



## Levy County Board of County Commissioners Agenda Item Summary Form

1. **Name:** Nicolle Shalley  
2. **Organization/Title/Telephone:** County Attorney/352-486-3389  
3. **Meeting Date:** Tuesday, November 7, 2023

4. **Requested Motion/Action:**

Requesting the Board: (1) consider an offer to settle an outstanding Final Judgment ordered for liquidated damages for time sentenced to County jail; and (2) if the offer is approved, authorize the execution of a Satisfaction of Judgment by the Chairman or Clerk of Court, which Satisfaction is to be held in escrow and not released until payment of the settlement funds are received by County Probation Services, Inc.

5. **Agenda Presentation:** Yes  No  N/A

6. **Time Requested:** 10 minutes  
(Request will be granted if Possible) allotted time not more than 15 minutes

7. **Is this Item Budgeted (If Applicable):** Yes  No  N/A

8. **If no, State Action Required:**

- a. **Budget Action:** EnterTextHere  
b. **Financial Impact Summary Statement:** EnterTextHere  
c. **Detailed Analysis Attached** EnterTextHere  
d. **Budget Officer Approval:** EnterTextHere

**If approved enter date:** Click or tap to enter a date.

9. **Background: (Why is the action necessary, and what action will be accomplished) (All supporting documentation must be attached if any)**

By email dated Friday, October 13, 2023, the County Attorney received an offer to settle and release a Final Judgment for liquidated damages for time sentenced to County jail.

To provide some background, the Circuit and County Courts order the payment of these liquidated damages pursuant to Section 960.293(2), Florida Statutes, titled "Determination of damages and losses", which states "(2) Upon conviction, a convicted offender is liable to the state and its local subdivisions for damages and losses for incarceration costs and other correctional costs. (a) If the conviction is for a capital or life felony, the convicted offender is liable for incarceration costs and other correctional costs in the liquidated damage amount of \$250,000. (b) If the conviction is for an offense other than a capital or life felony, a liquidated damage amount of \$50 per day of the convicted offender's sentence shall be assessed against the convicted offender and in favor of the state or its local subdivisions. Damages shall be based upon the length of the sentence imposed by the court at the time of sentencing."

As stated by the Florida Supreme Court in Ilkanic v. City of Fort Lauderdale, 705 So2d 1371, "The legislative intent for this statute is expressly set forth in the Act itself in the following statement: 'The Legislature also finds that there is an urgent need to alleviate

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the increasing financial burden on the state and its local subdivisions caused by the expenses of incarcerating convicted offenders.’ We conclude that imposing a per diem charge on convicted offenders clearly relates to a permissive legislative objective of reimbursing public bodies for the costs expended in incarcerating these persons. Furthermore, we believe that the flat charge of \$50 per day is reasonably related to the costs of incarceration.”

The Statute makes clear these are liquidated damages, not actual damages, and are based on the length of sentence at the time of sentencing, not the actual time served. In addition, the Judgment bears interest at the rate set forth in Section 55.03, Florida Statutes, and once recorded constitutes a lien on real and personal property owned by the convicted offender.

Pursuant to Section 948.15, Florida Statutes, the County has contracted with County Probation Services, Inc., to provide probation services, including the collection of restitution and amounts included in court orders – such as this Final Judgment.

After research and discussion with the County Coordinator, County Finance Director and County Probation Services, Inc., it does not appear the Board has adopted a written policy regarding requests for reduction and release (such as who is eligible to request, under what conditions will a request be considered, how is it evaluated, what amounts can be reduced). Instead, it appears these requests, when received by County Staff, have been brought to the Board for individual consideration.

The following information is provided to assist the Board in considering the settlement request received on October 13<sup>th</sup>. In June 2008, the Circuit Court issued a Final Judgment ordering Darryl Petrykowski to pay liquidated damages of \$9,000 (\$50 per day of jail sentence per Section 960.293(2)(b), Florida Statutes) and the Final Judgment was recorded in Official Record Book 1126, Page 459, of the public records of Levy County. Although, the Judgment is in the name of the “State of Florida,” a review of the Criminal Court file reflects Mr. Petrykowski was sentenced to 6 months in County Jail, and served 3 months 13 days, so it appears the County is the party in interest to this Final Judgment.

In March 2012, Mr. Petrykowski and Ms. Bonnie Dawn Miller purchased certain real property (Parcel ID 0339408600) from and executed a purchase money mortgage in favor of Paige Brookins. That property is now subject to foreclosure by the lender - Ms. Brookins - who is represented by Attorney Doug McKoy. If a foreclosure action is commenced, it is unknown whether the County will receive any funds. Because state law recognizes purchase money mortgages as having senior lien status to prior recorded judgment liens, the amount the County will receive from a foreclosure auction will depend on the highest foreclosure bid. If the lender submits the high bid for amounts owed, the County will receive no money and the property will transfer free and clear of the Final Judgment lien to the lender. The Final Judgment will remain of record (and so potentially collectable) until June 2028 when it reaches its 20 year maximum duration and expires per Section 55.081, Florida Statutes. If there is a higher winning bid, such as for the Property Appraisers Just (Market) Value of \$87,863, the lender would get paid all sums owed including costs of the foreclosure (estimated \$55,000) and the County and any other lienholders would then be paid in their order of priority.

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In exploring alternatives to the time and cost involved in foreclosure proceedings, Attorney McKoy presented an offer from the lender to settle the outstanding lien for \$13,000. Attorney McKoy intends to be present at the November 7 meeting to respond to any questions the Board may have about this offer.

County Probation Services has provided a payoff amount for the Judgment through October 31, 2023 of \$26,294.99 (comprised of the principal amount of \$9,000, interest of \$15,264.99, a collection fee of \$1,980 and a Satisfaction and filing fee of \$50.00.)

### 10. Recommended Approval

- |                         |                              |                             |   |
|-------------------------|------------------------------|-----------------------------|---|
| a. Department Director: | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| b. County Attorney:     | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| c. County Coordinator:  | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| d. Other:               | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |