



GEORGIA DEPARTMENT OF LAW

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

SAMUEL S. OLENS
ATTORNEY GENERAL

www.law.ga.gov
(404) 656-3300

August 14, 2012

MEMORANDUM

TO: John Earle, Director of Financial Operations
Georgia Superior Court Clerks' Cooperative Authority

THROUGH: Audrey Seidle, Assistant Attorney General *AS*

FROM: Julie Patel, Intern *JP 6/28/12*

RE: Statutory effect of amended priority distribution schedule under O.C.G.A. § 15-6-95

This responds to your question regarding the application of the amended priority distribution schedule under O.C.G.A. § 15-6-95.¹ As analyzed below, the amended priority distribution schedule under O.C.G.A. § 15-6-95 should be applied only to criminal fines, forfeitures, and costs (hereinafter "fees") assessed on or after July 1, 2012. As to fees assessed prior to July 1, 2012, the priority distribution schedule in effect at the time of the assessment should be applied, regardless of when the partial payments are made.

Under Georgia law, the clerk of any superior court (hereinafter "clerk") who "receives partial payments, as ordered by the court, of criminal fines, forfeitures, or costs" is required to distribute the money received according to a certain priority order. O.C.G.A. § 15-6-95. During the 2011-2012 legislative session, the General Assembly passed an amended priority distribution schedule for payments received by the clerk, which became effective July 1, 2012.² However, the amended priority distribution schedule applies only to those fees that are assessed on or after July 1, 2012.

With regard to fees that were assessed before July 1, 2012, even if partial payments will be received by the clerk after July 1, 2012, the priority distribution schedule in effect at the time of the fee assessment applies. Applying the priority distribution schedule in effect on July 1, 2012, to fees assessed prior to but paid after July 1, 2012, would appear to be a retroactive application of the law. In Georgia, there is a

¹ O.C.G.A. § 15-6-95 was amended by Senate Bill 50, which was signed by the Governor on May 2, 2012. The bill became effective on July 1, 2012.

² In the amended priority distribution schedule, not only were certain priorities reordered on the schedule, but new priorities were also added to the schedule. See, e.g., O.C.G.A. § 15-6-95 (7) (local victim assistance programs); O.C.G.A. § 15-6-95 (12) (Brain and Spinal Injury Trust Fund).

presumption against retroactively applying statutes when there is nothing in the language of the statute that would require such a construction. Dep't of Corr. v. Hicks, 209 Ga. App. 154, 155 (1993) (“[t]he legal presumption is against retroactively applying a statute to destroy vested rights and interests.”) (citing Seaboard Air Line Ry. Co. v. Benton, 175 Ga. 491, 498-499 (1932)); Polito v. Holland, 258 Ga. 54, 55 (1988) (“[g]enerally statutes prescribe for the future and that is the construction to be given unless there is a clear contrary intention shown.”) (citing Talmadge v. Cordell, 170 Ga. 13, 20 (1930)); Ga. Dep't. of Human Res. v. Deason, 238 Ga. App. 853, 856 (1999) (“[a] statute is never to be given retroactive operation unless such construction is absolutely demanded.”) (quoting J. Scott Rentals, Inc. v. Bryant, 239 Ga. 585, 587 (1977)).

Additionally, a rule or regulation authorizing the application of the current priority distribution schedule to fees assessed prior to July 1, 2012, would appear to be impermissible. While the Authority is allowed to promulgate rules and regulations in order to discharge its duties under O.C.G.A. §§ 15-6-94(b)(5) and 15-21A-7(b), such rules and regulations cannot be inconsistent with the legislative act of the State or Federal law. See, Ciba Vision Corp. v. Jackson, 248 Ga. App. 688, 693 (2001) (“[i]t is true that an administrative rule or regulation may be held invalid if it is not authorized by statute or is unreasonable.”) (citing Ga. Real Estate Comm'n v. Accelerated Courses in Real Estate Inc., 234 Ga. 30, 32 (1975)). Thus, in light of the legal presumption against retroactive statutes, applying the current priority distribution schedule retroactively through promulgated rules and regulations would appear to be impermissible.

Based on the foregoing, it would appear that the current priority distribution schedule under O.C.G.A. § 15-6-95 applies only to the fees assessed on or after July 1, 2012. Additionally, the enactment of any rules or regulations applying the current priority distribution schedule retroactively to fees assessed prior to July 1, 2012, would appear to be impermissible.

I hope this informal advice is helpful. If you have any questions, please contact Audrey Seidle at (404) 651-9457. Please keep in mind that this memorandum is not an official or unofficial opinion of the Attorney General.