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## Restitution in Federal White Collar Cases: Squeezing Blood From a Stone

**T**he purpose of restitution is to make a victim whole after suffering a loss from the criminal activity committed by others.<sup>1</sup> Making a victim whole, however, does not always equate to fairness. Consider the nominee owner of a medical clinic who allowed someone to use her name in exchange for a few hundred dollars, while others fraudulently billed Medicare for millions of dollars from the clinic in her name. Although the client may not have known all the details of the plan, the scope of the fraud or the names of the other conspirators, she nevertheless may be found guilty of a conspiracy to commit Medicare fraud. She may be slapped with a joint and several \$25 million restitution order even though she has no

ability to pay and even though she made less than one hundredth of one percent of the profits.

Although a defense attorney may represent clients in “white collar” cases, that does not mean the clients have endless amounts of money and assets. They may have made a pittance compared to the windfall of other co-conspirators. Moreover, they are often left penniless after fighting a federal indictment. In spite of those facts, if the client takes a plea or is found guilty, she will still have a restitution obligation. In question and answer format, this article will lay out the law and some opportunities of mitigating the heavy load of restitution.

- Q.** What is the applicable law regarding restitution?
- A.** Title 18 U.S.C. § 3663A mandates restitution to victims in nearly all white collar cases. It provides that “the court shall order ... that the defendant make restitution” for any offense against Property

under Title 18.<sup>2</sup> This includes crimes of racketeering, telemarketing fraud, mail and wire fraud, health care fraud, bank fraud, and securities fraud. The general conspiracy statute within Title 18 can also draw a non-Title 18 offense within the mandatory requirements of § 3663A.<sup>3</sup> Under the statute, a victim is a person or entity that is “directly and proximately harmed as a result of the commission” of the offense.<sup>4</sup>

Section 3664 and Fed. R. Crim. P. 32(c) address the procedure regarding restitution. They direct the government, at least 60 days prior to sentencing, to consult with all identified victims to obtain a restitution amount and to provide that information to the probation officer.<sup>5</sup> The probation officer then must provide notice to the victims of the offense of conviction, the amount of restitution, the date of the sentencing hearing, and the availability of a lien. The officer also must inform victims of the chance to submit additional loss information through a provided affidavit.<sup>6</sup>

The client must submit a completed affidavit to the probation officer containing her detailed financial information, including assets “owned or controlled by

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the defendant as of the date” of the defendant’s arrest.<sup>7</sup> After finishing its restitution investigation, probation must submit a report to inform the court sufficiently to issue an order. The report (either as part of the PSI or a separate document) must include an accounting of what is owed to each victim, any agreement to restitution, and the financial circumstances of the defendant.<sup>8</sup> The court may rely on the report or may take additional evidence, resolving any dispute by a preponderance of the evidence.<sup>9</sup> The burden of establishing the restitution amount is on the government.<sup>10</sup>

After reaching a conclusion regarding restitution, the court issues an order. The court’s final order or judgment must include the client’s identifying information, case number, restitution amount, schedule of payments, any modification or remission, a requirement that the client keep her address current with the U.S. Attorney’s Office, and identification of the victims.<sup>11</sup> The U.S. Attorney’s Office (USAO) then must file a lien against the client’s property.<sup>12</sup> A Release of Lien is not filed until the restitution has been paid.<sup>13</sup>

- Q.** Is there any circumstance in which the court would not order restitution in white collar cases?
- A.** Under very limited circumstances, the court does not have to order restitution when the large number of victims makes an order impractical, or when the complexity of determining an amount or the extensive length of time it might take to reach a conclusion would present an undue burden on the court.<sup>14</sup>
- Q.** Does the court consider what amount the client can afford to pay when determining the amount of restitution?
- A.** No. The court must order restitution to each victim for the full amount of loss the victim sustained regardless of the economic circumstances of the defendant.<sup>15</sup>
- Q.** Then why must the client provide all her financial information?
- A.** After the court determines the amount of restitution the client must pay, the order must specify how and when the restitution will be paid.<sup>16</sup> The economic circumstances of the client influences this portion of the order. Based upon the client’s finances — which includes assets,

projected earnings, and debts — “[a] restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, [ ] a combination of payments at specified intervals and in-kind payments,” or nominal periodic payments.<sup>17</sup> If the court permits a payment plan, the installments will be in equal monthly payments, unless the court directs otherwise.<sup>18</sup>

