

PALM BEACH COUNTY CRIMINAL JUSTICE COMMISSION  
**PROBATION ADVISORY BOARD**  
**Subcommittee Meeting**

Governmental Center, 10<sup>th</sup> Floor  
301 N. Olive Avenue  
West Palm Beach, FL 33401

June 18, 2015, 12:15 p.m.

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**MINUTES**

Members Present

Leonard Hanser, Chairman	Administrative Judge, County Criminal Court
Rosalyn Baker	Florida Department of Corrections
Adrienne Ellis	State Attorney's Office
John Rivera	Public Defender's Office
Louis Tomeo	Clerk and Comptroller's Office

Guests Present

Glenny Cueto	Professional Probation Services
James Eisenberg	Private Defense Attorney
Brian Fernandes	State Attorney's Office
Federico Forero	Professional Probation Services
Thomas Gano	Private Defense Attorney
Geraldine Nagy	McArthur Foundation
Michelle Spangenberg	Court Administration
Don Trapp	McArthur Foundation
Bert Winkler	Private Defense Attorney
Thomas York	Professional Probation Services

CJC Staff Present

Jacquelyn Esposito	Criminal Justice Analyst
Damir Kukec	Research & Planning Manager
Candee Villapando	Criminal Justice Analyst

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**I. Welcome/Opening Comments**

Judge Leonard Hanser, Chair, welcomed everyone to the first meeting of the subcommittee which will be working on issues that were introduced in the May 21<sup>st</sup> PAB meeting.

**II. Roll Call and/or Introduction of Members & Guests**

Judge Hanser asked everyone to introduce themselves.

### **III. Approval and/or Amendments to the Agenda**

The agenda was approved without amendments.

### **IV. Approval and/or Amendments to the May 21, 2015 meeting minutes**

As it was a subcommittee meeting, Judge Hanser said the minutes from the PAB May 21, 2015 meeting will be approved at the next PAB meeting.

### **V. Discussions**

#### **A. Notice to Appear for Violation of Probation and Technical Violations/Alternative Sanctions**

The subcommittee discussed notice to appear for violations of probation and technical violations/alternative sanctions in conjunction with one another. As Administrative Judge of County Court, Judge Hanser said that two things occurred to him. First, was that when county court judges receive an affidavit of violation of probation, historically, they have given one response which was to issue a warrant. Once arrested, the individual with the warrant will be taken to the county jail, before he or she is released. Judge Hanser also learned that this is not the only way that a county court judge can respond to technical violations of probation. He cited statute 948 which allows the court, felony or misdemeanor, to respond by filing a Notice to Appear (NTA). The NTA has the same effect of a warrant in that it tolls the probation until the alleged violation is resolved. Felony courts have been doing this, and have an Administrative Order (AO) that addresses this issue. Judge Hanser wanted to do the same thing in misdemeanor felony. Judge Hanser thanked Ms. Rosalyn Baker for providing a copy of the felony courts' AO. Mr. Jim Eisenberg shared copies of FL Statute 948.06 which deals with VOP, but makes no distinction between felony and misdemeanor. Mr. Eisenberg cited FS 948.06 (b) which says that in lieu of issuing a warrant for an arrest, the court *may* issue a NTA; it does not have to be an arrest. Further, FS 948.06 (e) states that any parole or probation supervisor is authorized to serve a NTA.

Judge Hanser pointed out two things. First, whatever the subcommittee recommends, there is really no way that anyone can tell the judges how to respond to an alleged VOP; it is in the judge's discretion how to respond in a manner authorized by the statute that he or she feels is appropriate. Second, when the subcommittee comes to the conclusion of its work, which may be recommending an AO, the AO will be written by the Office of the General Counsel for the 15<sup>th</sup> Judicial Circuit; then go to the Chief Judge to review, and then sign it or not. As Administrative Judge for County Court, Judge Hanser said he will survey all of the county criminal court judges and get their input, and ask how they feel about the AO. He remarked that they have to consider that they have an outside audience and may have to sell the AO.

Mr. Brian Fernandes commented from a felony perspective, and concurred that he does not see why a similar set up can be done in misdemeanor VOPs. He said that issuing warrants is really a judicial perspective, but that everyone could see the wisdom in not necessarily issuing a no-bond warrant for every single misdemeanor VOP, and when looking at technical VOP

resolutions, it would only be for certain third-degree non-violent technical offenses that they have been agreed upon. There is also an upfront discussion with the defendant so that they know what they are getting into; there has to be acquiescence on the record. And there will have to be a discussion on what alternative sanctions would be appropriate for what type of offenses. Mr. Fernandes said he was not sure how many are taking advantage of the program in felony, and wondered if Ms. Rosalyn Baker may have these numbers. Ms. Baker said they have the numbers and can provide them, but states that this is also a hard sell for probation officers as well because not everyone may want to engage in it in because it is tedious and would entail sitting down with the defendant explaining the process, that it is easier to issue a warrant. Mr. Tom York asked if it is voluntary; Ms. Baker said it is absolutely voluntary, that if the defendant does not want to participate, they do not move forward with it. Ms. Adrienne Ellis added that even if the defendants violate the sanctions they agreed to, they can always go back to VOP.

