal Court Judges shall consider alternative

methods of achieving the City's interest in punishment and deterrence. Judges 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 shall include the following:

- i. Reduction of the amount of fines, fees, court costs, and restitution imposed;
- ii. Waiver or Suspension of the fines, fees, court costs, and restitution imposed;
- iii. Community Service credit toward the discharge of fines, fees, state assessments, court costs, and 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;
- iv. 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;
- v. Extension of the Amount of Time for payment of fines, fees, court costs, state assessments, and restitution owed to Biloxi; and
- vi. Any Other Disposition deemed just and appropriate, in the

discretion of the Court, pursuant to applicable law.

g. Pursuant to Miss. Code Ann. § 63-1-53, Biloxi shall report to the Commissioner of Public Safety the failure of any person to pay timely any fine, fee or assessment levied as a result of a violation of Title 63 of the Mississippi Code following a Compliance Hearing concerning the alleged nonpayment.

2. Use of Private Probation Companies for LFO Collection. The City of Biloxi, Mississippi will implement this Agreement without hiring, contracting with, or otherwise using any private probation company after June 1, 2016.

3. Incarcerating Indigent People. The Biloxi Municipal Court shall immediately cease issuing and enforcing any type of warrant that permits law enforcement officers to arrest and jail a person for nonpayment of a fine, fee, state assessment, court cost, or restitution imposed by the Biloxi Municipal Court, without a pre-incarceration hearing on the defendant's ability to pay, in which defendants' right to legal representation and indigent defendants' right to court-appointed counsel are protected. The Biloxi Municipal Court shall not issue so-called "pay-or-stay" sentences, in which a municipal court judge sentences a person to a specific monetary penalty or, in the alternative, a specific number of days in jail for a misdemeanor offense or conviction of contempt of court without a pre-incarceration hearing on ability to pay and protection of the defendants' right to legal representation and indigent defendants' right to court-appointed counsel.

4. Suspension of Unpaid LFOs in Cases More Than Two-Years Old. On or before June 15, 2016, the Biloxi Municipal Court shall suspend fines, fees, court costs, and restitution for all Biloxi Municipal Court cases that remain open solely because fines, fees, court costs, or restitution imposed before March 15, 2014 have not been paid in full. The suspension of any

LFOs pursuant to this paragraph may only be revoked within two (2) years of the suspension, as set forth in Miss. Code Ann. § 21-23-7(5), and following an individualized determination by the Biloxi Municipal Court that revocation is warranted. If a suspension is revoked pursuant to such procedures, the collection of unpaid LFOs shall be handled in accordance with Paragraphs 5-7 of this Agreement.

5. Recall of Failure-to-Pay Warrants More Than Two-Years Old. On or before June 15, 2016, the Biloxi Municipal Court shall recall and quash all “failure-to-pay warrants,” which consist of: (a) “*capias pro finem*” warrants issued before March 15, 2014 against people charged with nonpayment of LFOs; (b) “*capias*” warrants issued before March 15, 2014, that allege that the subject has not paid a fine, fee, state assessment, court cost, or restitution and/or specify a monetary amount that, if paid, would secure release of the subject from jail; and (c) contempt warrants issued before March 15, 2014, that allege that the subject has not paid a fine, fee, state assessment, court cost, and/or restitution or specify a monetary amount that, if paid, would secure release of the subject from jail. On or before June 15, 2016, the Biloxi Municipal Court shall waive any post-sentencing fees and court costs associated with the recalled and quashed warrants.

6. Recall of Failure-to-Pay and Failure-to-Appear Warrants Less Than Two-Years Old. On or before June 15, 2016, Biloxi shall identify all people who owe a fine, state assessment, fee, court cost, or restitution imposed by the Biloxi Municipal Court and have an outstanding failure-to-pay warrant issued between March 15, 2014 and the date of this Agreement, and/or an outstanding arrest warrant issued between March 15, 2014 and the date of this Agreement for having failed to appear for a Biloxi Municipal Court hearing concerning alleged nonpayment of LFOs (“failure-to-appear warrants”). On or before June 30, 2016, Biloxi

shall recall and quash the aforementioned failure-to-pay and failure-to-appear warrants, and waive any post-sentencing fees and court costs associated with these warrants.

7. Reset Opportunity for People Subject to Recall of Failure-to-Pay and Failure-to-Appear Warrants Less Than Two-Years Old. On or before June 15, 2016, the Biloxi Municipal Court will issue an Order Setting Compliance Hearing to each person who is the subject of a recalled/quashed warrant pursuant to Paragraph 6 of this Agreement in a case that was not suspended pursuant to Paragraph 4 of this Agreement. The Order Setting Compliance Hearing (Form One) will be mailed to the last known address of each person along with an Advisement of Rights and Obligations for Legal Financial Obligations and Community Service (Form Two), an LFO Inability to Pay Guide (Form Four), and the following statement: “You are the subject of a recalled warrant; you have the obligation to appear at the Compliance Hearing set for [DATE]; and when you appear, you will NOT be jailed for nonpayment of a fine, state assessment, restitution, fee, or court cost or for failure to appear at a previously scheduled court hearing concerning nonpayment.” In addition, notice shall be posted in English, Vietnamese and Spanish as follows to indicate that reset letters have been sent: (a) on the window and front door of the Biloxi Municipal Court on 170 Porter Avenue in Biloxi; (b) in the Biloxi Municipal Court’s courtroom in the Harrison County Adult Detention Center; (c) in the Biloxi Police Station at 170 Porter Avenue in Biloxi; (d) on the City of Biloxi website, including on the following page: <http://www.biloxi.ms.us/departments/municipal-court/>; and (e) in the offices and other spaces used by service providers working with homeless and/or indigent people in Biloxi, as determined by the City, which shall make reasonable efforts to identify such providers. The foregoing provisions of this paragraph notwithstanding, any individuals with outstanding arrest warrants for conduct unrelated to alleged nonpayment or failure to appear for LFO collection proceedings

may be arrested when they appear at the Biloxi Municipal Court for a Compliance Hearing. The Biloxi Municipal Court shall not charge any subject of a reset LFO with failure to appear at a Compliance Hearing absent proof that she/he was afforded actual notice of the Order Setting Compliance Hearing, Advisement of Rights and Obligations for Legal Financial Obligations and Community Service, and LFO Inability to Pay Guide. Biloxi shall provide Plaintiffs' counsel with an email copy of each reset notice letter at approximately the same time that notice is provided to the subjects of the warrant recall addressed in Paragraph 6.

8. Release of Individuals Currently in Jail, if any, for Nonpayment of LFOs. On or before April 1, 2016, Biloxi shall identify and release the following individuals, if any currently exist, from confinement: (a) all people currently incarcerated in the Harrison County Adult Detention Center pursuant to a failure-to-pay warrant issued by the Biloxi Municipal Court, including all warrants described in Paragraph 5 (i.e., people who are "sitting out fines"); and (b) all people currently incarcerated in the Harrison County Adult Detention Center pursuant to the issuance of a "pay or stay" sentence by the Biloxi Municipal Court for a misdemeanor offense or finding of civil contempt. Biloxi shall order and effect the release of all such persons unless the Biloxi Municipal Court determines, on or before April 1, 2016, that an individual is properly held pursuant to an arrest warrant or sentence that is unrelated to any alleged nonpayment of LFOs. Biloxi shall provide Plaintiffs' counsel by email the names and case numbers for all individuals identified for release as described in this paragraph and all individuals whom Biloxi has determined may be held due to the existence of a valid warrant or sentence unrelated to nonpayment of LFOs. Biloxi shall credit each released person with a reduction in the amount of fines, state assessment, fees, court costs, or restitution owed at the rate of Fifty-Eight Dollars and no/100ths (\$58.00) per day. Biloxi may set a Compliance Hearing for any released person, but if

Biloxi does so, it shall provide the person the following information at least thirty (30) days in advance of the Compliance Hearing: (a) notice of the Compliance Hearing date through provision of a Biloxi Municipal Court Order Setting Compliance Hearing (Form One); (b) a Biloxi Municipal Court Advisement of Rights and Obligations For Legal Financial Obligations and Community Service (Form Two); (c) an Affidavit of Indigence (Form Three) to facilitate the gathering of information for purposes of appointing counsel; and (d) an LFO Inability to Pay Guide (Form Four) to facilitate the gathering of information for purposes of determining ability to pay.