The client’s financial disclosure does not end at the sentencing stage. Even after an order has been issued, if there is any material change to the client’s finances, she must notify the court and the U.S. Attorney’s Office, and the victim must also be informed.<sup>19</sup> Upon notification to all the parties of a change in finances or assets, the court may revise the restitution payment schedule or demand payment in full.<sup>20</sup>

- Q.** Can the client transfer title to property to a third party to decrease her assets?
- A.** A sincere sale or donation of property to another is permissible. But keep in mind that, in preparation for the restitution order, the client is mandated to provide sworn information to the probation officer regarding her finances as of the date she was arrested.<sup>21</sup> This suggests that the government can view any change since the time of arrest as an attempt to hide assets, even if it is prior to imposition of the restitution judgment.<sup>22</sup> Similarly, with future transfers of property or other assets, if the government suspects fraud, the government can seek to void a transfer with the court or attempt to collect from the third party.<sup>23</sup>
- To determine whether a client’s intent is meant to defraud or is free of deceit, the court may consider several non-exclusive enumerated factors,<sup>24</sup> including whether the transfer was to an insider;<sup>25</sup> the client retained possession and control of the property;<sup>26</sup> the transfer was hidden; the transfer consisted of nearly all the client’s assets; the payment received by the client for the transfer was negligible;<sup>27</sup> or the transfer occurred close in time to the restitution order.<sup>28</sup> If the court finds fraud, cancellation of the transfer may be the least of the client’s problems. She may also face additional charges and a lengthier sentence if the transfer occurs prior to the imposition of the restitution order.

- Q.** If the victim receives compensation from a third party, such as insurance, does that offset the amount of restitution?
- A.** No. If a victim receives reimbursement from another source, the court will order the defendant to repay that third party *after* the victim has been made whole.<sup>29</sup> It may reduce the amount the client pays directly to the victim, but not the total amount of restitution. The reduced amount due to the victim, added with the money that must be paid later to another source, will equal the full restitution amount imposed.<sup>30</sup>
- Q.** Can the restitution amount be offset by the value of any forfeited property?
- A.** In Mandatory Victims Restitution Act (MVRA) cases, federal law requires a district court to impose both restitution and forfeiture.<sup>31</sup> Because restitution and forfeiture serve very distinct purposes and are both required by statute, a court cannot offset the amount of restitution by the amount of property or monies forfeited to the government.<sup>32</sup> Thus, a client may be doubly penalized financially. “While restitution seeks to make victims whole by reimbursing them for their losses, forfeiture is meant to punish the defendant by transferring his ill-gotten gains to the United States Department of Justice (DOJ).”<sup>33</sup> One goes to the victim, and one goes to the government. After property has been forfeited, the attorney general has the sole authority to decide the disposition of the property, either by retaining it or distributing it to victims.<sup>34</sup>
- The U.S. Attorney’s Office may make efforts to assist the return of forfeited property to victims through two procedures, remission and restoration.<sup>35</sup> Remission requires victims to complete a petition to the U.S. attorney of their district demonstrating that they suffered a loss. If the U.S. attorney grants the petition, the attorney general, acting through the Asset Forfeiture Money Laundering Section (AFMLS), compensates the victim. In an approved restoration, upon the request of the USAO, the AFMLS notifies the custodian of the forfeited property to transfer the proceeds to the clerk of court for distribution to victims according to the restitution order. The restoration process avoids the necessity of each victim having to

submit a petition and simplifies the process for the government.<sup>36</sup> Consequently, it is generally a faster and more efficient way to victim reimbursement.<sup>37</sup>

- Q.** What happens to the bond money?  
**A.** Where the client posted a cash bond, the U.S. Attorney’s Office can ask the court to order “any money belonging to and deposited by or on behalf of the defendant” to be transferred to the U.S. attorney and applied toward payment of restitution.<sup>38</sup> Bond money paid by a third party (such as a family member or friend), however, cannot be given to the government.<sup>39</sup>

## If a client willfully fails to pay restitution while on probation or supervised release, the court may revoke or modify the terms of supervision.

- Q.** Is there anything that can be done to reduce the amount a client must pay for restitution?

