

2011 COSTS AND FEES CHANGES - FREQUENTLY ASKED QUESTIONS

PURSUANT TO S.L. 2010-145

(AMENDED BY S.L. 2011-192 (HB 642), S.L. 2011-391 (HB 22), AND OTHER LEGISLATION IDENTIFIED HEREIN)

COSTS EFFECTIVE JULY 1, AUGUST 1, AND DECEMBER 1, 2011

FAQ Prepared July 5, 2011, amended August 1 and December 1, 2011

FAQs added or amended since the August 1 edition are shaded.

Note: All of the answers to the following frequently asked questions (FAQ) reflect the interpretation of the relevant fee provisions by the Administrative Office of the Courts (NCAOC). Individual orders of the court may direct otherwise, and should be followed notwithstanding any advice below. Any party's dispute concerning the validity of a court's judgment must be addressed to the court, not to the clerk.

I. CRIMINAL COSTS – G.S. 7A-304 AND RELATED STATUTES

QUESTION	ANSWER
A. General Criminal Cost Questions	
Q: What are the basic court costs?	A: Basic court costs for each type of conviction are provided in the "Criminal Costs Summary," appended to the end of the annual court costs chart.
Q: If the defendant was convicted in court and the court assessed costs prior to the effective date of a cost increase, but the court gave the defendant until after that date to pay, does the defendant have to pay the new costs when he comes in to pay?	A: No. The defendant's obligations were fixed in the court's judgment, so he pays the costs specified in the judgment.
Q: We heard there was a new fee for improper equipment, higher jail fees, a DWI fee, and other new costs. Where are they in the chart?	A: The improper equipment fee and increased jail fees take effect on August 1, and are in the updated cost charts. The fee for convictions of impaired driving offenses doesn't take effect until December 1, 2011. See S.L. 2011-191 (House Bill 49, Laura's Law).
Q: For the increased jail fee, what if part of the defendant's pretrial credit was served before August 1, and some of it was served after August 1? Do we assess \$5.00 per day for the days before August 1, and \$10.00 per day for the days after August 1?	A: No. If jail fees are imposed as costs in a judgment entered on or after August 1, assess \$10.00 per day for all of the pretrial jail days. Because criminal costs are assessed at the point of judgment, any jail fees assessed in a judgment entered on or after August 1, 2011, should be assessed at the rate then in effect: \$10.00 per 24-hour period (or fraction thereof) for all pre-trial jail days, even if some or all of the jail days were served prior to August 1.



QUESTION	ANSWER
<p>Q: Now that costs must be assessed for active time, do we assess the jail fees for each day of an active sentence?</p>	<p>A: No. Defendants are liable for jail fees under G.S. 7A-313 for the time they spend in jail “awaiting trial.” Therefore jail fees are to be assessed only for pre-conviction jail time.</p> <p>Example: Defendant is arrested and spends 10 days in jail before trial. At trial, he is convicted and sentenced to 30 days. The court should assess jail fees for the 10 days spent in jail pre-trial, but not for the remaining 20 that will be served after conviction.</p> <p>A defendant should be assessed jail fees when ordered by the court for time imposed pursuant to special probation (split sentence) as a condition of probation. The current amount assessed for each day of a split sentence is \$40.00.</p> <p>It is unclear whether or not jail fees may be assessed for periods of confinement for probationers pursuant to G.S. 15A-1343(a1)(3) (conditions of community or intermediate punishment, effective for offenses committed on or after December 1, 2011) or for periods of confinement imposed in response to violation pursuant to G.S. 15A-1344(d2) (effective for probation violations occurring on or after December 1, 2011), both enacted by S.L. 2011-192 (HB 642, Justice Reinvestment Act). Consequently, the clerk should not assess jail fees for those confinements unless specifically ordered to do so by the court. If assessed, the jail fees imposed will be at the same \$40.00 daily rate as for special probation.</p>
<p>Q: Does the new requirement that the judge make a “written finding of just cause” to waive costs apply when the judge strikes a failure to appear?</p>	<p>A: No.</p> <p>The requirement of written findings applies only when the court waives a cost or fee assessed under G.S. 7A-304. If the court strikes the FTA entirely, then there is no fee to waive.</p> <p>If, on the other hand, the court does not strike the FTA from the case, but instead just forgives the FTA fee when entering judgment, the written finding would be required.</p>
<p>Q: Does the requirement of a “written finding of just cause” apply when the judge waives any cost or fee?</p>	<p>A: No. The requirement of written findings of just cause applies only to costs “under <i>this section</i>” (emphasis added), meaning G.S. 7A-304. The written finding of just cause therefore is required <i>only</i> when the court waives one or more of the following:</p> <ul style="list-style-type: none"> ▪ Service of process fee ▪ Facilities fee ▪ Phone systems fee ▪ Misd. Confinement Fund fee ▪ LEO retirement/benefit fees ▪ LEO training/cert. fee ▪ General Court of Justice fee ▪ Chapter 20 fee ▪ Improper Equipment fee ▪ Pretrial services fee ▪ FTA fee (but see above) ▪ FTC fee ▪ SBI or local lab test fee ▪ DNA fee ▪ Impaired driving fee ▪ Witness fee ▪ Jail fee ▪ Blood test fee ▪ Installment fee

