

Pro Bono Assistance Sought for Clients Struggling to Pay Court Debt

by Carolyn Kalantari and Richard DeMeglio



John Cook’s Virginia driver’s license was suspended due to unpaid court costs and fines¹ for two non-driving related convictions.² He comes to your office after trying unsuccessfully to reinstate his driver’s license on his own.

Cook was released from prison a few months ago on a bad check conviction and worked hard to secure a full-time fast food job. He found an apartment that he shares with a roommate in a rural county and commutes nearly thirty miles to work. He relies on a friend to get to work, but recently accumulated two write-ups for being tardy when his friend ran late.

You help Cook collect his Compliance Summary from the Virginia Department of Motor Vehicles (DMV). This document indicates he has unpaid court costs and fines in two Virginia courts and owes the DMV a reinstatement fee.

After contacting each court, you learn that Cook needs to pay \$4,115 to restore his driver’s license:

Cook works full time and earns \$7.25 per hour. He is indigent, barely scraping by at 74 percent of the federal poverty level. He is unable to pay these debts in full, but he has another option. If he can establish a payment plan in each court and pay the DMV reinstatement fee, his license suspension will be lifted.⁴

You learn that Court 1 places a premium on regular payments, however small. On his own, Cook quickly obtains a \$25 per month payment plan from Court 1. He will be expected to make these monthly payments until the year 2022. With the establishment of this payment plan, two very important things happen: Court 1 releases its hold on Cook’s driver’s license with the DMV and interest stops accruing on this debt.⁵

Court 2 proves to be a greater challenge. To establish a payment plan in Court 2, Cook must pay \$50 per month for six months before the

court will recognize his payments as a “payment plan” within the meaning of Va. Code § 19.2-354. Until that time, Court 2 will not release its hold on Cook’s driver’s license and interest will continue to accrue.

		Costs	Interest ³	Subtotal
Court 1	Probation Violation	\$1,900	\$342	\$2,242
Court 2	Bad Check Conviction	\$1,706	\$17	\$1,723
DMV	Reinstatement Fee and Multiple Order Fee			\$150
Total cost of reinstatement				\$4,115

Cook does not have an additional \$50 per month, nor can he afford to wait six months to get his driver's license back. His employer enjoys a steady stream of applicants looking for work. Cook knows that he will be replaced if he is tardy a third time.

There are a lot of Cook's in Virginia, and at the Legal Aid Justice Center we routinely see clients in similar situations. According to statistics provided by the Virginia DMV, in fiscal year 2014, 145,243 (or 39 percent) of the orders of driver's license suspension issued by the Virginia DMV were for failure to pay court costs and fines for non-motor vehicle related convictions.⁶

A driver's license suspension weighs heavily on individuals who lack the ability to pay. Pro bono counsel helped a client, in circumstances similar to Cook's get his life back on track. Pro bono counsel petitioned the court to lower the typical monthly payments from \$50 to \$25 and to recognize the payment plan in advance of the court's typical six-month waiting period. For this client, licensure offered more than just peace of mind; it offered an opportunity to stay employed and self-sufficient.

Court Collection Policies and Repayment Plans

In Virginia, each court is authorized to establish its own mechanism to secure repayment of court debt.⁷ In 2013, the Legal Aid Justice Center contacted sixty courts across the commonwealth to inquire about their payment plan policies and learned that the courts exercise this discretion in myriad ways. Very few courts have written procedures or information available online to debtors wishing to establish a payment plan. Some courts require a 50 percent down payment to establish a plan, while others refuse to establish a payment plan after a single default.

Clients seeking driver's license restoration often owe in multiple jurisdictions and do not know how to start to work towards licensure. The Legal Aid Justice Center reviewed thirty-four drivers license cases opened in our Charlottesville office in 2013. Of these thirty-four clients, twenty owed in multiple jurisdictions and twelve owed in three or more courts. At least half owed in excess of \$1,000 and all were indigent. A significant portion of this debt is uncollectible.⁸

There are practical reasons to extend realistic payment plan policies to the many low-income individuals who are obligated to pay costs and fines. The Honorable Robert H. Downer Jr., who presides in the Charlottesville General District Court, explains the rationale for his policy: "By setting up repayment plans with only a modest

Driver's License Restoration: What Can Pro Bono Attorneys Do to Help?