9. Secured Money Bonds will not be used to detain persons arrested for any violation that may be prosecuted by Biloxi in its Municipal Court absent an examination by the Biloxi Municipal Court of the defendants' substantial risk of non-appearance. People arrested will be released on a Release and Recognizance Bond as soon as practicable after booking unless the Biloxi Municipal Court determines that secured money bail is the only pretrial release option that will adequately assure the defendant's presence at trial.

10. Publication and Dissemination of Procedures. On or before May 15, 2016, Biloxi shall publish and disseminate the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service and the Bench Card to all personnel of, or under the control of, the City of Biloxi involved in the imposition and/or collection of fines, fees, state assessments, court costs, and restitution imposed by the Biloxi Municipal Court, including permanent and temporary Biloxi Municipal Court Judges, Biloxi Municipal Court staff, Biloxi public defenders and other defense counsel appointed to represent indigent people in Biloxi Municipal Court proceedings, Biloxi prosecutors, Biloxi Police Department staff, employees of private companies, if any, involved in the supervision of Biloxi Municipal Court probationers, or

in the collection of legal financial obligations imposed by the Biloxi Municipal Court. This publication and dissemination shall include prominent placement of the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service in the Biloxi Municipal Court located at 170 Porter Avenue in Biloxi, Mississippi, in the Biloxi Municipal Court courtroom in the Harrison County Adult Detention Center, and on the City of Biloxi website.

11. Changes to The City of Biloxi Website. As of the date of this Agreement, Biloxi has removed the following language from its website, <http://www.biloxi.ms.us/departments/municipal-court/>:

Payment of fines: Fines are due in full on the day of assessment. This will be either the day you plead guilty or the day you may be found guilty. There is never a fine when you are found not guilty. Tickets must be paid in full so that the outcome can be reported immediately to the Department of Public Safety. Larger misdemeanor fines may be paid according to a payment plan but only after an initial payment is made. Depending on the total fine the initial payment is \$50 or \$100 and is due on the date of assessment. Remember that release on a payment plan is a privilege afforded by the Court and a violation of a payment order will result in your immediate arrest.

On or before May 15, 2016, Biloxi shall replace the aforementioned language on its website with the following text:

Payment of fines, state assessments, fees, court costs, and restitution. If you plead guilty or are convicted of a misdemeanor, the Biloxi Municipal Court may impose fines, state assessments, fees, court costs, and/or restitution (“legal financial obligations” or “LFOs”). If you are found NOT GUILTY, the Court will NOT impose an LFO. You may pay the full amount of any LFO imposed upon you for a misdemeanor offense on the day of sentencing. If you are unable to pay in full on sentencing day, the Biloxi Municipal Court may place you on a Payment Plan administered by the Clerk of Court. The Court shall consider your ability to pay when setting the payment schedule.

The U.S. Constitution requires safeguards when collecting LFOs. No person shall be imprisoned for nonpayment of LFOs

solely because they are unable to pay. A person may ONLY be jailed for nonpayment of a fine, fee, court cost, state assessment, or restitution following a court hearing where the Court considers the person's ability to pay, efforts to secure resources, and alternatives to incarceration, and concludes, based on specific evidence, that the person **willfully failed to pay, failed to make sufficient efforts to secure money to pay, or that no adequate alternatives to incarceration exist.**

Your Rights. Any person who has not paid an LFO according to the terms of a Payment Plan has the right to a Compliance Hearing and the right to be represented by legal counsel for defense against possible incarceration for nonpayment of an LFO. If you are indigent, you also have a right to court-appointed counsel at no cost. The **Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service** seek to protect these rights and set forth the procedures the Court will follow.

Your Duty. It is your duty to keep the Biloxi Municipal Court informed of your mailing and residence address. As soon as reasonably possible after a change in your mailing and/or residence address, you should complete the Notice of Change of Address and deliver it to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530, by one of the following means: (1) U.S. Mail, (2) hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or (3) email to coacourt@biloxi.ms.us. You may access the Notice of Change of Address form at <http://www.biloxi.ms.us/ChangeOfAddressForm>.

The term "Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service" shall be bold and shall hyperlink to a page providing the full text of the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service and Bench Card.

12. **Training.** Within thirty (30) days after Defendants Biloxi, Miller, and Steele publish and disseminate the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service and Bench Card, Biloxi shall train on these documents and the policies, procedures and standards set forth therein all personnel involved in the imposition and collection

of LFOs, including all current Biloxi Municipal Court Judges, Biloxi Municipal Court staff, Biloxi public defenders, defense counsel appointed to represent indigent people in Biloxi Municipal Court proceedings, Biloxi prosecutors, Biloxi Police Department staff, employees of private companies, if any, involved in the supervision of Biloxi Municipal Court probationers and/or the collection of legal financial obligations imposed by the Biloxi Municipal Court. Training shall be conducted by qualified third-parties selected by Biloxi, after consultation with Plaintiffs' counsel.

a. Judges. Biloxi Municipal Court Judges shall attend training on LFO issues during the initial training period in 2016 and again during the City's training period in 2017. The training shall address: (i) the standards set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and *Turner v. Rogers*, 564 U.S. 431 (2011); (ii) the Bench Card and the Biloxi Municipal Court Procedures for LFO Collection and Community Service, and the forms attached thereto; (iii) the impact of LFOs on indigent people; (iv) procedures required for appointing counsel; (v) standards for evaluating the validity of any waiver of the right to counsel; and (vi) considerations regarding the inclusion of LFOs in plea agreements with indigent defendants. Biloxi shall ensure that copies of all training materials are provided to any new judges, and that new judges are trained on these materials prior to imposing or collecting LFOs.

b. Biloxi Police. For a minimum of two (2) years, Biloxi Police officers involved in the execution of arrest warrants and in booking people for jail shall attend annual trainings on LFO issues. The training shall address: (i) the rights of defendants and indigent people charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by legal counsel prior to jailing for failure to pay, and indigent

defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; and (ii) the termination of the use of failure-to-pay warrants described in Paragraph 5. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new police officers involved in the in the execution of arrest warrants and in booking people for jail.

c. Employees of Any Private Company Involved in Supervising Probation and/or LFO Collection, and Biloxi Municipal Court Non-Judicial Staff. For a minimum of two (2) years, Biloxi shall annually train on LFO issues: (i) the employees of Pioneer Credit Recovery, Inc. (if it continues to serve the Biloxi Municipal Court); (ii) the employees of any other private company handling the supervision of probationers or the collection of LFOs imposed by the Biloxi Municipal Court; and (iii) all Biloxi Municipal Court staff who are involved in the supervision of probation or the collection of LFOs imposed by Biloxi Municipal Court and who are not judges, prosecutors, or public defenders. The training shall address: (i) the rights of defendants charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by legal counsel prior to being jailed for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; (ii) the standards governing any waiver of the right to counsel; (iii) the impact of LFOs on indigent people; (iv) procedures for imposing LFOs, including Payment Plans; (v) procedures for collecting unpaid LFOs, including Compliance Hearings; (vi) standards for assessing ability to pay including the factors giving rise to a rebuttable presumption of inability to pay; and (vii) alternatives to incarceration for those determined to be unable to pay LFOs, including reduction or waiver of fines, fees, court costs and restitution, as well as community service and approved job skills training and programs in

education, counseling, mental health and drug treatment. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new probation officers, non-judicial Biloxi Municipal Court staff, and employees Pioneer Credit Recovery, Inc., and any other private company handling collection of LFOs imposed by the Biloxi Municipal Court.