- A.** If more than one defendant caused the loss to a victim, the court may order each defendant to pay the full restitution amount jointly and severally or “may apportion liability among the defendants to reflect the level of contribution to the victim’s loss and economic circumstances of each defendant.”<sup>40</sup> The court has full discretion to decide which option to choose in a multidefendant matter.<sup>41</sup> This provision is often overlooked. If the client agrees through her plea agreement or otherwise to pay the full restitution amount, the court will not allocate separate amounts due by each defendant.<sup>42</sup>

- Q.** What are the client’s restitution obligations while she is on probation or supervised release?  
**A.** Payment of restitution is a mandatory condition of probation.<sup>48</sup> Although it is a discretionary condition of supervised release,<sup>49</sup> the MVRA and a court’s restitution order (or Judgment and Conviction) require continued payments following the conditions of the order. If the client willfully fails to pay restitution while she is on probation or supervised release, the court may revoke or modify the terms of supervision.<sup>50</sup> If the court chooses to revoke supervised release and impose a term of imprisonment, this act does not cancel the client’s restitution obligations. Those will continue while she is incarcerated through the IFRP and again upon release.<sup>51</sup>

- Q.** Does the client’s requirement to pay restitution end when supervised release is terminated?

- Q.** What are the client’s restitution obligations while she is incarcerated and serving her sentence?

- A.** No. The Financial Litigation Unit of the U.S. Attorney’s Office maintains the responsibility for enforcing and monitoring restitution, even after the termination of supervised release.<sup>52</sup> To assist the U.S. attorney to continue collection after the completion of supervised release, federal law requires that the client must inform the U.S. Attorney’s Office of her mailing address whenever she moves.<sup>53</sup> Additionally, she must notify the court and USAO of any “material change” in her financial circumstances.<sup>54</sup>

- A.** After the client begins serving the prison portion of her sentence, she will be asked to participate in the Inmate Financial Responsibility Program (IFRP).<sup>43</sup> Each institution is required to operate an IFRP with an appointed Coordinator who is responsible for IFRP assignments and making sure inmates receive information about the program. The unit staff then counsels the client and monitors payment regarding financial obligations. Clients should elect to participate in the program rather than refuse participation. Clients who refuse to participate will have BOP benefits and privileges withheld, such as furloughs, UNICOR (federal prison industries) work assignments, better housing, etc.<sup>44</sup> Clients can pay their court-ordered monetary charges from outside resources or prison work assignments (institution, commissary, or industry through UNICOR). The Bureau of Prisons collects the restitution payments from the clients’ trust fund accounts or prison work earnings.<sup>45</sup> If the client receives an inheritance, settlement, or significant money from another source while she is incarcerated, she must apply the money to the restitution owed.<sup>46</sup> When the client is released, BOP notifies the U.S. Attorney’s Office if restitution is still outstanding.<sup>47</sup>

- Q.** How long does the obligation to pay restitution last?

- A.** Title 18 U.S.C. § 3613 provides that an order of restitution “is a lien in favor of the United States. . . . The lien arises on the entry of judgment and continues for 20 years” from its entry or after the individual’s release from imprisonment or until it is satisfied.<sup>55</sup> Should the client die before the 20 years have passed, the lien passes to the client’s estate.<sup>56</sup>

- Q.** Who distributes the restitution money to the victim?

- A.** The Clerk’s Office disburses all restitution payments.<sup>57</sup>

- Q.** What can the victims actively do to be made whole?

- A.** Victims can request that the clerk issue an abstract of judgment certifying the restitution order.<sup>58</sup> An



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abstract of judgment is a written summary of a judgment that states how much money the client owes the victim. The victim can have the abstract recorded at the county recorder. The purpose of an abstract of judgment is to effect a public record and create a lien or claim if necessary on property owned or later acquired by the client located in the county in which the abstract of judgment is recorded.<sup>59</sup> If the client does not pay the judgment voluntarily, then the victim can force a sheriff's sale of any property to collect.<sup>60</sup>

A victim may also sue the client in civil court. If a victim chooses this route, the procedural statute provides that “[a] conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.”<sup>61</sup> In some circumstances, the U.S. Attorney’s Office may prefer that victims sue and pursue collection on their own so that resources are not unnecessarily expended by the government to seek collection.<sup>62</sup>