Mr. Tom Gano asked what happens when it goes to the judge and the judges disagreed with either the defendant going into the program or the recommended punishment. Ms. Baker said they will comply with the judge's instructions and that the judge will put his or her instructions in writing and provides it to them. The defendant can back out at any time. Mr. Bert Winkler asked if there may be any data on the program. He was curious how often the program is being used and what the results are. Ms. Michelle Spangenberg said that the Clerk's Office is using specific codes for these cases; they have not generated a report recently but can bring back statistics at the next meeting. Mr. Gano was thinking that the judges know about the statute, but Judge Hanser said not all the judges are aware, and that when they receive the affidavit, there is no opportunity to issue a NTA; the judge will have to formulate a NTA appropriate for that defendant at his or her desk. Ms. Baker pointed out to the NTA form they use in felony probation and parole included in the packet. An extensive discussion followed on the process of issuing a warrant or the NTA and on Mr. John Rivera's question on the legality aspect, and the alternative sanctions.

Mr. Winkler likewise was concerned that the defendant is not counseled, but saw the benefit of keeping people who should not be in jail not be sent to jail for technical violations. Mr. Rivera contended that it is a coercive situation in that without counsel the probationer feels compelled to agree to the alternative sanctions, and it may actually be not a willful violation as it is determined out of court; a person may be agreeing to a sanction when there was even no violation to begin with. He noted that this was their original concern when they were working on the felony VOPs. Mr. Brian Fernandes remembered the item discussed and acknowledged that it is a true issue and one that they all admittedly accepted but were willing to try and go forward as it could benefit some individuals. Judge Hanser also agreed that it is a legitimate issue and having the concerns indicated by Mr. Rivera should not prevent them from moving forward. Mr. Gano said it is similar to Drug Court except that they have the advice of an assistant PD, or a private attorney. Ms. Ellis adds that it is just like PTI and that the defendant does not necessarily lose their right to have a full VOP hearing at the end, if that is what they wanted eventually. Judge Hanser clarified with Mr. Rivera that the crux of his concern is the uncounseled decision. But the practical matter is that every defendant's main goal seems to be to stay out of jail. Mr. Fernandes adds that if it is part of the initial colloquy to begin with when the individual is placed on probation, then the defendant understands what to expect. The problem from Judge Hanser's perspective is that you do not know the nature of

the violation that may arise. Mr. Fernandes said you try to formulate a list that is all-inclusive as much as possible, but that if something falls outside of the list, then you issue a NTA and adjust that in court. Mr. Gano said the benefit of the advantage of having this in misdemeanor court is that you do not have the court tied up in technical violations. Judge Hanser said he this is a selling point for the judges in that he thinks they will see a reduction in their docket. Michelle Spangenberg asked if anyone knows any other circuits that have this in their misdemeanor court. Judge Hanser said he is going to a county court judges' conference next month and he will ask around.

Mr. Winkler asked if there is a consensus to move forward in terms of studying this issue. Judge Hanser asked the members and everybody agreed that they have to address this issue. Following Mr. Eisenberg's and Mr. Gano's request Judge Hanser suggested that the probation officer submits both the affidavit, on which there is a warrant at the bottom and the NTA, and let the judge decide how he wants to proceed. Ms. Baker said that is what they do; and that they do it both ways, i.e.: 1) submit an affidavit and the warrant, with the violation report; if the judge decides he wanted an NTA, they go back and prepare an NTA; or 2) issue an NTA if they know that is what they wanted to do based on the type of violation; they call the JA and get the information for the NTA, and then do an NTA.

**B. Technical Violations/Alternative Sanctions**

Discussed with item # V-A.

**C. Payment Plans**

Will be discussed next meeting.

**VI. Member and Guest Comments**

No member and guest comments.

**VII. Next Meeting**

Judge Hanser suggested meeting in August. He asked that Mr. Winkler be added to the list of meeting notice recipients. Mr. Kukec said that Candee Villapando will canvass the members and guest who attended to set a date and time for the next meeting.

**VIII. Adjournment**