d. Court-Appointed Defense Counsel. For a minimum of two (2) years, the public defender(s) and panel attorneys appointed by the Biloxi Municipal Court to represent indigent defendants shall attend annual trainings on LFO issues. The training shall address: (i) the standards set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and *Turner v. Rogers*, 564 U.S. 431 (2011); (ii) the rights of defendants and indigent people charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by counsel prior to jailing for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; (iii) procedures and standards for assessing ability to pay at the time of imposing LFOs, setting a Payment Plan, and during Compliance Hearings, including the factors giving rise to a rebuttable presumption of inability to pay; (iv) defenses to charges of willful failure to pay LFOs and evidence in support of mitigation; (v) the Bench Card, the Biloxi Municipal Court Procedures for LFO Collection and Community Service and the forms attached thereto; (vi) the importance of meeting with clients in advance of sentencing proceedings and Compliance Hearings in order to prepare defenses against the imposition of LFOs and/or a finding of willful failure to pay, and to provide sufficient time to gather evidence in support of defenses and/or mitigation against failure-to-pay charges; (vii) the impact of LFOs on indigent people; (viii) alternatives to incarceration for those determined to be unable to pay LFOs, including the reduction or waiver of fines, fees, court costs, and restitution, as well as community

service and approved job skills training and programs in education, counseling, mental health and drug treatment; and (ix) considerations regarding the inclusion of LFOs in plea agreements with indigent defendants. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new public defenders and counsel added to the list of panel attorneys for appointment by the Biloxi Municipal Court.

e. Prosecutors. For a minimum of two (2) years, prosecutors operating in the Biloxi Municipal Court shall attend annual trainings on LFO issues. The training shall address: (i) the standards set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and *Turner v. Rogers*, 564 U.S. 431 (2011); (ii) the rights of defendants and indigent people charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by counsel prior to jailing for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; (iii) the Bench Card, the Biloxi Municipal Court Procedures for LFO Collection and Community Service and the forms attached thereto; (iv) procedures and standards for assessing ability to pay at the time of setting a Payment Plan, including the factors giving rise to a rebuttable presumption of inability to pay; (v) the impact of LFOs on indigent people; (vi) considerations regarding the inclusion of LFOs in plea agreements with indigent defendants; and (vii) alternatives to incarceration for those determined to be unable to pay LFOs, including the reduction or waiver of fines, fees, court costs, and restitution, as well as community service and approved job skills training and programs in education, counseling, mental health and drug treatment. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new prosecutors.

13. Public Defense and Appointment of Counsel to the Indigent. Since the filing of

this lawsuit, Biloxi has voluntarily provided additional funding to the Biloxi Legal Department and Biloxi Municipal Court and intends to continue providing funding needed to ensure: (a) that every defendant charged with failure to pay LFOs is provided a competent indigence determination using the Affidavit of Indigence for purposes of evaluating whether the Biloxi Municipal Court must appoint counsel to represent the defendant in any Compliance Hearing; (b) that all court-appointed counsel, whether a panel attorney or public defender, provide competent representation (including appeals and *habeas corpus* motions, as allowed by law) to indigent defendants charged with failure to pay LFOs; and (c) sufficient supervision of panel attorneys and public defenders; and (d) data collection.

a. Public Defense Contracts. Any professional services agreements with public defenders or panel attorneys working on a contract basis and representing indigent people in the Biloxi Municipal Court shall make clear: (i) that the attorney may be appointed to represent indigent people solely with respect to the issue of nonpayment of LFOs imposed by the Biloxi Municipal Court; (ii) that the attorney is expected and obligated to provide competent representation on LFO issues to any indigent person to whom the attorney is appointed, regardless of whether appointment was specifically in relation to nonpayment of LFOs; (iii) that such representation shall cover the imposition of LFOs, setting of a Payment Plan, and charges of nonpayment of LFOs; that such representation shall be continuing in nature (including appeals and habeas motions, as allowed by law); (iv) that the attorney is expected and obligated to participate in training on LFO issues and review related materials; (v) that the attorney will be supervised by Biloxi regarding the representation of indigent people in relation to LFO issues; and (vi) that the attorney is obligated to provide information, as defined in Paragraph (c) below, to Biloxi regarding such representation.

b. Supervision. No later than June 15, 2016, Biloxi shall establish procedures for the supervision of counsel appointed to represent indigent people charged with failure to pay LFOs. The supervision shall ensure that: (i) court-appointed attorneys are providing competent representation to indigent people regarding LFO issues, including LFO imposition and alleged nonpayment; (ii) that such representation shall be continuing in nature (including all appeals and habeas motions, as allowed by law); (iii) that adequate data is collected; and (iv) that each court-appointed attorney's caseload does not impede competent representation of indigent defendants.

c. Data Collection. No later than July 30, 2016, Biloxi shall start collecting the following data concerning cases involving the appointment of counsel to represent indigent people in the imposition and/or collection of LFOs: (i) number of cases to which each court-appointed attorney is appointed; (ii) amount of time spent on each case; and (iii) number of jail visits, motion filings, trials, and investigation requests handled by the attorney for each case.

14. Monitoring and Settlement Compliance.

a. Within sixty (60) days of implementing the requirements set forth in Paragraphs 1 through 13 above, Biloxi shall provide the U.S. District Court for the Southern District of Mississippi, Southern Division, and Plaintiffs' counsel with a status report sufficient to establish that Biloxi has substantially complied with the requirements detailed above.

b. Biloxi shall provide the following information to Plaintiffs' counsel on or about the following dates: July 15, 2016; November 15, 2016; March 15, 2017; July 15, 2017; November 15, 2017; and March 15, 2018:

i. The case numbers for Biloxi Municipal Court cases in which an individual is placed in jail for nonpayment of an LFO or nonperformance

of community service following the Effective Date of this Agreement;

- ii. All data collected, as defined above in Paragraph 13c, regarding court-appointed counsels' representation of clients in LFO imposition and/or collection proceedings in the Biloxi Municipal Court; and
- iii. All new public defender contracts entered into within the prior six (6) months, whether with new public defenders or renewals.

B. FINANCIAL TERMS

15. In full and complete satisfaction, compromise, and settlement of the Plaintiffs' claims for damages, attorneys' fees and expenses, and without admitting any liability or fault or wrongdoing, the City and Miller have agreed, in addition to promulgating the policies and procedures stated in this Agreement and attached as Exhibits "A" and "B", to pay a one-time, total sum of Seventy-Five Thousand and no/100ths Dollars (\$75,000.00) for all damages, attorneys' fees and expenses. The City will deliver the Settlement Sum by check made payable to "The American Civil Liberties Union Foundation, Inc." Said check will be delivered by overnight mail to Plaintiffs' attorney, Nusrat Choudhury at the ACLU, 125 Broad Street, 18th Floor, New York, New York, 10004, within thirty (30) business days after the Biloxi City Council adopts a resolution approving all terms of this Agreement at its open meeting on March 15, 2016. Plaintiffs' counsel shall distribute the Settlement Sum as follows: \$14,286 for Plaintiff Kennedy; \$18,367 for Plaintiff Anderson; \$17,347 for Plaintiff Tillery; and \$25,000 for attorneys' fees and expenses. The payment of the above-stated total amount is the entire and only monetary consideration for this Agreement. Each Defendant shall likewise be responsible for his or its own attorneys' fees and legal expenses in connection with the Incidents and the Lawsuit. Plaintiffs made no claim against Judge Steele for damages, attorneys' fees and

expenses.

C. TIME PERIOD

16. Unless otherwise stated, Biloxi, Miller, and Steele shall comply with the terms of this Agreement for a minimum of three (3) years.

D. DISMISSAL OF LAWSUIT

17. On March 4, 2016, Magistrate Judge John Gargiulo of the U.S. District Court for the Southern District of Mississippi held a Settlement Conference concerning the Lawsuit at which the Parties reported their agreement upon the policy reforms and financial terms addressed above. On March 7, 2016, the U.S. District Court issued a Final Judgment of Dismissal, which stated in full: “FINAL JUDGMENT OF DISMISSAL: that the above captioned civil action is dismissed with prejudice as to all parties, and that the Court hereby specifically retains jurisdiction to enforce the settlements.”

18. The Parties understand the U.S. District Court’s March 7, 2016 Final Judgment to indicate that the Court has retained jurisdiction to enforce the terms of this Agreement and the Parties’ obligations hereunder.