- Q.** What if the client has other monetary obligations, such as a fine?
- A.** Restitution takes precedence over other criminally-imposed monetary obligations.<sup>63</sup> The court, in fact, should not order imposition of a fine if it would interfere with the victim’s ability to receive payment of restitution.<sup>64</sup>
- Q.** Can the client discharge the debt in bankruptcy?
- A.** Any discharge of debts pursuant to a Chapter 11 bankruptcy does not apply to a restitution order.<sup>65</sup>
- Q.** What if the client does not pay?
- A.** The Financial Litigation Unit of the U.S. Attorney’s Office is responsible for the collection of restitution.<sup>66</sup> It can seek enforcement under federal and state law or “by all other available and reasonable means.”<sup>67</sup> If the client is delinquent in paying restitution (over 30 days late<sup>68</sup>), the U.S. Attorney’s Office must notify the client of her delinquency.<sup>69</sup> If the payment is in default (more than 90 days past due<sup>70</sup>), the government must

inform the client that the restitution is in default and the remainder of the restitution amount is due within 30 days.<sup>71</sup>

Additionally, the U.S. Attorneys’ Manual (USAM) advises aggressive government collection of restitution for victims and recommends the following when a client is in default:

[D]iscovery of the debtor’s assets should be pursued, including, but not limited to: reviewing the presentence report for asset information; requesting a financial statement from the debtor or completed interrogatories regarding assets and liabilities; ... inquiring whether any victims have information about the debtor’s assets; requesting asset information from the prosecutor and case agent; and, researching online the property locator services available to the Financial Litigation/Asset Recovery Unit.

In cases where the United States Attorney’s Office has reason to believe that the debtor might have assets based on the inquiries and research set forth above or other information, a credit report should be obtained and, where practicable, the deposition of the defendant or other parties who may have knowledge of the debtor’s assets should be conducted.<sup>72</sup>

Further, the government is authorized to collect restitution “in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law.”<sup>73</sup> The procedures for enforcement of civil judgments under federal law are provided in the Federal Debt Collection Practices Act (FDCPA). According to the USAM:

All enforcement remedies, including those under the Federal Debt Collection Procedures Act, 28 U.S.C. 3001-3308, should be pursued, including garnishment of the debtor’s wages and/or bank accounts,

execution of the debtor’s non-exempt property and filing of a fraudulent transfer action.<sup>74</sup>

- Q.** What does the Federal Debt Collection Procedures Act allow for?
- A.** Pursuant to the FDCPA, the government can bring a civil suit against the client. Restitution qualifies as debt under the FDCPA owed to a “creditor” — the government.<sup>75</sup> If the amount of the remaining restitution is greater than \$50,000, the FDCPA permits the government to seek discovery from the client in the form of requests for admission, interrogatories, subpoenas, and depositions to determine her true financial condition.<sup>76</sup> The Act also allows for a writ of attachment on the client’s property<sup>77</sup> and writ of garnishment on property and earnings.<sup>78</sup> If the court enters a judgment against the client, upon filing, the judgment creates a lien on all the client’s real property, which remains in effect for 20 years.<sup>79</sup> The court can order the sale of the property to satisfy payment of the restitution<sup>80</sup> or the property itself can be subject to levy pursuant to a writ of execution.<sup>81</sup> Until the lien is lifted, the client may have difficulty applying for any federal grants, loans, or programs.<sup>82</sup>
- Q.** How does state property law affect what the government can take?
- A.** An order of restitution is enforceable through the procedures established in 18 U.S.C. § 3613.<sup>85</sup> While state law may provide exemptions for certain property belonging to a client, the plain language of Section 3613 preempts state law. Subsection (a) specifically states that 28 U.S.C. § 3014, a federal statute generally permitting federal judgment debtors to apply state law property exemptions, is *not* applicable when the government enforces a judgment for criminal restitution.<sup>86</sup> After the court orders restitution, all of a client’s property becomes subject to a lien in favor of the United States and may be gar-

nished following the same method as tax liens.<sup>87</sup> Thus, any property that may be seized to satisfy a tax lien may be garnished to fulfill a restitution order. “[S]tate law exemptions are not effective against the United States” for taxation purposes.<sup>88</sup> So, too, “[s]tate law exemptions are not available to a criminal defendant owing restitution.”<sup>89</sup> The only exemptions to enforcement of a judgment are those found in Section 3613, citing specific tax code provisions.<sup>90</sup>

**Q.** What can the court do if the client is in default?

**A.** The court continues to have power when the client does not pay restitution, yet has the ability to pay. If the court makes a finding that the defendant is in default, the court may resentence the client to any sentence that could have originally been imposed, hold the client in contempt of court, “enter a restraining order or injunction, order the sale of property of the [client], enter or adjust the payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.”<sup>91</sup>

