

## Clarification Regarding the Purpose of CourTools Measure 7

*Measure 7, Collection of Monetary Penalties*, is designed to gauge whether litigants are in compliance with judicial orders. The measure is currently being assessed in light of concerns about how the justice system as a whole is operating with respect to fees and fines. These concerns were summarized in 2011 by the Conference of State Court Administrators in its policy paper, “Courts Are Not Revenue Centers” and in NCSC’s “Principles for Judicial Administration”. In a recent publication of the US Department of Justice, *Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees*, the DOJ noted that

Justice systems – traditionally funded primarily from a jurisdiction’s general tax revenues – have come to rely increasingly on funds generated from the collection of fines and fees, or “legal financial obligations” (LFOs). In some places, justice systems have been transformed into revenue centers that pay for even a jurisdiction’s non-justice-related government operations. The U.S. Department of Justice addressed an example in a report of its investigation into the practices of the Ferguson, Missouri police department and municipal courts. Ferguson is not unique; similar problems exist throughout the country.

The responsibility of the courts in general, and individual judges in particular, is to ensure that any fees and fines arising out of a criminal case are reasonable and take into account a defendant’s ability to pay. Compliance with legal and financial obligations has two dimensions. First, it requires a court, including its judicial officers and staff, to follow applicable constitutional provisions, statutes, case law and appellate court policies and procedures that apply to collecting monetary penalties, as well as consciously employing recognized best practices in doing so. These best practices include making a determination of an offender’s ability to pay, supported by findings of fact. As noted by the Supreme Court of Alabama in its bench card on “*Collections of Fines and Court Costs*”

In determining whether to impose a fine, the court should consider the reasons a fine is appropriate, the financial resources and obligations of the defendant and the burden payment of a fine will impose, ability of the defendant to pay, and the extent to which payment of a fine will interfere with the defendant’s ability to make restitution.

The second dimension of compliance with financial obligations imposed by the court is the requirement that a litigant obey and fulfill the monetary requirements levied by the court. *Measure 7* is currently focused on this second dimension, and assumes that the court and its judicial officers are cognizant of and consistently practicing the principles summarized above by the Alabama Supreme Court. Courts evaluating compliance with judicial orders as described in *CourTools Measure 7* should be aware of both dimensions to ensure that the fees and fines imposed are fair.

In 2016, NCSC will be revising Measure 7 to accommodate both perspectives. For further information on the revision of Measure 7, contact Richard Schauffler ([rschauffler@ncsc.org](mailto:rschauffler@ncsc.org)) or Brian Ostrom ([bostrom@ncsc.org](mailto:bostrom@ncsc.org)).

### References

COSCA, *Courts Are Not Revenue Centers*, <http://cosca.ncsc.org/Policy-Papers.aspx>

National Center For State Courts, *Principles for Judicial Administration*, [http://www.ncsc.org/information-and-resources/budget-resource-center/analysis\\_strategy/principles-of-judicial-administration.aspx](http://www.ncsc.org/information-and-resources/budget-resource-center/analysis_strategy/principles-of-judicial-administration.aspx)

US Department of Justice, *Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees*, <http://ojp.gov/docs/finesfeesresguide.pdf>

Alabama Access to Justice Commission, Benchcard on “Collection of Fines and Court Costs,” available upon request.