19. In the event any discrepancy exists between the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service (Exhibit A), the Bench Card (Exhibit B) and this Stipulated Settlement Agreement, the terms, conditions, and procedures in the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service (Exhibit A) shall govern.

20. If Plaintiffs’ counsel finds or believes that Defendants Biloxi, Miller, or Steele are not in substantial compliance with any term of this Agreement, Plaintiffs’ counsel shall bring the issue to the attention of Defendants’ counsel prior to filing a motion seeking appropriate relief

with the U.S. District Court for the Southern District of Mississippi, Southern Division. The Parties agree to use their reasonable best efforts to resolve any disputes that may arise.

E. RELEASE OF DEFENDANTS BILOXI, MILLER, AND STEELE BY PLAINTIFFS

21. In consideration of the policy reforms and the other covenants contained herein, Plaintiffs do for themselves and for their successors and assigns fully, finally and forever release, acquit, indemnify and hold harmless, and discharge each of the City of Biloxi, Mississippi, and all of its present and former agents, servants, employees, judges, law enforcement officers, departments, elected and non-elected officials, both individually and officially, including, but not limited to, John Miller, James Steele, Mayor Andrew “FoFo” Gilich, all present and former Biloxi City Council members, mayors, judges, and/or employees, subsidiaries, partnerships, successors or predecessor corporations, associations, insurers, attorneys, present and former members, owners, employers, supervisors, superiors, subordinates, coworkers, officers, directors, parents, subsidiaries, underwriters, consultants, subcontractors, and any and all other legal entities (“Releasees”), and covenants not to prosecute or sue Releasees for or on account of any and all Claims, as defined in this Agreement, including, but not limited to, claims of constitutional violations, as well as any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, in admiralty or in equity, that Plaintiffs, their successors and assigns ever had, now have, or hereafter can, shall or may have, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of this Agreement, including without limitation any Claims under any federal or state regulation, statute or

constitution, or any foreign law, including common law, which were raised or could have been raised in the Lawsuit.

22. It is intended by Plaintiffs and by Defendants Biloxi, Miller, and Steele that this Release shall be complete and shall not be subject to any claim of mistake of fact or law by Kennedy, Tillery, or Anderson, and that it expresses a full and complete settlement of liability claimed and denied, as against Defendants Biloxi, Miller, and Steele, and this Release is intended to avoid litigation and to be final and complete.

23. This Release is the result of a compromise of a disputed claim and is not a finding or an admission of liability, fault, wrongdoing, or responsibility on the part of the parties hereby released, who deny and disclaim such liability, fault, wrongdoing, or responsibility.

24. This Agreement is intended to, and Plaintiffs represent and warrant that each of them will, and hereby do, release and dispose of all liability of Defendants Biloxi, Miller, and Steele, and each of them, to Plaintiffs, and to any of his or her successors, assigns, or immediate family members, that might now or in the future have a claim as a result of any injury sustained by Plaintiffs, or any one of them, as a result of the Incidents, and that Plaintiffs will, and hereby do, release the Releasees from any such claims. Should any such further claim be made by any person or entity specified in this paragraph for which Defendants Biloxi, Miller, and Steele, or any of them might be liable, directly or indirectly, Plaintiffs agree to defend, hold harmless and indemnify Defendants Biloxi, Miller, and Steele, and each of them, from such claims.

F. RELEASE OF PLAINTIFFS BY DEFENDANTS BILOXI, MILLER, AND STEELE

25. In consideration of the General Release and the other covenants contained herein, each of Defendants Biloxi, Miller, and Steele does for itself or himself, and for its or his

successors and assigns, fully and forever release and discharge Plaintiffs, and covenants not to prosecute or sue Plaintiffs and any of their successors and assigns for or on account of any and all Claims, as defined in this Agreement, including, but not limited to, claims of constitutional violations, as well as any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty or in equity, that Defendants Biloxi, Miller, or Steele, ever had, now have, or hereafter can, shall or may have, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of this Agreement, including without limitation any Claims under any federal, state, or municipal regulation, statute or constitution, or any foreign law, including common law, which were raised or could have been raised in the Lawsuit; provided however, that the provisions of this release do not bar prosecution and disposition of future violations of criminal law, if any, and provided further as to Plaintiff Kennedy, that enforcement of the Biloxi Municipal Court sentence imposed for the 2015 charge of driving under a suspended license shall be handled according to the new Biloxi Municipal Court Procedures for LFOs and Community Service (attached hereto as Exhibit A).

26. It is intended by Defendants Biloxi, Miller, and Steele, and by Plaintiffs Kennedy, Tillery, and Anderson that this Release shall be complete and shall not be subject to any claim of mistake of fact or law by Defendants Biloxi, Miller, or Steele, and that it expresses a full and complete settlement of liability claimed and denied, as against Plaintiffs and, that this Release is intended to avoid litigation and to be final and complete.

27. This Agreement is intended to, and Defendants Biloxi, Miller, and Steele, each

represent and warrant that it or he will, dispose of all liability of Plaintiffs Kennedy, Tillery, and Anderson to it or him, and to any of its or his successors or assigns, that might now or in the future have a claim as a result of any injury sustained by it or him as a result of the Incidents.

G. MISCELLANEOUS

28. This Agreement will be binding upon and will inure to the benefit of the signatories hereto and their respective successors and assigns.

29. No amendments of this Agreement will be valid unless made in writing and signed by all of the signatories hereto.

30. This Agreement may be executed in duplicate counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto were on the same instrument. Each signatory to the Agreement may execute this agreement by telefax or email of a scanned copy of the signature page, which shall have the same force and effect as if executed on an original copy.

31. The Parties further agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

32. The Parties represent and warrant that they are not relying on the advice of any other Party, or anyone associated with them, as to legal, tax (income, estate, gift, or otherwise), or other consequences of any kind arising out of this Agreement; that they have not relied on any representations or statements, written or oral, of any other Party, including, but not limited to, any factual representation regarding the Incident, except insofar as those representations or statements are set forth in this Agreement; and that they are knowingly and voluntarily signing this Agreement and are not subject to duress, coercion, or undue influence by any other Party or

by anyone else.

33. The Parties understand that they have the right to obtain legal counsel to review and evaluate this Agreement, and attest that they have done so or else have agreed to waive this right.

34. If, after the date hereof, any provision of this Agreement is held to be illegal, invalid, or unenforceable, the remaining provisions shall continue in full force and effect.

35. It is the intent of the signatories that no part of this Agreement is to be presumptively construed either against or in favor of any signatory because of the identity of the drafter.

36. Paragraph headings contained herein are for purposes of organization only and do not constitute a part of this Agreement.

37. Any communications or notices to be provided to legal counsel for the parties pursuant to this Agreement will be sent in writing via email or addressed, via commercial overnight delivery service, to the attention of the persons identified below (or as the signatories may subsequently direct in writing):

Qumotria Kennedy:

c/o Nusrat Choudhury, Esq.
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 519-7876
Fax: (212) 549-2654
Email: nchoudhury@aclu.org

Richard Tillery:

c/o Nusrat Choudhury, Esq.
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Telephone: (212) 519-7876
Fax: (212) 549-2654
Email: nchoudhury@aclu.org

Joseph Anderson:

c/o Nusrat Choudhury, Esq.
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 519-7876
Fax: (212) 549-2654
Email: nchoudhury@aclu.org

The City of Biloxi:

City of Biloxi
c/o Gerald Blessey, City Attorney
140 Lameuse Street
Biloxi, Mississippi 39530
Telephone: (228) 435-6254
Fax: (228) 435-6129
Email: gblessey@biloxi.ms.us

John Miller:

City of Biloxi
c/o Gerald Blessey, City Attorney
140 Lameuse Street
Biloxi, Mississippi 39530
Telephone: (228) 435-6254
Fax: (228) 435-6129
Email: gblessey@biloxi.ms.us

James Steele:

c/o Corban Gunn
CORBAN GUNN, PLLC
175 Lameuse Street, Suite C
Biloxi, Mississippi 39530
Telephone: (228) 284-6805
Cell: (228) 697-4866
corban@corbangunn.com

38. The Parties further agree to cooperate fully and in good faith to draft and release

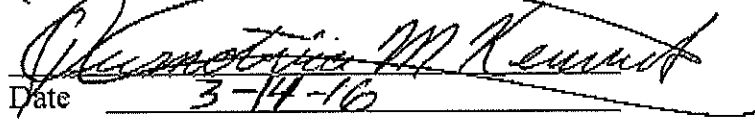
jointly to the public and press a reasonable and mutually agreeable joint press release that will summarize the basic terms and intent of this Agreement and the court procedures that the City has agreed to implement. The Parties agree to issue the joint press release simultaneously on March 15, 2016, the date of the regular Biloxi City Council meeting at which this Agreement will be approved.