**Q.** What can the defense attorney do to help the client?

**A.** Beyond the pain and difficulty of imprisonment, the imposition of a hefty restitution amount imposes a massive burden on a client and her family. That taxing penalty cannot be eliminated. Instead, it is important to keep the client informed and reduce, where permitted, the client’s obligation:

1. If the client intends to plead guilty, negotiate the restitution terms of the plea agreement. In a multidefendant case, avoid agreeing to the full amount of restitution so that the defense can ask the court to apportion liability and money amounts at sentencing.<sup>92</sup> This could significantly reduce the amount of money the client will owe over the next 20 years of her life.
2. Distinguish restitution from forfeiture and make sure the court is specific. When discussing the plea agreement, request that the government recommend that funds recovered through forfeiture be applied to restitution or that the government requests

that the attorney general grant restoration in the client’s case.<sup>93</sup> Applying forfeiture money to restitution prevents the possibility of a double financial penalty on the client.

3. Although a court has no authority to require the government to treat assets previously forfeited as restitution, its hands are not completely tied. A court has the ability to give restitution priority over a client’s assets that have not yet been allocated to satisfy a forfeiture obligation.<sup>94</sup>
4. Inform the client regarding the consequences of not paying. While it would make sense that the court has no jurisdiction over the client after supervised release has been terminated, the law provides otherwise. Rather, the court maintains the power to resentence the client in the most extreme case. Equally as important is the fact that the government can sue and pursue avenues against the client to take away property and wages.
5. Advise the client of the consequences of hiding assets. The government may take the position that hiding, selling, transferring, or devaluing assets may serve as a basis for denying a reduction for acceptance of responsibility and recommending an increased sentence to the court. Pre- or post-sentencing, it may also result in additional charges to the client, including charges under 18 U.S.C. § 1001.
6. Recommend that the client participate in the Inmate Financial Responsibility Program while she is incarcerated. Voluntary participation in IFRP will allow the client to experience benefits — such as work assignments, better housing, furloughs — that can otherwise be denied in prison.

## Notes

1. See *United States v. Innarelli*, 524 F.3d 286, 294 (1st Cir. 2008).
2. 18 U.S.C. § 3663A(c)(1)(A)(ii).
3. *United States v. Quarrell*, 310 F.3d 664 (10th Cir. 2002) (defendants’ conviction under 18 U.S.C. § 371 satisfied “under this title” requirement of MVRA even though conviction for violation of ARPA under Title

16 did not); *United States v. Minneman*, 143 F.3d 274 (7th Cir. 1998).

4. 18 U.S.C. § 3663A(a)(2).
5. 18 U.S.C. § 3664(d)(1).
6. 18 U.S.C. § 3664(d)(2).
7. 18 U.S.C. § 3664(d)(3).
8. 18 U.S.C. § 3664(a).
9. 18 U.S.C. § 3664(a)(4) and (6)(e).
10. *Id.*
11. 18 U.S.C. § 3612(b)(1).
12. 18 U.S.C. § 3613(c) and (d); USAM 3-12.340. If the victim is a federal agency, the USAO must file a notice of lien only if the restitution amount exceeds \$2,500. *Id.*
13. *Id.*
14. 18 U.S.C. § 3663A(c)(3). See, e.g., *United States v. Doe*, 374 F.3d 851 (9th Cir. 2004) (government could not meet burden of proving identifiable victims, thus restitution order was vacated).
15. 18 U.S.C. § 3664(f)(1)(A).
16. 18 U.S.C. § 3664(f)(2).
17. 18 U.S.C. § 3664(f)(3)(A) and (B).
18. 18 U.S.C. § 3572(d)(1).
19. 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3). Although the statutes provide that the attorney general should be notified, this duty has been designated now to the United States attorneys. See 28 C.F.R. § 0.171; USAM 3-12.200.
20. *Id.*
21. 18 U.S.C. § 3664(d)(3).
22. See 28 U.S.C. § 3304(b).
23. 28 U.S.C. § 3306(a).
24. 18 U.S.C. § 3304(b)(2).
25. *United States v. Schippers*, 982 F. Supp. 2d 948 (S.D. Iowa 2013) (ex-wife considered insider where defendant transferred property pursuant to a marital settlement).
26. *United States v. Sherrill*, 626 F. Supp. 2d 1267, 1273 (M.D. Ga. 2009) (although defendant transferred house to his wife, he retained possession of the property by continuing to live there and contributing to mortgage).
27. *United States v. Forbes*, 740 F. Supp. 2d 334 (D. Conn. 2010) (no evidence that judgment debtor received reasonably equivalent value in exchange for transfers of his right, title, and interest in LLCs).
28. *United States v. Holt*, 664 F.3d 1147, 1151 (8th Cir. 2011) (defendant made significant transfer of cash to boyfriend on the eve of sentencing).
29. 18 U.S.C. § 3664(j)(1).
30. *Id.*
31. 18 U.S.C. § 3663A; FED. R. CRIM. P. 32.2(b)(1)(A).
32. *United States v. Joseph*, 743 F.3d 1350 (11th Cir. 2014); *United States v. Martinez*, 610 F.3d 1216 (10th Cir. 2010); *United States v. Ruff*, 472 F.3d 1044, 1047 (8th Cir. 2007); *United States v. Bright*, 353 F.3d 1114 (9th Cir. 2004); *United States v. Alalade*, 204 F.3d 536, 539-41 (4th Cir. 2000); *United States v. Emerson*, 128