QUESTION	ANSWER
<p>B. The “Waiver Exception,” G.S. 7A-304(g). S.L. 2011-145, § 31.23B, as enacted by S.L. 2011-391 § 63.(b).</p>	
<p>Q: The effective date on the new costs legislation just says “July 1, 2011” or “August 1, 2011.” Do defendants who plead guilty or responsible by waiver have to pay the new costs if they waive after those dates?</p>	<p>A: No. The “waiver exception” has now been codified in the criminal costs statute.</p> <p>G.S. 7A-304(g) provides that, for defendants who waive in cases “in which the citation or other criminal process was issued before the effective date [of the change in costs],” the costs are those in effect after the change or those specified on the defendant’s copy of the process, whichever is <i>less</i>.</p> <p>So defendants who waive on citations or other processes issued prior to the effective date of a cost change should be assessed the costs in effect at the time the process was issued. However, if the defendant attempts to waive more than 20 days after a failure to appear, the waiver exception does not apply; see the next question.</p>
<p>Q: Does the waiver exception apply to older cases in which the defendant failed to appear but is allowed to plead guilty as if it were a waiver on or after the effective date of the increase in criminal costs?</p>	<p>A: No. If the person failed to appear and twenty days have passed since the court date on which he failed to appear, he must pay the new costs amounts. However, he pays the fine that was in effect at the time of the offense.</p> <p>Under the codified waiver exception, G.S. 7A-304(g), defendants who waive are allowed to pay the old costs only if they waive “within the time limit imposed by G.S. 7A-304(a)(6)” (the FTA provision), so defendants in FTA status no longer get the benefit of the waiver exception and must pay the new costs (plus the FTA fee).</p> <p>However, because the State and federal constitutions prohibit increasing a person’s punishment retroactively, the courts must assess the fine for the offense in effect at the time of the offense.</p> <p>Therefore the rule for any person in FTA status who is allowed to pay off an old charge as if it was a waiver is “old fine, new costs.”</p>
<p>Q: Does the waiver exception apply to a defendant who is waiving a worthless check offense on a process issued prior to the effective date of the increase in criminal costs?</p>	<p>A: No. The waiver exception applies only to timely waivers of “waiver list offenses” under G.S. 7A-180(4) and G.S. 7A-273(2). Worthless check offenses are waived under other subsections of those statutes that are not covered by the waiver exception, so worthless check defendants must pay the new costs even when waiving.</p>