39. This Agreement constitutes the entire agreement and understanding between and among the signatories with respect to the subject matter hereof and supersedes all other prior or contemporaneous oral agreements, understandings, undertakings and negotiations of the Parties.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their own signature or by their duly authorized representatives.

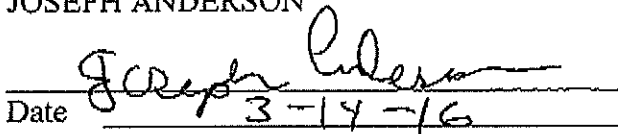
QUMOTRIA KENNEDY


Date 3-14-16

RICHARD TILLERY

Date _____

JOSEPH ANDERSON


Date 3-14-16

CITY OF BILOXI

By _____
Name _____
Title _____
Date _____

JOHN MILLER

By _____
Name _____
Title _____
Date _____

JAMES STEELE

By _____
Name _____
Title _____
Date _____

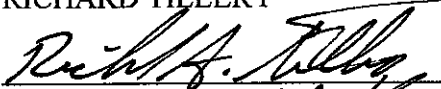
- Exhibits attached to and made a part of this Agreement:**
- Exhibit "A": Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service; and Forms One - Four
 - Exhibit "B": Bench Card

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their own signature or by their duly authorized representatives.

QUMOTRIA KENNEDY

Date _____

RICHARD TILLERY


Date 3-14-11

JOSEPH ANDERSON

Date _____

CITY OF BILOXI

By _____
Name _____
Title _____
Date _____

JOHN MILLER

By _____
Name _____
Title _____
Date _____

JAMES STEELE

By _____
Name _____
Title _____
Date _____

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QUMOTRIA KENNEDY

Date _____

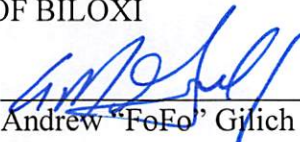
RICHARD TILLERY

Date _____

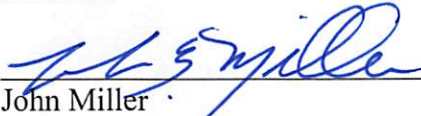
JOSEPH ANDERSON

Date _____


CITY OF BILOXI

By 
Name Andrew "FoFo" Gilich
Title Mayor
Date March 15, 2016

JOHN MILLER

By 
Name John Miller
Title Chief of Police, City of Biloxi
Date March 15, 2016

JAMES STEELE

By 
Name James Steele
Title n/a
Date March 15, 2016

Exhibits attached to and made a part of this Agreement:

- Exhibit "A": Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service; and Forms One - Four
- Exhibit "B": Bench Card

EXHIBIT A
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 Three) 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 Three), and by considering any other relevant factors, to evaluate whether the defendant is entitled to court-appointed counsel at no cost.

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.

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

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) provide the defendant the attached **Advisement of Rights and Obligations Related to Legal Financial Obligations and Community Service** (Form Two); and
- (5) provide the defendant the attached **LFO Inability to Pay Guide** (Form Four).

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 (FTA).

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 Two A). 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), 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.

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

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 for LFOs and Community Service** (Form Two) and the **LFO Inability to Pay Guide** (Form Four).

The **Order** (Form One) will provide the defendant with thirty (30) 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 Three) 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

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

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.

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 Three) and inquire on the topics set forth in the **LFO Inability to Pay Guide** (Form Four), 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;

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

3. the defendant is incarcerated; or
4. the defendant resides in a mental health facility.

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

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

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
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 thirty (30) days notice of the Compliance Hearing to the address provided by the defendant, the Court may issue a warrant for failure to appear (FTA). It is defendant's duty and responsibility to notify immediately the Municipal Court of any change in her/his address.

All efforts must be made to serve the FTA warrant during business hours on a weekday. Upon arrest pursuant to an FTA warrant, the defendant should be brought directly to Municipal Court instead of being taken to the Harrison County Adult Detention Center. At that time, the Court will

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have the defendant complete an **Affidavit of Indigence** (Form Three) to determine whether the defendant is entitled to court-appointed counsel at no cost. On traffic tickets and other misdemeanor charges that will be fine only, if a defendant is arrested on a weekend, weekday night, holiday, or any other time when Court is not in session, the arresting officer will contact a Biloxi Municipal Court Judge by telephone before transporting the defendant to Harrison County Adult Detention Center, at which time the Judge will authorize release of the defendant on his or her own recognizance until the next Biloxi Municipal Court plea or hearing date.

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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:

Fines:

State Assessments:

Fees:

Court Costs:

Restitution:

PAYMENT PLAN SCHEDULE:

COMMUNITY SERVICE HOURS REQUIRED AND COMPLETION DATE:

OTHER PROGRAM HOURS REQUIRED AND COMPLETION DATE:

You have been charged with the failure to pay and/or the failure to complete community service and/or an approved program as required by the Biloxi Municipal Court.

Payment Options

You may pay the Biloxi Municipal Court Clerk the full amount of your fines, fees, state assessments, court costs, or restitution (“legal financial obligations” or “LFOs”) today or at any point prior to your Compliance Hearing. You may also make installment payments according to the Payment Plan Schedule set forth above.

Compliance Hearing

The Court has set the above date for a **Compliance Hearing** when it will review the status of your payment of any LFOs and your completion of any community service or approved program imposed as part of your sentence.

You will be expected to explain to the Court the reason why you have not complied with the Court’s Order.

If you are unable to pay the Total Balance Due identified above, the Compliance Hearing offers an opportunity for you to discuss your financial situation and explain why you are unable to pay.

If you are unable to complete the community service or approved program in job skills training, education, counseling, mental health, or drug treatment, required by the specified date, you may explain why you are unable to do so.

You may ask the Court to reduce or waive any fine, fee, court cost, or restitution that you were ordered to pay, or to convert any LFO (fine, fee, court cost, state assessment, restitution) to

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community service or participation in an approved job skills training, education, counseling, mental health, or drug treatment.

If the Court determines you are indigent and cannot afford an attorney, an attorney will be appointed to represent you.

Your ability to pay is a critical issue in this hearing. You should bring with you any records to help explain the reasons for your nonpayment or non-completion of community service, including, but not limited to, pay stubs, utility bills, expenses, federal and state tax returns, documentation of disability status and/or any medical conditions, medical bills, and evidence of efforts to earn or borrow money to satisfy your obligations to the Court and/or to gain paid employment.

Biloxi Municipal Court Judge

**IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE
MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.**

Attachments:

- Form 2: Advisement of Rights and Obligations for Legal Financial Obligations and
 Community Service
- Form 2A: Notice of Change of Address
- Form 4: LFO Inability to Pay Guide

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM TWO

BILOXI MUNICIPAL COURT
ADVISEMENT OF RIGHTS AND OBLIGATIONS
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

What is a “Legal Financial Obligation” or “LFO”?

Any fine, fee, state assessment, court cost, or restitution imposed on you by the Court.

Do I have to attend the Compliance Hearing?

THIS HEARING IS MANDATORY. According to the Court records, you have failed to meet the requirements of the Court’s imposed sentence.

You **MUST** attend if you are unable to pay the Total Balance Due or complete the community service hours or participation in any job skills, education, counseling, mental health, or drug treatment required on your **Biloxi Municipal Court Order Setting Compliance Hearing** before the hearing date identified on the Order.

What will happen if I do not attend?

A warrant may be issued for your arrest for failure to appear in court.

Do I have a right to a lawyer?

