To: Daphne Webber
Regional Collections Specialist, Central Region
Office of Court Administration

From: John W. Bull
Presiding Judge
San Antonio Municipal Court

Re: San Antonio Analysis sent February 23, 2016

Ms. Webber:

Chief Deputy Court Clerk, Elizabeth Pardo forwarded me an e-mail you sent to her on February 23, 2016, with an attachment titled San Antonio Analysis. I do not know who prepared the analysis or to whom it was disseminated. The language in your e-mail infers Ms. Pardo should have already seen the analysis. As you may know, we have recently been engaged in meetings relating to legal actions that have been taken against Courts in Texas relating to fine and fee collection practices. Surprisingly, this "analysis" came one week after a stakeholder meeting at the University Of Texas School Of Law, which included a presentation from the Deputy United State's Attorney that actually handled the Ferguson Missouri civil rights complaint. At the stakeholder meeting, the Collection Improvement Program became a topic of discussion.

It is of major concern, that the "analysis" opens with the statement, "The OCA model program includes the following best collection practices for defendants who are not able to pay court costs, fees, and fines in full on the day they are assessed... **Establishing strict payment plans with the goal of collecting the largest amount of money in the shortest period of time..."**

First and foremost, the "analysis" attempts to take credit for payments that have been made within the first thirty days of assessment. These payments have for many years been paid in the normal course of court process - without the need for direction or instruction from OCA. The San Antonio Municipal Court provides a number of ways to resolve violations including, internet payments, interactive court kiosks, partial pay deferred probation and defensive driving, warrant amnesty periods, etc. It appears the "analysis" gives credit to OCA for long established Court practice and policy that has nothing to do with the Collection Improvement program, while disavowing anything that might indicate the Collections Improvement program is not what it purports to be.

More importantly, this "analysis" is EXACTLY what state groups in attendance at the meeting were beginning to highlight and criticize. It treats the court as a pure financial collections institution, and completely ignores the fact that some of the recommended collections and

payment plan criteria are impossibly strict and inflexible. Additionally, it is unclear as to how the analysis comes to the "cost of collection" data. It fails to take into account that the Collection Improvement program is an unfunded mandate requiring court staff to perform the role of loan officer in addition to the myriad of other duties that they perform at the court.

These kinds of financial collections criteria are most often applied to accounts in which the debtor has willingly applied for a loan or line of credit. Although the "analysis" may consider OCA's criteria to be "best practices" for loan applicants, many of the defendants could not even qualify for "pay day loans", and as such, OCA's criteria for time payment requests are inapplicable at best, and in many cases, oppressive when viewed in light of many defendants' individual circumstances. It would be one thing if a defendant willingly entered into a business relationship with the court. But they did not, and applying "best practices" that might be relevant for banks or credit card companies, are simply not realistic when applied to courts.

Further, there is a complexity to jail processes that defies simple application of "best practices." In fact, the "analysis" implies that "community service" is an option, but "credits for jail time should be limited to cases in which a defendant refuses to pay or perform community service, but has the ability to do so." The language in the analysis could be read in such a way that encourages courts to jail people who don't pay. Once in jail, inability and refusal are no longer an issue. When people fail to comply or appear a warrant may issue, they are arrested, detained and deprived of their liberty before seeing a judge. In light of recent litigation it should be noted that Municipal Courts do not have access to the indigent defense funds we are required to collect as part of state mandated court costs.

Of particular concern is an attempt to characterize jail credits as related to commitments only, as opposed to jail credits related to any time an individual has been arrested, detained and deprived of liberty resulting from an arrest warrant. It is apparent; whoever is generating this type of "analysis" has never seen a jail magistration. Do you realize that we rarely deal with a defendant that has been arrested who has only a single class "c" offense and is well employed? Many have been arrested multiple times. The flawed assumption is that all courts are seeing a defendant in court and committing them to jail, as opposed to people being arrested pursuant to a warrant for failure to appear or failure to comply, taken into custody and detained and then seeing a judge post-arrest. Peace officers arrest on outstanding warrants 365 days a year, 24 hours a day.

This "analysis" appears to be a computer generated report identifying none of the realities of most defendants, the functions of the court- not related to collections-or the intent or purpose of court - justice for our communities. Courts are not a Pay-Day Loan Company. My administrator made one very important observation after reading the analysis, at no point does it reference **people** in connection with the fines/fees and costs.

In the 10 plus years the Collection Improvement Plan has been in place we have never received a correspondence like this. I think this analysis demonstrates what Municipal Courts are dealing with in receiving constant pressure to bring in "revenue". The analysis mischaracterizes data, misstates the law and over-emphasizes the effectiveness of OCA collection improvement program. At times, many Judges have expressed concerns your "suggestions" for collections to be unrealistic and crossing a line into the area reserved to the purview of judicial discretion and independence.

Further, the "analysis" states, "Waiver of fine(s) should generally be limited to individuals with medical condition, such as physical disability, that prevent them from participating in a community service or work program". It would appear this "analysis" has established a new definition for indigence. It should be noted, people now owe surcharges, private collection firms, cannot obtain a license and have multiple violations in multiple jurisdictions; all of these issues and many more must be factored into a judge's determination as to what can be paid and how it can be paid **realistically**.

I was particularly intrigued by the line, "In this analysis, we review the cost effectiveness of your program by comparing revenue collected to the cost of collection. **Revenue collected means the dollars paid by defendants; it does not include jail credits, community service and waivers.** On a broader level, so long as fines/fees and costs ordered paid by a judge are characterized as **revenue** (a term used repeatedly in the analysis), municipal courts will continue to be viewed as "cash cows" as opposed to places where people can receive a fair and impartial hearing on their cases.

Finally, I can only hope that whoever prepared this "analysis" would spend a day in courts across the state and see the challenges we have in trying to resolve these cases, we are on the front lines dealing with real people with real problems every single day. **Real people are not algorithms**. One of our primary roles at the Court is not to collect money but to see that every individual is treated fairly throughout the process.

With increased scrutiny on court processes in Texas, an "analysis" like the one you sent to Ms. Pardo only reinforces the public perception that municipal courts are seen merely as "revenue generators" for governmental entities. The "analysis" makes that quite clear. I would strongly encourage you to read the entire U.S. Attorney General report on Ferguson, Missouri, particularly as it pertains to municipal court practices.

Finally, I was recently asked to serve on a Collection Improvement Program Advisory Committee to review and make recommendations on the program rules. I have expressed my willingness to serve and hope to address some of the issues discussed in the "analysis" you sent and my concerns. I also sending this to the Texas Municipal Courts Association Board President Judge Ed Spillane, who was also in attendance at the Stakeholder meeting in Austin as well as Judge Robin Ramsay who also sits on the board. Thank you.