

STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE 820 NORTH FRENCH STREET, 11TH FLOOR WILMINGTON, DELAWARE 19801

NORMAN A BARRON CHIEF MAGISTRATE

TELEPHONE: (302) 571 - 6001

POLICY DIRECTIVE 86-105

TO:

ALL JUSTICES OF THE PEACE COURTS

FROM:

NORMAN A. BARRON

CHIEF MAGISTRATES

DATE:

NOVEMBER 12

RE:

ASSIGNMENT OF EARNINGS FOR THE PAYMENT OF FINES, COSTS OR

RESTITUTION

Many criminal defendants, although employed, are unable to pay their fines, costs and/or restitution at the time the sentences are imposed. Rather then opting for the deferred payment route with regard to such cases, another viable option should be explored in appropriate cases. This option is the assignment of earnings option permitted by 11 Del.C., §4104(c) which reads as follows:

in its discretion, "(c) Any court may, direct any person sentenced to pay a fine or restitution upon conviction of a crime, who is employed within this State or by a Delaware resident or employer, to execute an assignment of a specified periodic sum not to exceed 1/3 of his total earnings, which assignment shall direct his employer to withhold and remit that amount to this State up to the total of the fine, costs and restitution imposed.

An assignment of earnings executed in accordance with this subsection shall be binding upon an employer in the same manner as an attachment of wages pursuant to Title 10, except that an assignment need be filed only once with the employer who shall make the withholding and remittances until the full amount is paid. An amount of total earnings consistent with federal law may be assigned. An employer shall take no action against an employee who has executed an assignment, and the penalty imposed upon an employee solely because of an assignment under this subsection shall be in accordance with the manner set forth for attachments." (Emphasis added.)

What are the parameters of this statutory provision? First, the defendant must be employed:

- (a) within Delaware; or,
- (b) by a Delaware resident; or,
- (c) by a Delaware employer.

Second, the defendant must have been convicted of a crime. Any offense which sets forth criminal penalties for conviction thereof is considered as a crime. Thus, offenses which set forth criminal penalties for convictions thereof, even though found outside of Title 11 of the Delaware Code, such as Title 21 traffic offenses, are subject to the provisions of 11 Del.C., §4104(c).

Finally, only an amount of total earnings consistent with federal law may be assigned, notwithstanding the "1/3 of his total earnings" provision as found within \$4104(c). The maximum allowable amount for a wage attachment under federal law is the lesser of:

¹⁵ U.S.C., §1673(a).

- 25% of an employee's disposable earnings² for that week, or
- 2. The amount by which his disposable earnings for that week exceed 30 times the Federal minimum hourly wage in effect at the time the earnings are payable.

Suppose the defendant, John Doe, is employed by the ABC Company of Dover. He earns \$300 per week gross. His disposable earnings equal \$200. Under the federal formula, the amount of his earnings subject to a \$4104(c) assignment is the lesser of:

- 1. 25% of \$200 = \$50; or
- 2. \$200 minus \$100.50 = \$99.50

Fifty dollars per week are subject to assignment under the provisions of \$4104(c).

Now let's assume that the Court imposed a fine of \$50; VCF 4 assessment of \$7.50, Court costs of \$12 and restitution in the amount of \$150, for a total of \$219.50. The assignment of earnings, would, in the above, case, call for 4 weekly payments of the full \$50 and a 5th payment for the remaining \$19.50.

[&]quot;Disposable earnings" are defined as gross wages minus mandatory deductions which would include federal, state and city taxes and FICA. See: 15 U.S.C., §1672(b).

The present minimum wage is \$3.35 per hour. Thirty times \$3.35 equals \$100.50.

^{\$8.50} Court costs, \$2 for issuance of bond, and \$1.50 for recovery of certified mail costs. This latter figure is an estimate.

Payments should be made out to the applicable Justice of the Peace Court which would then be responsible for disbursing the payments to the proper parties, to wit:

- (a) \$150 to the victim as restitution;
- (b) \$58.50 to the State, or \$50 to the municipality or 5 county and \$12 to the State whichever is appropriate; and,
 - (c) \$7.50 to the Victim's Compensation Board.

A copy of Criminal Form No. 19 (Rev. 9/86), the revised \$4104(c) wage assignment form, is attached for your review. This form and the procedures connected therewith as set forth above may be utilized in the Court's discretion. Although not legally required, better practice dictates that permission from the defendant to have his wages assigned be given as a prerequisite for the use of this collection method. The form contemplates that such permission be provided for a \$4104(c) wage assignment. For control purposes, a \$4104(c) assignment of wages form should be sent to the employer by certified mail, return receipt requested, the costs thereof to be added as Court costs. See: Footnote 4, supra.

See: Policy Directive 85-098, dated July 26, 1986; Supplement dated August 27, 1986; 2nd Supplement dated September 9, 1985.

You will note that the VCF assessment has been include within the costs subject to a wage assignment. It's omission from the provisions of \$4104(c) is clearly an inadvertant oversight. There is no proscription barring the inclusion of a VCF assessment from a \$4104(c) wage assignment. For the sake of uniformity and consistency, it is suggested that these assessments may be included within the term "costs" as used in \$4104(c).

The Justice of the Peace Courts have several collection "weapons" at their disposal. Among these are: Deferred payments as authorized by 11 Del.C., \$4104(a) (2); Taking and holding a defendant's driving license as security for the payment of fines, costs, restitution, and assessments as permitted by 11 Del.C., \$4104(e); Work referral as permitted by 11 Del.C., \$4105(b); and Wage assignments as permitted by 11 Del.C., \$4104(c).

Let's see if we can't decrease the amount of outstanding fines, costs, restitution, and VCF assessments through greater use of wage assignments.

NAB:pn
Attachment
cc: The Honorable Andrew D. Christie
 Michael E. McLaughlin
 File (20-P105)

| | WAGE ASS | | orehy assign to the State of |
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| Delaware \$ permitting me to pay my fine | of my (weekly, so and costs on an | emi-monthly on installment ba | ereby assign to the State of monthly) wages thereby assis. Should I default in |
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| memi-monthly or monthly) unti have been paid. TO THE EMPLOYER: 11 Del. Code : as an Attach | <pre>11 the fine and c Section 4104(c) requi</pre> | res you to accept t to 10 Del. Code | nount of \$ |
| TE SS: | | (Signature) | · |
| | | (Street) | |
| Justice of the Peace | | (City and State) Phone: (| e) (Zip Code) |
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