Anyone may be represented by a lawyer at this Court proceeding. If you are found to be indigent, you have the **RIGHT TO A COURT-APPOINTED ATTORNEY TO REPRESENT YOU AT NO COST** at your Compliance Hearing.

The Court will use an **Affidavit of Indigence** to determine whether you are indigent and have the right to be represented by a court-appointed attorney at no cost.

The Court will provide you the form at the hearing.

What is the benefit of being represented by a lawyer at my Compliance Hearing?

A lawyer can help you assert your rights, prepare and present financial hardship documentation to the Court, and argue against jail and for alternatives to incarceration, if you are unable to pay any fine, fee, state assessment, court cost, or restitution.

Do I have to pay for a lawyer to represent me at the Compliance Hearing?

Yes, unless you are found to be indigent by the Court. If the Court finds you are indigent, the Court will appoint a lawyer to represent you at no cost to you.

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BILOXI MUNICIPAL COURT PROCEDURES
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If the Court appoints an attorney to represent me, when will the attorney prepare my case?

If the Court appoints an attorney to represent you at the Compliance Hearing, it will set a new date and time for the Compliance Hearing. Before that date, your attorney can help you complete the enclosed **LFO Inability to Pay Guide** and any other forms that the Court deems necessary, and to gather supporting documents. It is your responsibility to contact your appointed attorney for preparation and conference purposes.

You MUST attend the Compliance Hearing at the new date and time.

What will happen at my Compliance Hearing?

You will be expected to explain to the Court the reason why you have not complied with the Court's Order.

If you report that you are unable to pay LFOs, the Court will use the **LFO Inability to Pay Guide** and the **Affidavit of Indigence**, and will consider any other relevant information to **inquire and make a decision about your finances.**

This inquiry may include, among other things, asking you about your income, bank accounts, expenses (for example: rent, childcare, utilities, food, clothing, medical bills, transportation, etc.), and your property and other assets.

The Court may also inquire about your efforts to obtain money to pay, including your efforts to borrow money, your job search efforts and job skills, and any relevant limitations to your ability to work or secure work, including your disability, homeless status, health and mental health conditions, driving, and transportation limitations.

You should be prepared to present any DOCUMENTS showing your income, efforts to find work, expenses, disability or homeless status, receipt of needs-based public assistance, residence in a mental health facility, other LFOs, health conditions, driving, and transportation limitations.

Based on your ability to pay, you may be ordered to perform community service or be placed on a monthly Payment Plan with the Court.

Can I be JAILED for not being able to pay?

Yes, but there are protections to ensure that you are **NOT JAILED** solely because you are unable to pay LFOs.

1. The Court **MAY IMPOSE JAIL** for nonpayment of a **FINE, FEE, COURT COST, or RESTITUTION ONLY IF** it concludes, based on evidence, that:

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you **ARE ABLE TO PAY, BUT WILLFULLY FAILED to pay;**

you **FAILED TO MAKE SUFFICIENT EFFORTS** to secure money to pay; or

there are **NO ADEQUATE ALTERNATIVES** to incarceration.

2. The Court **CANNOT** jail you for LFO nonpayment if you are indigent and you are not represented by a lawyer and have not validly waived your right to counsel.

Can I be jailed for not being able to complete my community service or a required job skill training or program in education, counseling, mental health, or drug treatment?

Yes, but you **CANNOT** be jailed for non-completion of community service or a program **UNLESS** you **WILLFULLY** failed to perform community service or complete the program despite having the ability to do so.

If the Court determines that you have a disability, illness, or other circumstances that would prevent you from performing community service or completing the program, you will not be required to complete it.

What if the terms of my probation require me to pay LFOs or to complete community service or a required program?

Your probation may be revoked and you may be jailed for failing to comply with these terms of your probation **ONLY IF** the Court determines that:

- you have the ability to pay the LFO, or the ability to complete community service and/or the required program, but failed to do so;
- you failed to make sufficient efforts to acquire the resources to pay or perform community service and/or complete the required program;
- even though you are unable to pay, and you made sufficient efforts to acquire resources, the alternatives to incarceration are not adequate.

What if I am unable to pay?

If the Court determines that you are unable to pay **finances, fees, court costs, or restitution**, the Court will consider alternatives to incarceration including reducing, suspending or waiving the amount owed, extending the time to pay, or any other disposition deemed just and appropriate, in the discretion of the Court. The Court will also consider converting **finances, fees, state assessments, court costs, and restitution** owed to Biloxi to community service or the requirement to complete a training treatment or other program.

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
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What if the “Total Balance Due” amount on my Biloxi Municipal Court Order Setting Compliance Hearing is incorrect?

You may ask the Biloxi Municipal Court Clerk to provide you with a balance history that shows the amount of fines, state assessments, fees, court costs or restitution imposed and the application of any payments you have made.

If you believe the information provided to you is incorrect, you may discuss this with your attorney and raise it with the judge at your Compliance Hearing.

What if I change my mailing address before I pay my LFO in full or complete my required program?

As soon as reasonably possible after a change of mailing address, you should complete the **Notice of Change of Address** (Form Two A) and deliver it to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530, either 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>.

**IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE
MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.**

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
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FORM TWO A

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:

.....
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.**

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM THREE

AFFIDAVIT OF INDIGENCE

In the Municipal Court of the City of Biloxi, Mississippi

CITY OF BILOXI

v.

Case No. _____

Defendant

Name: _____

Residential Address: _____

City: _____ State: _____ ZIP: _____

1. Public Benefits/ Government Assistance received based on indigence:

- SSI WIC Food Stamps/SNAP TANF Medicaid
 CHIP AABD Needs-based VA Pension Pregnant Women Assistance
Benefits LIS in Medicare (“Extra Help”) Refugee Settlement Benefits
 Emergency Assistance County Assistance, County Healthcare, or General Assistance (GA)
 Public Housing Community Care via DADS Low-Income Energy Assistance
 LIS in Medicare (“Extra Help”) Child Care Assistance under Child Care and
Development Block Grant Other _____

2. Employment Status:

- a. Do you have a job? _____
b. How much do you make per hour? \$_____._____
c. How many hours do you work per week? _____

Employer’s Name: _____

Employer’s Address: _____

City: _____ State: _____ ZIP: _____

- d. If you don’t have a job, how long have you been unemployed? _____

EXHIBIT A

**BILOXI MUNICIPAL COURT PROCEDURES
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3. Monthly Income

Total Work Income (salary, wages, tips, commissions, overtime, allowances) (pre-tax)	\$ _____
Spousal Work Income	\$ _____
Alimony Received	\$ _____
Child Support Received	\$ _____
Unemployment Compensation	\$ _____
Social Security/ Pension / Retirement	\$ _____
Trusts	\$ _____
Veteran's Benefits	\$ _____
Other Income from Family Members (not spousal income or child support)	\$ _____
Dividends or Interest Payments	\$ _____
Life Insurance Payments	\$ _____
Rental Income	\$ _____
Worker's Compensation	\$ _____
Disability	\$ _____
Union Payments	\$ _____
Gifts	\$ _____
Inheritance	\$ _____
Income Tax Refund	\$ _____

Other Income not on list	\$ _____
--------------------------	----------

Total Monthly Income → \$ _____

3a. Other Income Not Received Monthly

Type of Income	\$ _____

Total Other Income → \$ _____

4. Assets

Cash on Hand	\$ _____
Real Property (home/land)	\$ _____
Non-Homestead Real Property	\$ _____
Dividends, Interest, Royalties	\$ _____
Motor Vehicle(s) Value	\$ _____
Certificates of Deposit	\$ _____
Boats	\$ _____
Stocks/Bonds	\$ _____
Savings Accounts	\$ _____
Checking Accounts	\$ _____
Money Market Accounts	\$ _____
Trusts	\$ _____
Other Assets Not on List	\$ _____

Total Assets → \$ _____

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

5. Liabilities and Debts

Motor Vehicle	\$ _____
Home	\$ _____
Other Real Property	\$ _____
Child Support Paid	\$ _____
Student Loans	
Credit Cards	\$ _____
Medical Bills	\$ _____
Other	\$ _____

Total Liabilities and Debts

\$ _____

LFOs in other cases (fines fees, state assessments, court costs, or restitution)	\$ _____
--	----------