QUESTION	ANSWER
<p>Q: What if the charging officer wrote an incorrect costs amount on the citation? Must the clerk charge the amount written by the officer?</p>	<p>A: No. Although the text of the waiver exception provides that the defendant may pay the lesser of the costs in G.S. 7A-304 or those “specified in the notice portion of the ... citation or other criminal process,” a law enforcement officer has no authority to alter the costs amounts set by the General Assembly, so an inadvertent entry of incorrect costs does not change what the defendant owes.</p> <p>If the officer lists an amount that is too high, the clerk will need to refund any overpayment by the defendant. If the officer lists an amount that is too low, the clerk will need to obtain the difference from the defendant.</p>
<p>Q: Does the waiver exception apply if the defendant waives after the district attorney has entered a misdemeanor statement of charges (including a reduction noted on the original citation or other process) to replace the original charge?</p>	<p>A: The law is not clear, but the NCAOC takes the position that the waiver exception applies in this situation. The waiver exception applies when:</p> <ol style="list-style-type: none"> 1. The offense is a misdemeanor or infraction; 2. The defendant pleads guilty by waiver; and 3. The “citation or other criminal process” was issued before the effective date of an increase in costs. <p>Although a misdemeanor statement of charges supersedes a previous criminal pleading, G.S. 15A-922(a), a statement of charges is not a “criminal process” as defined in G.S. 15A-301. So if the original process was issued prior to the effective date of the increase in criminal costs, the waiver exception would appear to apply.</p> <p>Note that the clerk should assess the fine and costs applicable to the amended charge(s) on the misdemeanor statement (or amended citation), not the original charge(s) on the original process.</p>
<p>Q: Does it matter if the misdemeanor statement was filed on or after the effective date of the increase in costs?</p>	<p>A: No. If the original process was issued prior to the effective date of the increase, the waiver exception applies, even if the modification of the charge occurs after that date.</p>
<p>Q: Does the waiver exception apply if an attorney appears in court on the defendant's behalf and enters a plea of guilty/responsible pursuant to a written waiver of appearance under G.S. 15A-1011(a)(3)?</p>	<p>A: No. The waiver exception applies only to cases waived before a clerk or magistrate under G.S. 7A-180(4) and 7A-273(2), in which the clerk or magistrate disposes of the charge pursuant to the appropriate waiver list.</p> <p>The “waiver” under G.S. 15A-1011 therefore is not the type of waiver covered by the waiver exception. Whenever a case is disposed by entry of judgment from a judge at an actual session of court, the waiver exception does not apply, and the court should assess the costs in effect at the time of disposition.</p>

QUESTION	ANSWER
C. Improper Equipment Fee - G.S. 7A-304(a)(4b)	
Q: The statute for the improper equipment fee says it applies only for “conviction” of an improper equipment offense. Does it apply when the defendant is only found “responsible” for an improper equipment infraction?	A: Yes. Pursuant to G.S. 7A-304(e), the costs applicable to criminal offenses must be assessed for infractions.
Q: If the defendant waives on an improper equipment offense that occurred prior to August 1, 2011, does the waiver exception apply?	A: Yes. The improper equipment fee is a court cost under G.S. 7A-304(a), so it is subject to the waiver exception for citations or other criminal processes issued prior to August 1, 2011. Therefore if a defendant is convicted/found responsible pursuant to waiver for an improper equipment violation based on a citation or other process issued prior to August 1, and the defendant is not in FTA status, then he pays only the costs in effect at the time of the offense, which means no improper equipment fee. For other questions about application of the waiver exception to the improper equipment fee, see section I.B. on the preceding pages. Those answers apply equally to the improper equipment fee.
Q: Is the improper equipment fee in addition to the fine?	A: Yes. The improper equipment fee is a new court cost under G.S. 7A-304(a). Therefore it is assessed in addition to the other court costs applicable to the conviction and separate from any fine imposed. For example, the district court finds a defendant responsible for a mirror violation, an infraction under G.S. 20-126. The total assessed against the defendant would be the regular court costs for a Chapter 20 infraction disposed in district court (\$188.00), plus the improper equipment fee for the equipment violation (\$50.00), plus any fine imposed by the court under G.S. 20-176(b).
Q: Does the improper equipment fee apply only to charges <i>reduced</i> to improper equipment offenses?	A: No. The improper equipment fee is to be assessed upon conviction for “ <i>all</i> offenses arising under Chapter 20 of the General Statutes and <i>resulting in a conviction</i> of an improper equipment offense” (emphasis added). G.S. 7A-304(a)(4b). Therefore whenever the offense of conviction (or finding of responsibility) is an improper equipment offense, the fee must be assessed, regardless of whether the improper equipment offense was the original charge or resulted from a reduction.
Q: What if the improper equipment offense is consolidated for judgment with a more serious offense that is <i>not</i> an improper equipment offense? Does the fee apply?	A: Yes. Because the defendant was convicted or found responsible for an improper equipment offense, the fee applies.