1. Identify barriers to license restoration (e.g. unpaid court costs or fines, delinquent child support obligations, an unpaid motor vehicle judgment or uninsured motor vehicle violations).
2. Help a client prioritize among competing debts. What can the client realistically afford to pay? Are there options available for the client to complete community service in lieu of payment?
3. Negotiate with court clerks regarding payment plan terms. If necessary, petition the court to alter typical payment plan requirements in compelling or unusual circumstances.
4. Determine if the client is eligible for a restricted driver's license.
5. Evaluate other creative solutions available to the client.

down payment and a realistic payment schedule, the court can provide an effective means for indigent people to succeed in paying off even a large indebtedness. Setting repayment terms that are too difficult to meet only results in the individual giving up on trying to pay the indebtedness, or failing to comply with the plan. When that happens, individuals drive anyway, especially if public transportation is unavailable, risking incarceration for this criminal offense and resulting in additional expense to taxpayers and the commonwealth."

In 2007, O. Randolph Rollins, former Virginia Secretary of Public Safety, founded "Drive to Work," a Virginia non-profit organization to tackle barriers to driver's license reinstatement in Virginia. He founded this organization after learning that hundreds of thousands of driver's license suspension orders are issued in Virginia each year because of unpaid court costs and fines.

"It's a public safety issue: Many of these people drive anyway — taking a chance so they can get to work or take their kids to school. But they have not passed the driving test, are not insured and are looking over their shoulders for the blue lights," Rollins said. "These distracted drivers present a danger to the road. Drive-To-Work seeks to break this unfortunate spiral, by assisting individuals with affordable pay plans that the courts will accept."

Would you like to volunteer?

JusticeServer is an online pro bono portal that permits attorneys to browse a description of cases

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Joseph Platania,
Assistant Commonwealth’s Attorney, City of Charlottesville:

“We take a proactive approach to assist indigent individuals trying to reintegrate themselves back into society and comply with the law. If a defendant charged with driving on a suspended license because of unpaid court costs is able to get his or her license back before the trial date, we routinely resolve the case with a conviction that allows them to stay licensed. It benefits the entire community when folks on the roadways are validly licensed and insured.”

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in need of pro bono representation. If you would like to volunteer, please take five minutes to register with JusticeServer at www.justiceserver.org. You may select any areas of interest, including Driver’s License Restoration, from the “special projects” menu. If you would like additional information on pro bono opportunities, or on JusticeServer, please contact Carolyn Kalantari directly at carolyn@justice4all.org. You may also volunteer on driver’s license cases with Drive to Work in Richmond, by contacting O. Randolph Rollins at rrollins@drivetowork.org.

The Legal Aid Justice Center is available to train attorneys who wish to volunteer on driver’s license restoration cases. Together, we can provide a valuable service to low income Virginians seeking to restore their drivers’ licenses and get their lives back on track.

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Endnotes:

- 1 In Virginia, when an individual is assessed court costs and fines for traffic or criminal offenses, he has thirty days to pay in full or establish a payment plan with his local court. A debtor who fails to comply is subject to driver’s license suspension. Va. Code § 46.2-395(C).
- 2 Cook represents a hypothetical case that demonstrates several of the issues pro bono counsel should expect to confront in driver’s license restoration matters.
- 3 Interest accrues at a rate of 6 percent and continues to accrue until the individual establishes a payment plan or pays in full. In some cases, interest continues to accrue during a period of incarceration. Va. Code §§ 19.2-353.5, 6.2-302.
- 4 Va. Code § 19.2-354.
- 5 Va. Code § 19.2-353.5.
- 6 Data provided to the Legal Aid Justice Center on July 21, 2014, pursuant to a Freedom of Information Act request. The DMV further noted that any one individual may be subject to more than one order of suspension and some of the orders were issued to individuals who had contact with the Virginia roads, but who do not reside in Virginia.
- 7 Va. Code § 19.2-354.
- 8 “[I]t is important to note that some percentage of accounts will always be uncollectible. As an example, we estimate incarcerated individuals owe approximately 10 percent or an average of \$16.8 million each year relating to the cases for which they were incarcerated. We believe this figure is conservative because incarcerated individuals typically also owe fines and costs relating to charges for which they were not incarcerated.” Commonwealth of Virginia Auditor of Public Accounts, Commonwealth Court Collections Review 2 (April 2013).



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