F.3d 557 (7th Cir. 1997).

33. *Joseph*, 743 F.3d at 1354. See also *Overview of Asset Forfeiture and Money Laundering Program*, United States Attorneys' Bulletin, September 2013, at 7 ("asset forfeiture relates to the amount of proceeds generated by a crime and, in some cases, the actual property used to commit a crime, while restitution relates to the amount of losses caused by a crime").

34. *Id.*

35. *Id.* at 48.

36. *Id.* at 50.

37. *Id.*

38. 28 U.S.C. § 2044.

39. *United States v. Equere*, 916 F. Supp. 450, 452 (E.D. Pa. 1996) (plain meaning of statute prevented government from keeping defendant's bond money that was posted by his brother).

40. 18 U.S.C. § 3664(h). See also *United States v. Salas-Fernandez*, 620 F.3d 45, 49 (1st Cir. 2010) (court had discretion to divide loss equally among the responsible defendants); *United States v. Ingles*, 445 F.3d 830, 838-39 (5th Cir. 2006).

41. *United States v. Moeser*, 758 F.3d 793, 799 (7th Cir. 2014).

42. See *United States v. Bogart*, 490 F. Supp. 2d 885, 897, *aff'd*, 576 F.3d 565, *aff'd*, 577 F.3d 713 (S.D. Ohio 2007) (no error to order defendant to pay full amount of restitution where defendant had agreed in his plea agreement to "pay restitution to victims of the conspiracy").

43. *The Federal Bureau of Prisons' Inmate Financial Responsibility Program*, September 2000, <https://oig.justice.gov/reports/BOP/e0023/intro.htm#court>.

44. *Id.*

45. *Id.* The amount is typically \$25 per quarter or 50 percent of the client's UNICOR monthly wages. *Id.*

46. 18 U.S.C. § 3664(n).

47. 28 C.F.R. § 0.171.

48. 18 U.S.C. § 3563(a)(6)(A).

49. 18 U.S.C. § 3583(d).

50. 18 U.S.C. § 3613A(a)(1).

51. 18 U.S.C. § 3663A. See also *United States v. Webb*, 30 F.3d 687, 690 (6th Cir. 1994) ("district court's decision to revoke supervised release does not affect the obligation to pay restitution").

52. 18 U.S.C. § 3612(c).

53. 18 U.S.C. § 3612(b)(1)(F).

54. 18 U.S.C. § 3664(k).

55. 18 U.S.C. § 3613(b) and (c).

56. *United States v. Asset*, 990 F.2d 208, 212 (5th Cir. 1993); *United States v. Cloud*, 921 F.2d 225, 227 (9th Cir. 1990). The 18 U.S.C. § 3613(b) "cease upon death" provision applies only to fines or penalties imposed by the government and does not apply to terminate restitution payments outstanding at death. *Id.* at 227. Courts generally adopt the

view, however, that upon the death of a client pending direct appeal of her case, convictions are overturned and indictments are dismissed. Thus, some courts also direct that a restitution order is abated. *United States v. Logal*, 106 F.3d 1547, 1552 (11th Cir. 1997) ("Under the doctrine of abatement *ab initio* ... the defendant stands as if he never had been indicted or convicted. The absence of a conviction precludes imposition of the restitution order against the [defendant] or his estate.") (internal citation omitted). See also *United States v. Estate of Parsons*, 367 F.3d 409, 415 (5th Cir. 2004) (en banc) ("regardless of its purpose, the order of restitution cannot stand in the wake of Parson's death. Because he now is deemed never to have been convicted or even charged, the order of restitution abates *ab initio*"). *Contra United States v. Christopher*, 273 F.3d 294, 299 (3d Cir. 2001) (order of restitution survives against the estate of the deceased defendant); *United States v. Dudley*, 739 F.2d 175, 178 (4th Cir. 1984).