QUESTION	ANSWER
D. Impaired Driving Fee – G.S. 7A-304(a)(10)	
<p>Q: Does the fee apply when the defendant is convicted of an impaired driving offense committed prior to December 1, 2011?</p>	<p>A: No.</p> <p>All of the provisions of S.L. 2011-191 (HB 49) are effective December 1, 2011, and apply “to offenses committed on or after that date.” This is different from the usual application of new or increased costs, which typically take effect based on the date of assessment or collection. The impaired driving fee, on the other hand, applies <u>only</u> if the offense was committed on or after December 1, 2011.</p> <p>Because the fee applies only for offense committed on or after December 1, 2011, the fee should be assessed only for impaired driving sentences imposed on the judgment forms for offenses committed on or after that date:</p> <ul style="list-style-type: none"> ▪ AOC-CR-310C (suspended sentences); and ▪ AOC-CR-342B (active sentences).
<p>Q: What offenses require the new impaired driving fee?</p>	<p>A: The fee is to be assessed <u>only</u> upon conviction for one of the four offenses listed in G.S. 7A-304(a)(10) (which are the four offenses sentenced pursuant to G.S. 20-179):</p> <ul style="list-style-type: none"> - Impaired driving, G.S. 20-138.1; - Impaired driving in commercial vehicle, G.S. 20-138.2; - Operating a commercial vehicle after consuming alcohol (second or subsequent convictions, <u>only</u>), G.S. 20-138.2A; and - Operating a school bus, activity bus, or child care vehicle after consuming alcohol (second or subsequent convictions, <u>only</u>), G.S. 20-138.2B.
<p>Q: Is the fee assessed in addition to the other court costs, like the Chapter 20 fee?</p>	<p>A: Yes. The impaired driving fee is to be assessed in addition to all other costs that apply to the offense(s) of conviction.</p> <p>For example, because the four offenses to which the fee applies are all found in Chapter 20, conviction of one of the four offenses always will require assessment of <u>both</u> the Chapter 20 fee and the impaired driving fee.</p>
<p>Q: Does waiver of the fee require a finding of just cause to waive it?</p>	<p>A: Yes. The impaired driving fee was codified as a new subdivision of G.S. 7A-304. The waiver of any cost or fee under that statute requires a finding of just cause.</p>
<p>Q: Does the fee apply if the defendant was charged with an impaired driving offense, and the impaired driving offense ended in dismissal or acquittal, but the defendant was convicted of some other offense on the same citation?</p>	<p>A: No. The fee applies only if the defendant was convicted of one of the four offenses listed in G.S. 7A-304(a)(10).</p>



QUESTION	ANSWER
E. AOC-CR-381 – Criminal Bill of Costs	
Q: Why does the bill of costs list the General Court of Justice fee (GCJF) as \$2.45 less than the amount in the costs chart?	A: The GCJF includes \$2.45 allocated to the State Bar for provision of civil legal services to indigents. Because that portion of the GCJF is allocated to a specific agency rather than the General Fund, it is listed on the criminal bill of costs with the appropriate account numbers for proper distribution in each of the three GCJF line items (magistrate, district, and superior).

II. CIVIL COSTS – G.S. 7A-305

QUESTION	ANSWER
A. General Civil Cost Questions	
Note: For questions about cover sheets that are not specific to the assessment of court costs, see the memo “Revisions to Cover Sheet Requirements,” June 28, 2011, and “Suspension of Rule 5(b) by the Chief Justice ,” July 6, 2011, both posted with the 2011 court cost documentation at http://www.nccourts.org/Courts/Trial/Costs/ .	
Q: Our Sheriff insists that they are now entitled to \$30.00 for civil service of process.	A: Effective August 1, 2011, that’s correct. The civil service of process fee was increased to \$30.00 effective August 1, not July 1. That fee increase was contingent on House Bill 642, and, pursuant to section 7.(n) of that bill, is effective August 1.
Q: What is the basic filing fee for divorce?	A: \$225.00. G.S. 7A-305(a2) provides that the divorce fee “shall be in addition to any other costs assessed under this section.” Therefore the base filing fee is the sum of the divorce fee of subsection (a2) (\$75.00) and the regular District Court filing fees (now \$150.00): \$225.00.
Q: Plaintiff wants to file an amended complaint, and leave of the court is not required because a response hasn’t been served or isn’t required. Does plaintiff have to pay any additional filing fees?	A: No. There will be no fee charged for the Plaintiff to amend their complaint without leave of the court. Note that the motion fee of G.S. 7A-305(f) would apply if the Plaintiff applied to the court (by motion) for permission to file an amended complaint. But if the Plaintiff is filing the amended complaint and no action is required from the court to allow them to file an amended complaint, there is no charge.
Q: Plaintiff just filed an amended complaint to add a new claim against the defendant. Does the clerk assess the civil filing fees again?	A: No. However, if Plaintiff requests an alias and pluries summons or endorsement to serve the amended complaint, the fee for issuance of an alias and pluries summons or endorsement applies.
Q: Plaintiff just filed an amended complaint to add a new defendant to the suit. Does the clerk assess the civil filing fees again?	A: No. However, like the previous answer, if Plaintiff requests an alias and pluries summons or endorsement to serve the amended complaint, the fee for issuance of an alias and pluries summons or endorsement applies.

