Administrative Office of the Courts

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Utah Supreme Court
Chair, Utah Judicial Council

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MEMORANDUM

To: **Julia D'Alesandro, Audit Department**

From: **Brent Johnson, General Counsel**

Returned Checks

October 6, 2003

This memorandum is in response to your e-mail dated September 10, 2003, requesting guidance on the justice court practice involving returned checks. As I understand the practice, in many justice courts, when a defendant's check bounces, the court records showing payment are never reversed. The local government entity pursues the bad check through civil procedures. In many cases, the justice court may not even know that the check has bounced. I am somewhat concerned about this practice and believe that the criminal processes of the justice courts should be used whenever there is a bad check.

The two main purposes of a criminal fine are to punish wrongful conduct and to deter other bad conduct. The purpose of a criminal fine is not to provide revenue for local governments. The more that we treat criminal fines as simply another debt owed to government, the more we stray from the purposes of a criminal court. Straying from these purposes may have unintended consequences. For example, the reason that fines and restitution are not dischargeable in bankruptcy is because of their punitive nature. If they lose their punitive nature, by becoming just another civil debt, they may lose their bankruptcy protections.

When a court orders a defendant to pay a fine, the amount is, to use a cliche, a "debt to society." When a defendant fails to pay a fine as ordered, a court has other means available to ensure that the defendant pays his or her debt. If the court has also ordered jail, the court can reinstate the jail time upon the failure to pay the fine. If the court has not ordered jail time, the court can punish the defendant for contempt. The court can also convert the fine into community service hours or perhaps take other steps to ensure that the defendant is accountable in a punitive way, and not simply a financial way.

If a defendant pays a fine with a bad check, and the court relieves the defendant of the obligation, the defendant has not paid the appropriate criminal penalty. Although seeking the payment through civil remedies will ultimately ensure that the defendant pays the money, the conversion of the debt to a civil responsibility makes the debt no different than other citizen responsibilities to government, such as payment for pet or vehicle licenses, or payment of water and sewer fees. The failure of an individual to pay these fees can be pursued through civil remedies, but they are not punitive in the same manner as criminal fines. It is important to retain the punitive qualities of a criminal fine.

It would therefore be my recommendation that, whenever a defendant's check bounces, the justice court be notified of that occurrence and the justice court reverse the payment and pursue any remedies that the justice court determines is appropriate. This would not prevent the local government from pursuing civil remedies and obtaining the penalties that are available through the bad check statutes, but this would also allow the justice court to ensure that the defendant has adequately paid the "debt to society." There isn't anything in statute or rule which would expressly require this course of action, but I think it is the appropriate course.

If you have any questions about this, please let me know.