Total Monthly Expenses →

\$ _____

6. Monthly Expenses

Rent/ House Payments	\$ _____
Food and Supplies	\$ _____
Utilities	\$ _____
Clothing	\$ _____
Medical and Dental	\$ _____
Insurance	\$ _____
School and Child Care	\$ _____
Vehicle Payments	\$ _____
Travel/ Commute	\$ _____
Wages Withheld by Court	\$ _____
Debt Payments (student loan, credit card, etc.)	\$ _____
Other Expenses (Describe)	\$ _____

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

8. Family and Dependents

- a. Do you have any children residing with you? Yes _____ No _____
If so, how many? _____ Age(s)? _____
- b. Including yourself, how many people in your household do you support? _____
- c. Marital Status (check one) __ Married __ Single __ Separated ___ Widowed __ Divorced
Spouse's Name: _____
Spouse's Address: _____
City: _____ State: _____ ZIP: _____
- d. Does your spouse have a job? _____ Where? _____
- e. Are you less than 18 years old? _____ If yes, please provide the following:
Father's name: _____ His monthly income \$ _____
Mother's name: _____ Her monthly income \$ _____

9. Please Read and Sign the Following:

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 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.

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM FOUR

LFO INABILITY TO PAY GUIDE

Name: _____
Attorney Name: _____
Case Number: _____
Address: _____
City: _____ State: _____ ZIP: _____

INCOME

Approximate Monthly Amount

Do you have a job? _____

Your wages/salary:\$ _____

How much do you make per hour? _____

 How many hours do you work per week? _____

 Occupation: _____

 Employer's name, address and phone number: _____

 How long worked there: _____

Spouse/partner's monthly wages/salary:\$ _____

Unemployment Compensation Received:\$ _____

If you don't have a job, how long have you been unemployed? _____

Social Security/Pension/Retirement Received:\$ _____

Worker's Compensation:\$ _____

Disability:\$ _____

Union Payments:\$ _____

Gifts:\$ _____

Trusts:\$ _____

Alimony Received:\$ _____

Child Support Received:\$ _____

Income from Family Members:\$ _____

Stocks/Bonds:\$ _____

Rental Income:\$ _____

Dividends or Interest:\$ _____

Life Insurance Payments:\$ _____

Inheritances:\$ _____

Income Tax Refund:\$ _____

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
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Monthly amount received from public assistance programs:.....\$ _____

- Basic Food (SNAP)* *WIC* *SSI* *Pregnant Women Assistance Benefits*
Medicaid *CHIP*
 Poverty-Related Veterans' Benefits *Temporary Assistance for Needy Families*
Refugee Settlement Benefits *Aged, Blind or Disabled Assistance Program* *Public Housing* *Other:* _____

Other sources of income:.....\$ _____

APPROXIMATE TOTAL MONTHLY INCOME: \$ _____

MONTHLY EXPENSES

	Approximate Monthly Amount
Wages (garnishments) taken from your paycheck:	\$ _____
Rent/mortgage (your share):.....	\$ _____
Utilities (electricity, water, garbage, telephone, etc.):.....	\$ _____
Food:.....	\$ _____
Travel/Commute:.....	\$ _____
Health care (out-of-pocket medical/dental costs, prescriptions, insurance, debt payments).....	\$ _____
Child support, spousal maintenance, and loan payments:.....	\$ _____
Child Care and School:.....	\$ _____
Vehicle Payments:.....	\$ _____
Court-ordered fines, fees, and restitution – monthly payment amount:.....	\$ _____
Credit cards and other debt payments:.....	\$ _____
Other basic living costs (diapers, clothing, etc.) Describe: _____	\$ _____

APPROXIMATE TOTAL MONTHLY EXPENSES: \$ _____

ASSETS

	Approximate Monthly Amount
Cash on Hand:	\$ _____
Checking Accounts:.....	\$ _____
Savings Accounts:.....	\$ _____
Money Market Accounts:.....	\$ _____
Dividends, Interest, Royalties:.....	\$ _____
Certificates of Deposit:.....	\$ _____
Stocks/Bonds:.....	\$ _____
Trusts:.....	\$ _____
Other:.....	\$ _____

APPROXIMATE TOTAL ASSETS: \$ _____

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

OTHER ASSETS

	Approximate Value
Real Property (home/land):.....	\$ _____
Non-Homestead Real Property:.....	\$ _____
Motor Vehicle(s):.....	\$ _____
Boat(s):.....	\$ _____

APPROXIMATE TOTAL OTHER ASSETS: \$ _____

CURRENT OUTSTANDING DEBTS

	Approximate Amount
Credit cards, personal loans, and other installment debt:.....	\$ _____
Motor Vehicle:.....	\$ _____
Home:.....	\$ _____
Other Real Property:.....	\$ _____
Outstanding legal financial obligations (LFOs), including other cases:.....	\$ _____
Outstanding medical care debt:.....	\$ _____
Child support arrears:.....	\$ _____
Outstanding Student Loans:.....	\$ _____
Other outstanding debt (describe):.....	\$ _____

APPROXIMATE TOTAL CURRENT DEBT: \$ _____

PERSONAL INFORMATION

Are you less than 18 years old? _____ If yes, please provide the following:

Father's Name: _____ His monthly income?.....\$ _____

Mother's Name: _____ Her monthly income?.....\$ _____

Incarceration for this and/or other offenses: _____

Anticipated length of incarceration for this and/or other offenses: _____

In addition to myself, I financially support _____ person/people. Age(s): _____

Marital Status (Check One) Married ___ Single ___ Separated ___ Widowed ___ Divorced ___

Spouse's Name: _____

Spouse's Address: _____

Does your spouse have a job? _____

EXHIBIT A
BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

Your highest level of education or vocational training, area of study:

Brief description of employment history and approximate salary/wages over the past three years:

Description of the impact of LFO payments on your immediate family (include any information regarding housing, employment, child care, transportation, and any additional information you believe to be relevant):

Impact of incarceration or jail time on your ability to pay your LFOs:

Your efforts to borrow money:

If unemployed, what efforts have you made to obtain employment upon being assessed with the fines, fees, state assessments, court costs, and/or restitution?

When was the last time you looked for a job?

Why didn't you pay the fine and costs from any money received?

Other facts the court should know regarding future ability to pay fees and fines (if a disability or health or mental health condition has impeded your ability to secure employment or earn money, please request permission to approach the bench and tell the judge, if you would like judge to know).

**IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE
MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.**

**EXHIBIT B
BENCH CARD**

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

The U.S. Constitution and Mississippi law require safeguards when collecting fines, state assessments, fees, court costs, and restitution (collectively, “legal financial obligations” or “LFOs”).¹ All Biloxi Municipal Court (“BMC”) Judges shall abide by the procedures described below.

RIGHT TO COUNSEL

FIRST APPEARANCE:

When a person is brought before the Biloxi Municipal Court, and charged with a misdemeanor, the Court shall provide the defendant an opportunity to sign an **Affidavit of Indigence** stating that he or she is indigent and unable to employ counsel.²

The court shall use the **Affidavit of Indigence**, and any other relevant factors, to evaluate whether the defendant is entitled to counsel.

The court may appoint counsel to represent an indigent defendant charged with a misdemeanor punishable by confinement.³

When the court determines that representation is required at the plea, trial, sentencing, or post-sentencing stage of the proceedings, it must appoint counsel to represent an indigent defendant, unless there is a knowing, voluntary, and intelligent waiver of the right to counsel.⁴

SENTENCING:

A defendant is entitled to the assistance of counsel *before* being sentenced to incarceration or probation for the collection of a fine, fee, court cost, state assessment, or restitution, unless there is a knowing, voluntary and intelligent waiver of the right to counsel.⁵

If the Court contemplates imposing incarceration or probation on an unrepresented defendant, or wishes to preserve its right to impose a jail sentence or probation in the future, the Court must conduct an indigence determination by using the **Affidavit of Indigence**, and considering any other relevant factors, to evaluate whether the defendant is entitled to court-appointed counsel at no cost.