QUESTION	ANSWER
<p>Q: A party wants to file a complaint (or a counterclaim, cross-claim, or motion), or request an alias & pluries summons or endorsement, but the party doesn't have the fees and hasn't been approved to proceed as an indigent. Should the clerk take the filing or refuse it?</p>	<p>A: This is within discretion of the clerk.</p> <p>Costs should always be paid at the time of filing for any filing for which a fee is due. G.S. 7A-305(c) states, "The clerk of superior court, at the time of the filing of the papers initiating the action ..., shall collect as advance court costs, the facilities fee, General Court of Justice fee... except in suits by an indigent." This requires the filing party to pay the fee when the document is filed.</p> <p>In the Rules of Record Keeping, Rule 3.4, Advanced Costs, Comment B states "The clerk may refuse to file any action not accompanied by all appropriate fees. Where no advance fee is included with a complaint filed by mail, or when the amount sent is less than required, the clerk has the option to accept the filing for payment at a later time or refuse the case for filing. In either situation the clerk should notify the plaintiff or the plaintiff's attorney. If the complaint is accepted for filing, the clerk should note the fact that the notice was sent to the plaintiff on the face of the complaint."</p> <p>Because the fees for cross-claim or counterclaim, alias and pluries summons, endorsement to summons, and motions are all new to the courts and to litigants and attorneys, it may take some time for persons filing these documents to realize an additional fee is needed. In accordance with Rule 3.4 the elected Clerk has the discretion to either accept a filing with payment at a later time or to reject the filing.</p>
B. Counterclaim and Cross-Claim Fees - G.S. 7A-305(a5)	
<p>Q: Does the counterclaim fee apply if a party files a document that only contains an answer or reply, without any motions and without asserting any claims of his own?</p>	<p>A: No. There are no fees for an answer or reply that asserts no claims and makes no motions.</p>
<p>Q: What if a party files an answer with either a counterclaim or a cross-claim?</p>	<p>A: The filing fee for a counterclaim/cross-claim must be assessed.</p>
<p>Q: What if a party files an answer with both a counterclaim and a cross-claim?</p>	<p>A: Only one counterclaim/cross-claim filing fee should be assessed. The fees of subsection (a5) apply only to "a pleading containing one <i>or more</i> counterclaims or cross-claims" (emphasis added), so the fee is assessed only once for the <i>pleading</i>, not based on the number of claims asserted therein.</p>
<p>Q: What if the defendant's answer includes a counterclaim and a motion to dismiss the plaintiff's case. Does defendant pay both the counterclaim fee and the motion fee?</p>	<p>A: Yes. G.S. 7A-305(a5) applies to any "pleading containing one or more counterclaims or cross-claims," so the counterclaim fees apply to the defendant's pleading.</p> <p>In addition, G.S. 7A-305(f) assesses the motion fee for "any filing containing one or more motions," unless the motion is exempt by law. The defendant's answer is a filing, and a motion to dismiss is not one of the exempt motion types, so the motion fee also must be assessed for the defendant's answer.</p>