57. 18 U.S.C. § 3611.

58. 18 U.S.C. § 3664(m)(1)(A)(ii)(B).

59. *Id.*

60. See Law.com, *Abstract of Judgment*, <http://dictionary.law.com/Default.aspx?selected=2289>.

61. 18 U.S.C. § 3664(l).

62. USAM 3-12.600.

63. 18 U.S.C. § 3572(b).

64. *Id.*

65. 18 U.S.C. § 3613(e).

66. 18 U.S.C. § 3612(c). Although the statute provides that the attorney general is responsible, this duty has been designated now to the United States attorneys. See 28 C.F.R. § 0.171; USAM 3-12.200 and 3-12.600.

67. 18 U.S.C. § 3664(m)(1)(A)(l). See also 18 U.S.C. § 3613(a); USAM 3-12.350.

68. 18 U.S.C. § 3572(h).

69. 18 U.S.C. § 3612(d).

70. 18 U.S.C. § 3572(i).

71. 18 U.S.C. § 3612(e).

72. USAM 3-12.600.

73. 18 U.S.C. § 3613(a).

74. USAM 3-12.600.

75. *United States v. Schippers*, 982 F. Supp. 2d 948 (S.D. Iowa 2013).

76. 28 U.S.C. § 3015.

77. 28 U.S.C. § 3102.

78. 28 U.S.C. § 3104; 28 U.S.C. § 3205. Property may include stocks, interest in a partnership, negotiable instruments, rent, and retirement accounts. *Id.* See also *United States v. Petal*, 444 Fed. Appx. 737 (5th Cir. 2011); *United States v. Seymour*, 275 Fed. Appx. 278 (5th Cir. 2008).

79. 28 U.S.C. § 3201.

80. *Id.*

81. 28 U.S.C. § 3203.

82. 28 U.S.C. § 3201.

83. 28 U.S.C. § 3306. See also *United States v. Sherrill*, 626 F. Supp. 2d 1267 (M.D. Ga. 2009).

84. 28 U.S.C. § 3304(b)(1).

85. See 18 U.S.C. §§ 3664(m)(1)(A)(i), 3613(f).

86. 18 U.S.C. § 3613(a)(2).

87. 18 U.S.C. § 3613(c).

88. *Medaris v. United States*, 884 F.2d 832, 833-34 (5th Cir. 1989) (citing *United States v. Mitchell*, 403 U.S. 190 (1971)).

89. *United States v. Nash*, 175 F.3d 440, 443 (6th Cir. 1999); *United States v. Blondeau*, 2011 WL 6000499, at \*3 (E.D.N.C. 2011); *United States v. Rosin*, 2010 WL 454933, at \*11 (M.D. Fla. 2010).

90. 18 U.S.C. § 3613(a).

91. 18 U.S.C. § 3613A(a)(1). See also 18 U.S.C. § 3614; 18 U.S.C. § 3664(m)(1)(A)(i) ("An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title: or (ii) by all other available and reasonable means.").

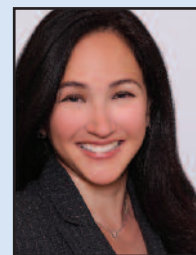
92. General agreements are ineffective — such as, the defendant knows the court can impose restitution or the defendant knows the government will request an order for restitution. *United States v. Phillips*, 174 F.3d 1074 (9th Cir. 1999). The agreement must be specific for the client to be bound.

93. *E.g., United States v. Fenner*, 2011 WL 2014939, at \*1 (M.D. Pa. May 23, 2011).

94. *United States v. Cohan*, 988 F. Supp. 2d 323, 328 (E.D.N.Y. 2013) (court's prioritization of restitution did not impinge on government's authority to dispose of forfeited assets or improperly reduce the amount of forfeiture to which it was entitled). ■

## About the Author

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