

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
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DATE: October 23, 2009

SUBJECT: Judicial Council–sponsored Legislation: Disposition of Unclaimed Money
Deposited With Trial Courts (amend Gov. Code, § 68084.1) (Action
Required)

Issue Statement

Existing law prescribing the disposition of unclaimed money deposited with the trial court needs clarification with regard to money deposited for restitution to a victim. The court escheat statute was added by Assembly Bill 145 (Com. on Budget) (Stats. 2005, ch. 75, § 100). (See Gov. Code, § 68084.1.) It provides that, with certain exceptions, courts may escheat to themselves unclaimed money that they have been holding for three years if they comply with specified notice and claims procedures.

The court escheat law, like the local agency escheat law, excludes victim restitution money from its purview. This means that courts may not escheat to themselves restitution money that a defendant has deposited with a court to be distributed to the victim. Unlike the local agency escheat law, however, the court escheat law does not include language directing courts how unclaimed victim restitution money is to be handled, which results in the money being left in limbo. This was simply a drafting oversight.

On February 27, 2009, the Judicial Council approved sponsorship of legislation to address this oversight. Subsequently, the Judicial Council sponsored Senate Bill 556 (Com. on Judiciary) (Stats. 2009, ch. 596), which, as introduced, included several noncontroversial court operations provisions, including an amendment to Government Code section 68084.1 to require courts to deposit into the State Restitution Fund any unclaimed victim restitution money that they have been holding for three years or longer.

As the bill moved through the legislative process, however, counties contacted AOC staff about the need to allow courts the option to deposit the escheated funds with the counties.

Recommendation

The Policy Coordination and Liaison Committee recommends that the Judicial Council sponsor legislation in 2010 to amend Government Code section 68084.1 to require courts to deposit any unclaimed victim restitution money that they have been holding for a minimum of three years into either the State Restitution Fund *or into the county general fund to be used by a local agency for purposes of victim services.* (See attached language.)

Rationale for Recommendation

The court escheat statute was part of the Judicial Council–sponsored Uniform Civil Fees and Standard Fee Schedule Act of 2005 (Assem. Bill 145 [Com. on Budget]; Stats. 2005, ch. 75, § 100), which was enacted to streamline and simplify the civil fee structure. The act provided that, for most fees, the same amounts would be charged for the same services across all 58 counties. The act also established a new method of depositing and distributing the newly consolidated fees. Because of the deposit and distribution changes, the court escheat statute was needed to direct how the courts handle unclaimed money, which formerly was a county responsibility.

The proposed court escheat statute is modeled on existing law applicable to local agencies. The local agency law states that “[m]oney representing restitution collected on behalf of victims shall be either deposited into the Restitution Fund or used by the local agency for the purposes of victim services” if the money remains unclaimed for three years. (Gov. Code, § 50050.)

Last year, the council sponsored legislation providing that any unclaimed victim restitution money that courts are holding and is eligible for escheatment be forwarded to the state for deposit into the state State Restitution Fund. However, section 50050 also gives local agencies the option of keeping the money so that they themselves may spend it “for the purposes of victim services.” At that time, it did not appear to be a necessary alternative to provide courts, because courts do not have victims’ services programs. This portion of section 50050, therefore, was not included.

As noted above, however, counties contacted AOC Office of Governmental Affairs staff as SB 556 moved through the Legislature about the need to give courts the option to transfer the escheated money to the counties. Staff considered the appropriateness of this proposal and decided to amend SB 556 to remove the escheat provisions until further research could be done on the possibility of depositing, at the courts’ discretion, escheated victim restitution money with the county.

The AOC Office of the General Counsel was initially concerned about the appearance of bias if a court opted to deposit escheated money with the county, and the court knew that the county might or would transfer the money to a victim witness assistance program operating within a district attorney's office. There was concern, too, that district attorneys might use this money in a manner that would help develop the prosecution's case, further suggesting bias on the part of the court.

The Office of the General Counsel believes, however, that these concerns can be overcome by ensuring that amendments to Government Code section 68084.1 clearly direct courts to deposit escheated money into the *county general fund to be used for the purposes of victim services*. This revision makes clear that it is the county, not the court, making the decision about which local government entity receives the escheated money, and that the county is obligated to ensure that the escheated money is used only for statutorily prescribed purposes.

For these reasons, the PCLC recommends that the council sponsor legislation in 2010 to amend Government Code section 68084.1 to require courts to deposit any unclaimed victim restitution money that they have been holding for three years or longer into either the State Restitution Fund or into the county general fund to be used by a local agency for purposes of victim services.

Alternative Actions Considered

The PCLC considered amendments that would have given courts the option of sending unclaimed victim restitution money to (1) the State Restitution Fund or (2) the county general fund to be used *to compensate victims for the pecuniary losses they suffer as a direct result of criminal acts*. This would have guaranteed that escheated money could not be used inappropriately by district attorneys. However, under Penal Code section 13835.5, Victim-Witness Assistant Programs (VWAPs) in fact *cannot* provide compensation for pecuniary loss. That is the role solely of the State Restitution Fund. Services that can be provided by VWAPs include crisis intervention, resource and referral counseling, direct counseling, and assistance in the processing of restitution claims. But for county programs to provide compensation to victims would place them in the role of claims processors, which is not what they do now. Restricting use of escheated victim restitution money by the county for that purpose would require a completely new county program to handle claims processing. This would likely generate opposition by the counties to the bill.

This approach was therefore rejected. The statutory restrictions on the types of services that may be provided by the VWAPs strengthen the analysis that a court would not be confronted with the ethical dilemma of choosing to escheat money "to the county general fund to be used for purposes of victim services," because (1) limits on a county's use of the money for "victim services" are already defined by statute; (2) the court need not look beyond the statutory requirement to see how the county in fact spends the money; and (3)

even when the court knows that the county distributes the money to a VWAP that is housed within a district attorney's office, the statute makes clear that use of victim services money is restricted to that purpose.

Comments From Interested Parties

As questions arose about SB 556, AOC staff contacted the Victim Compensation and Government Claims Board to determine whether they would oppose amending the court escheat provision to allow courts to deposit escheated money with the counties. They responded that the board would not oppose this change.

Implementation Requirements and Costs

N/A

Attachment

Section 68084.1 of the Government Code would be amended to read:

1 **68084.1**

2 (a) Except as otherwise provided by law, any money, excluding restitution to victims,
3 that has been deposited with a superior court, or that a superior court is holding in
4 trust for the lawful owner, in a court bank account or in a court trust account in a
5 county treasury, that remains unclaimed for three years shall become the property
6 of the superior court if, after published notice pursuant to this section, the money
7 is not claimed or no verified complaint is filed and served. Money representing
8 restitution collected on behalf of victims that remains unclaimed for three years
9 shall be deposited either into the State Restitution Fund or into the county general
10 fund to be used for purposes of victim services.

11 (b)–(i) * * *