QUESTION	ANSWER
<p>Q: What if the defendant's counterclaims are the same issues as in the plaintiff's complaint?</p> <p>For example, if the plaintiff files for divorce, and then the defendant files an answer that counterclaims for divorce (and nothing else), does the defendant have to pay the counterclaim fees?</p>	<p>A: Yes. Subsection (a5) applies to any "pleading containing one or more counterclaims or cross-claims." The presence of <i>any</i> counterclaim in the pleading triggers the fee, even if the relief requested in the counterclaim is substantively the same as in the plaintiff's complaint.</p>
<p>Q: Plaintiff filed for divorce. Defendant wants to file a counterclaim for divorce. Does defendant pay both the counterclaim filing fees and the divorce fee?</p>	<p>A: Yes. G.S. 7A-305(a2) provides, in relevant part:</p> <p>"In every action for absolute divorce filed in the district court, a cost of seventy-five dollars (\$75.00) shall be assessed against the person filing the divorce action. ... Costs assessed under this subsection shall be in addition to any other costs assessed under this section."</p> <p>The person asking for divorce in a counterclaim is "filing the divorce action." Further, the last sentence of (a2) says that the fee is in addition to "any other costs" in the section, which would include the counterclaim fees of the new subsection (a5).</p>
<p>Q: Plaintiff filed a complaint and paid the filing fees. Defendant filed a counterclaim against plaintiff and paid the counterclaim fee. Plaintiff now wants to file an answer to defendant's counterclaim, and the answer includes a cross-claim against a third party. Does plaintiff pay the cross-claim fee, even though he already paid the filing fees for his complaint?</p>	<p>A: Yes. Subsection (a5) applies to any "pleading containing one or more counterclaims or cross-claims." Because the plaintiff's answer contains a cross-claim, the filing fees of subsection (a5) must be assessed.</p>
<p>Q: A third-party defendant files an answer to a cross-claim, and the answer includes a counterclaim or cross-claim. Must the third-party defendant pay the counter/cross-claim fees?</p>	<p>A: Yes. As explained above, because the pleading contains a counterclaim or cross-claim, the fees apply.</p>
<p>Q: Do the counterclaim/cross-claim fees apply in special proceedings or estates?</p>	<p>A: No. The counterclaim/cross-claim fees are codified in G.S. 7A-305, which applies only to civil actions.</p>
<p>C. Civil Motion Fee - G.S. 7A-305(f)</p>	
<p>1. General Motion Fee Questions</p>	
<p>Q: What if a motion is made orally in open court? Does the motion fee apply?</p>	<p>A: No. The motion fee, codified in G.S. 7A-305, 7A-306, and 7A-307, applies only to "any filing containing one or more motions." Oral motions are not "filings," so they do not trigger the fee.</p>
<p>Q: What if it is a clerk or judge who makes the motion? Does the motion fee apply?</p>	<p>A: No. Motions made <i>ex mero motu</i> (of the court's own accord) by the presiding official do not trigger the fee.</p>
<p>Q: Is the motion fee assessed if the motion is contained in a party's answer or reply?</p>	<p>A: Yes. The motion fee applies to "any filing containing one or more motions," so the fee must be assessed, unless the motion is exempt from the fee by law (see the appendix to the relevant cost chart for a list of exempt motions).</p>