COMPLIANCE HEARING:

The court must inform every person charged with failure to pay an LFO of:

- (1) all defendants’ right to representation by legal counsel in any proceeding concerning nonpayment;
- (2) indigent defendants’ right to court-appointed representation at no cost when facing possible incarceration for failure to pay LFOs.

The Court must appoint counsel to represent indigent people who face the possibility of incarceration due to nonpayment of an LFO, including in Compliance Hearings and Probation Revocation Hearings, unless there is a knowing, voluntary, and intelligent waiver of that right.

WAIVER OF RIGHT TO COUNSEL:

The Court **may not** accept a written or oral waiver of any right to court-appointed counsel without **FIRST** informing the defendant of the nature of the charges, of the defendant’s right to be counseled regarding her/his plea, and the range of possible punishments, and ensuring that any waiver is knowing, intelligent, and voluntary.

If a defendant/probationer seeks to waive his or her right to counsel, the court must conduct a colloquy on the right to inform the defendant:

- (1) **that the indigent defendant has a right to a court- appointed attorney or public defender at no cost**;
- (2) **that any fee normally charged for representation by a court-appointed attorney shall be waived** for indigent defendants; and
- (3) the nature of the charges against the defendant, of defendants’ right to be counseled regarding his or her plea, and the range of possible punishments.

EXHIBIT B
BENCH CARD

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs

SENTENCING:

The Court shall assess ability to pay when setting the amount of any fine, fee, court cost, or restitution.⁶ The Court should consider:

- (1) the defendant's financial resources and income;
- (2) the defendant's financial obligations and dependents;
- (3) the defendant's efforts and ability to find and engage in paid work, including any limitations due to disability or residence in a mental health facility;
- (4) outstanding LFO obligations in other cases or to other courts;
- (5) the length of the defendant's probation sentence, if any;
- (6) the goals of deterrence, retribution, and rehabilitation;
- (7) the Affidavit of Indigence; and
- (8) any other factor or evidence that the Court deems appropriate.

The Court shall also consider the ability to perform community service when setting any community service requirements.

Fines, Fees, Court Costs, and Restitution:

If the defendant is unable to pay, the Court should consider:

- (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, 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, restitution, fees, and court costs imposed;
- (5) Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- (6) Other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Mandatory State Assessments:

If the defendant is unable to pay, the Court should consider:

- (1) extending the defendant's time to pay;
- (2) requiring the defendant to perform community service to satisfy the state assessment fees;
- (3) requiring the completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- (4) imposing any other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

The Court may not reduce or suspend any mandatory state assessments, including those imposed under Miss. Code Ann. § 99-19-73.

Jail: The Court's decision to sentence a defendant to jail shall NOT solely be based on any finding that the defendant is unable to pay a fine, state assessment, court costs, fee, or restitution.

After setting the amount of any LFOs, and Community Service, and Program Requirements the Court shall:

- (1) Determine whether the defendant can pay LFOs in full, or needs additional time;
- (2) Set the terms of a Payment Plan by which LFO payments shall be made to the BMC Clerk, if the defendant cannot pay in full on sentencing day;
- (3) Set forth the sentence in a written order indicating the final date for payment of LFOs and performance of community service, and any Payment Plan terms;
- (4) Provide the defendant the **Advisement of Rights and Obligations Related to LFOs and Community Service, Notice of Change of Address** form, and **LFO Inability to Pay Guide**.

REPORT OF NONPAYMENT:

Warrants: The court shall not issue any warrant directing arrest for alleged LFO nonpayment absent a Compliance Hearing as described below.

The Court shall hold a Compliance Hearing for defendants who are sentenced to LFOs, community service and/or training, treatment, counseling and mental health programs and who are alleged to have failed to meet the requirements of the Court's sentence.

The Court shall provide at least 30 days notice of a Compliance Hearing through use of the **Biloxi Municipal Court Order Setting Compliance Hearing**. The Court shall also provide the **Advisement of Rights and Obligations Related to LFOs and Community Service** and the **LFO Inability to Pay Guide** when providing notice of a Compliance Hearing.

**EXHIBIT B
BENCH CARD**

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs (continued)

COMPLIANCE HEARING:

Compliance Hearings will be audio recorded. In the event audio recording equipment is temporarily not working, the Court shall ensure that the case record includes: 1) the evidence submitted by the defendant, and 2) written documentation of the Court's findings, supporting evidence, and colloquy concerning ability to pay, efforts to secure resources, alternatives to incarceration, and the right to counsel.

Hearing Procedures and Standards

The Court must advise defendants of:

- (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; and
- (6) the potential penalties if a person is found to have willfully failed to pay an LFO.

The Court must provide defendants an opportunity to present evidence that the amount allegedly owed is not accurate or not in fact owed if the defendant believes the amount is not correct.

As part of determining whether the failure to pay was willful and whether incarceration can be imposed, the Court shall:

1. **Inquire into, and make a determination on, ability to pay LFOs**, by considering the totality of the circumstances, including the defendant's income, assets, debts, other LFO obligations, and any other information the Court deems appropriate. The Court shall use the **Affidavit of Indigence** and the **LFO Inability to Pay Guide** to conduct this inquiry.

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. The Court shall make a rebuttable presumption that a person is unable to pay LFOs when:

- a. 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;
- b. the defendant is homeless;
- c. the defendant is incarcerated; and/or
- d. the defendant resides in a mental health facility.

2. **Inquire into, and make a determination on, the reasonableness of a defendant's efforts to acquire resources to pay LFOs**.

The Court shall take into account 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.

3. If the Court determines that a defendant is unable to pay, **the Court will consider and make a determination on the adequacy of alternatives to incarceration for nonpayment of fines or restitution**, including:

- a. Reduction of the amount of fines, fees, court costs, and restitution imposed;
- b. Waiver or Suspension of the fines, restitution, fees, and court costs imposed;
- c. 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;
- d. Extension of the amount of time for payment of the fines, restitution, fees, state assessments, and court costs imposed;
- e. Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- f. Imposing other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Judges 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"⁷ to incarceration.

The Court will document its actions and findings and evidence in the record supporting its findings.

**EXHIBIT B
BENCH CARD**

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs (continued)

IMPOSING JAIL FOR FAILURE TO PAY

The Court may impose incarceration following a Compliance Hearing if it makes one of the following findings, supported by evidence:

- (1) a defendant has willfully refused to pay the fine, fee, court cost, state assessment, or restitution when she/he has the means to pay;
- (2) a defendant has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure resources in order to pay the fine; or
- (3) the defendant is unable to pay, despite making sufficient efforts to acquire the resources to pay, and alternative methods for achieving punishment or deterrence are not adequate.⁸

THIRD PARTY COLLECTIONS

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 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 the 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.

Collecting Fines, Fees, State Assessments, Court Costs, and Restitution

Permitted Methods of Collection

- Voluntary Payment
- Payment Plan Administered by Court
- Community Service (except restitution owed to a party other than Biloxi)
- Execution of Civil Judgment
- Collection by Third Party Contractors following Compliance Hearing and Court determination as described above.

Impermissible Methods of Collection

- Imposing Jail at Sentencing
- Issuance of Failure-to-Pay Warrants Upon Report of Nonpayment
- Forfeiture of Confiscated Money
- Imposing “pay or stay” sentence

¹ *Bearden v. Georgia*, 461 U.S. 670, 672 (1983) (“If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court *must* consider alternative measures to punishment other than imprisonment.”) (*Emphasis added*); Miss. Code Ann. §§ 21-23-7; 25-32-9; 63-1-53; 99-15-26; 99-37-11.

² Miss. Code Ann. § 25-32-9.

³ Miss. Code Ann. §§ 21-23-7; 25-32-9

⁴ Miss. Code Ann. § 25-32-9.

⁵ *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).

⁶ *Bearden v. Georgia*, 461 U.S. 660, 669–70 (1983) (“[W]hen determining initially whether the State’s penological interests require imposition of a term of imprisonment, the sentencing court can consider the entire background of the defendant, including his employment history and financial resources.”).

⁷ *Bearden v. Georgia*, 461 U.S. 670, 671–72 (1983).

⁸ *Id.* at 668–69.