



**DANE COUNTY
DISTRICT ATTORNEY
ISMAEL R. OZANNE**



October 31, 2014

Attorney General J.B. Van Hollen
Wisconsin Department of Justice
17 W. Main Street
Madison WI 53703

RE: Unpaid Restitution

Dear Mr. Van Hollen,

As District Attorney of Dane County, I am requesting an Attorney General's Opinion, pursuant to Wis. Stats. §165.015(1), to resolve this issue of statewide importance which I believe presently has no other legal means of being resolved regarding the constitutional and statutory rights of victims of crimes to receive full restitution when ordered by a court. Section 9m of the Wisconsin Constitution provides, in relevant part, "This state *shall* ensure that crime victims have all of the following privileges and protections as provided by law: . . . restitution . . ." (emphasis added) Wis. Stats. §950.04(1v)(q) provides that victims of crime have the *right*, "To restitution, as provided under ss. 938.245(2)(a)5., 938.32(1t), 938.34(5), 938.345, 943.212, 943.23(6), 943.245, 943.51 and 973.20."

The issue to be resolved is whether victims can be deprived of their constitutional and statutory right to restitution by the DOC when the DOC is collecting money towards restitution from offenders and the DOC applies that money **first** to its fees and costs before applying the remainder of the funds tendered by the offender, who is ordered to do so by the court for restitution purposes, to the court-ordered restitution.

Wis. Stats. §304.074(2) provides that DOC, ". . . *shall* charge a fee to probationers, parolees, and persons on extended supervision to partially reimburse the department for the costs of providing supervision and services. . . ." (emphasis added) Sec. 304.074(4m)(b) specifically gives the DOC its remedy if such fees are not paid, i.e., "*The department may request the attorney general to bring a civil action to recover unpaid fees owed to the department under sub.(2) by a person who has been discharged from probation or from his or her sentence and who, at the time of discharge, owed the department unpaid fees under sub. (2).*" (Emphasis added.)

Wis. Stats. §973.20(12)(a) states, "If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges under sec. 973.05 and 973.06 and ch. 814, it shall set the amount of fines, costs, fees, and surcharges in conjunction with the amount of restitution and issue a single order, signed by the judge covering all of the payments." At issue here is §973.20(12)(b) which directs that, ". . .

payments *shall* be applied *first* to satisfy *the ordered restitution in full*, then to pay *any* fines or surcharges under §973.05, *then* to pay costs, fees, and surcharges under ch. 814 . . ." (Emphasis added.)

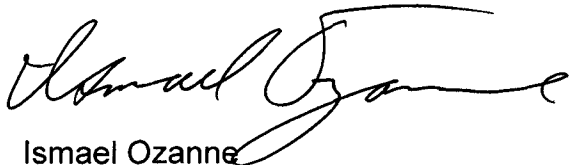
Wis. Stats. §973.20(12)(a) and (b) make no exception from the law that payments by offenders *shall* be paid first to satisfy the ordered restitution, and only then after that to fines and costs and fees. This is what is required by the Wisconsin constitution and Chapter 950. Subsection (b) of §973.20(12) does not say that "fees" there means only the fees legislated about in subsection (a). It just says "fees" and "fees" are to be paid after the ordered restitution. Section 304.074(2) deals with "fees" and "fees" are to be paid after the restitution.

If the legislature intended DOC's fees to be paid first, they could have said so in §973.20(12)(b), but they did not. Wis. Stat. §304.074(2) has been in effect since 2003, so the legislature is presumed to know what laws it has on the books when it passes new laws. Wis. Stat. §973.20 has been amended at least three times since 2003 and such a change has never been made. This office believes that a fee is a fee, and it only gets paid after the victim has received their constitutional and statutory due.

The law provides no other remedy for victims to collect restitution by way of the criminal justice system except by way of restitution as ordered by the judge who presided over their case. Reducing restitution owed to a civil judgment does victims no good where they have to spend money to hire a lawyer to enforce the judgment. In addition, on those occasions where DOC has collected enough to pay all the restitution, but half of it went to fees, and the person is revoked for not paying the restitution, these clear statutory provisions may in fact give that inmate a cause of action against the DOC for continuing to confine that person illegally.

In that the DOC is not proceeding with its collections as this office believes it ought to under the law, and because it is likely that the DOC is conducting itself similarly across the entire state of Wisconsin, the office believes this is a matter of statewide importance which should be resolved by way of an Opinion of the Attorney General. Thank you for your care and attention to this important matter.

Sincerely,



Ismael Ozanne