QUESTION	ANSWER
Q: A party has filed multiple motions in a single document, and none of them is exempt from the motion fee. Is the fee assessed separately for each motion in the filing?	A: No. The fee applies to “any filing” containing one or more motions. The fee is assessed only once for the filing.
Q: A party has filed multiple motions, each in a separate document. Is the fee assessed separately for each motion?	A: Yes. The fee applies to “any filing” containing one or more motions. Because the party has made multiple filings, the fee applies separately to each filing that contains a non-exempt motion.
Q: I read that the motion fee isn't required in estates cases where there will be no hearing on the motion. What about civil cases and special proceedings?	A: The no hearing exception <u>only</u> applies in estates, it does not apply to special proceedings or civil cases.
Q: Does the motion fee apply to motions filed in juvenile proceedings?	A: No. The statutes in which the motion fee is codified, G.S. 7A-305 through 7A-307, have no application to juvenile proceedings. Further, with a few, specific exceptions in statute (e.g., the emancipation costs under G.S. 7B-3506), court costs are not charged in juvenile abuse, neglect, dependency, undisciplined or delinquency cases.
2. Child Support Motion Fee Exemption (S.L. 2011-145, § 31.23.(g), enacted by S.L. 2011-391, § 66.1)	
Q: Does the motion fee apply to motions filed in a IV-D child support case?	A: No. IV-D cases (e.g., if Child Support Enforcement represents the mother or father) are governed by G.S. Chapter 110, Article 9, and the motion fee does not apply to these cases, even if one party is represented by private counsel (or <i>pro se</i>).
Q: Does the motion fee apply to non-IV-D cases?	A: Yes. If neither the mother nor father is represented by Child Support Enforcement, the clerk should charge the motion fee. However, the fee does not apply to a motion for income withholding under G.S. 110-136.5, even in a non-IV-D case; that specific remedy is in Chapter 110, Article 9, so it is exempt from the motion fee.
Q: Does the motion fee apply in UIFSA cases?	A: Not for the petitioner. G.S. 52C-3-312(a). The court may tax costs against the obligor, however, under certain circumstances. If the court taxes costs of the proceeding against the obligor, any motion fees that accrued (but were not paid) should be included in that assessment. UIFSA cases are explicitly exempt from court costs, which would include the motion fee. G.S. 52C-3-312(b) and (c).

QUESTION	ANSWER
<p>Q: If child support is just one issue in a case, does the motion fee apply to motions about other claims in the case, like divorce, equitable distribution, visitation, etc?</p>	<p>A: Yes. As noted above, the motion fee exemption for child support actions applies only to IV-D matters under G.S. Chapter 110, Article 9. All other domestic matters are subject to the motion fee.</p> <p>Note that if there are non-support issues in a case (e.g., divorce), even child support motions in the case probably are not exempt from the motion fee. Child Support Enforcement typically does not intervene in a domestic case just for IV-D purposes; the IV-D action generally is a separate case. So if a case includes non-support domestic issues, it's probably not a IV-D case, and only a wage withholding motion (described in the previous question) would be exempt from the fee.</p>
<p>3. Questions about Specific Motions</p>	
<p>Q: Does the motion fee apply to a judgment debtor's motion to claim exemptions?</p>	<p>A: Yes. A judgment debtor will be charged the filing fee to file a motion to claim exemptions. However, if the judgment debtor files a petition to proceed as an indigent and the court approves the petition, the motion fee would not apply.</p>
<p>Q: If the motion fee applies to a debtor's motion to claim exemptions, do we assess it for a request for a hearing to designate exemptions?</p>	<p>A: No. A request for a hearing to designate exemptions is not a motion requesting any relief of the court; it is just a request for a hearing, so the motion fee does not apply.</p> <p>Nor does the motion fee apply if the clerk uses form AOC-CV-407, Motion to Claim Exempt Property, as a convenient way to memorialize the debtor's exemptions designated at the hearing. The use of the form merely for incorporation in the clerk's order designating exemptions does not make it a filing by the debtor that would trigger the motion fee.</p>
<p>Q: Does the motion fee apply to set-aside motions, petitions for remission, and the schools' motions for sanctions in bond forfeiture proceedings?</p>	<p>A: No. Although they originate in criminal cases, bond forfeiture proceedings are civil in nature. <i>State v. Pelletier</i>, 168 N.C. App. 218 (2005). However, forfeiture proceedings are not "civil actions" within the context of G.S. 7A-305, so the fees of that section do not apply.</p>
<p>Q: Does the motion fee apply to a motion for entry of default or a motion for default judgment?</p>	<p>A: Yes. (But if both motions are made in the same document, the fee is assessed only once.)</p>
<p>Q: Will the motion fee be charged for a Notice of Voluntary Dismissal?</p>	<p>A: No. If the filing is a Notice of Voluntary Dismissal rather than a Motion to Dismiss, no motion filing fee will be charged. A Notice of Voluntary Dismissal under Rule 41 of the NC Rules of Civil Procedure is not an application to the Court for an Order. Therefore, it is not a motion, and the motion fee is not charged.</p>



QUESTION	ANSWER
D. Alias & Pluries Summons/Endorsement Fee - G.S. 7A-308(a)(21)	
Q: In a case with two defendants listed on the same summons, what will the Clerk charge for the issuance of an alias and pluries summons or an endorsement? Will the fee be charged per summons or per defendant?	A: One fee per summons. Remember, the alias and pluries or endorsement fee is separate from the service fee charged by the sheriff. Although the service of process fee is charged per defendant (because each defendant will be served individually), the Clerk should charge the alias and pluries summons/endorsement fee per summons issued/endorsed, only. In this case, the clerk would charge one fee of \$15.00 for the alias and pluries summons or endorsement because the Clerk is only issuing one summons.
Q: What if there are four defendants and the plaintiff has filled out two summonses because they can't fit all four defendants on one summons? Would the clerk charge one alias and pluries/endorsement fee, or two?	A: Two fees. In this case, the clerk will be issuing two summonses with two defendants on each. Therefore, the clerk will charge \$15.00 per summons for a total of \$30.00.
Q: Does the alias & pluries/endorsement fee apply in IV-D proceedings?	A: No. Parties to child support proceedings under G.S. Chapter 110, Article 9, are exempt from the alias & pluries/endorsement fee in the same manner as they are exempt from the motion fee of G.S. 7A-305(f). See S.L. 2011-145, § 31.23.(g), enacted by S.L. 2011-391, § 66.1). For FAQs about application of the motion fee to child support proceedings, see section C.2., above. The same answers apply to the alias & pluries/endorsement fee.

III. SPECIAL PROCEEDING COSTS – G.S. 7A-306 AND G.S. 7A-308

QUESTION	ANSWER
Note: For questions about cover sheets that are not specific to the assessment of court costs, see the memo “Revisions to Cover Sheet Requirements,” June 28, 2011, and “Suspension of Rule 5(b) by the Chief Justice ,” July 6, 2011, both posted with the 2011 court cost documentation at http://www.nccourts.org/Courts/Trial/Costs/ .	
A. General Special Proceeding Cost Questions	
Q: Do the counterclaim/cross-claim fees apply in special proceedings?	A: No. The counterclaim/cross-claim fees are codified in G.S. 7A-305, which applies only to civil actions.
B. Special Proceeding Motion Fee - G.S. 7A-306(g)	
See the questions and answers under section C.1., “General Motion Fee Questions” of “II. Civil Costs,” above. Except as noted below, the answers applicable for motion fee issues in general civil actions will apply equally to the motion fee in special proceedings.	
Q: Does the motion fee apply in foreclosures under power of sale?	A: No. In accordance with in G.S. 7A-306(f), the fees in G.S. 7A-306 (including the motion fee in subsection (g)) do not apply to foreclosures under power of sale in a deed of trust or mortgage.

IV. ESTATE COSTS – G.S. 7A-307

QUESTION	ANSWER
<p>Note: For questions about cover sheets that are not specific to the assessment of court costs, see the memo “Revisions to Cover Sheet Requirements,” June 28, 2011, and “Suspension of Rule 5(b) by the Chief Justice,” July 6, 2011, both posted with the 2011 court cost documentation at http://www.nccourts.org/Courts/Trial/Costs/.</p>	
<p>A. General Estate Cost Questions</p>	
Q: Do the counterclaim/cross-claim fees apply in estates?	A: No. The counterclaim/cross-claim fees are codified in G.S. 7A-305, which applies only to civil actions.
<p>B. Estate Motion Fee - G.S. 7A-306(g)</p>	
<p>See the questions and answers under section C.1., “General Motion Fee Questions” of “II. Civil Costs,” above. Except as noted below, the answers applicable for motion fee issues in general civil actions will apply equally to the motion fee in estates.</p>	
Q: When would the “no hearing” exclusion apply in an estates case? (<i>i.e.</i> , when would a party not have to pay the motion filing fee in an estate case?)	A: Motions in estate cases that do not require a hearing are exempt from the motion fee. The following situations involve motions that would not require a hearing and therefore do not require a motion fee: <ul style="list-style-type: none">▪ A motion for emergency removal of a guardian under G.S. 35A-1291.▪ A motion for summary revocation of letters testamentary or administration under G.S. 28A-9-2.▪ A motion to extend time to file an accounting in an estate file.

V. MISCELLANEOUS COSTS – G.S. 7A-308

QUESTION	ANSWER
<p>There are no frequently asked questions about miscellaneous fees at this time.</p>	

