



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Legal and Legislative
Services Division

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MEMORANDUM

(via E-Mail)

TO: Clerks of Superior Court¹
Magistrates
Superior Court Judges
District Court Judges
District Attorneys
Public Defenders

FROM: Peter E. Powell, Legal Counsel
Pamela Weaver Best, Deputy Legal Counsel
Amy Funderburk, Associate Legal Counsel
Jo McCants, Associate Legal Counsel
Matt Osborne, Associate Legal Counsel
Troy Page, Associate Legal Counsel
Tammy Smith, Legislative Counsel

DATE: July 25, 2011

RE: Additional Legislative Increases in Court Costs and Fees, August 2011
EFFECTIVE August 1, 2011, unless otherwise noted.

As explained in the prior memo on court costs, "Legislative Increases in Court Costs and Fees, July 2011," distributed June 28, 2011, the General Assembly enacted multiple stages of court cost increases for 2011. This memo describes additional court costs provisions taking effect on August 1, 2011, as provided in the 2011 budget bill, Session Law (S.L.) 2011-145² (House Bill 200, Appropriations Act of 2011, referred to herein as the "Act") and as further amended by S.L. 2011-192 (House Bill 642, Justice Reinvestment Act) and S.L. 2011-391 (House Bill 22, 2011 Budget Technical Corrections). This memo describes **only** cost changes taking effect August 1; explanations of cost provisions that took effect July 1 are provided in the memo described above.

Cost changes described in this memo and the accompanying court cost chart affect filings in all case types and are effective **August 1, 2011**,³ unless otherwise noted for a specific cost item. All changed costs and fees **must** be collected on filings on or after that date, unless otherwise noted.

Distributed with this memo is an updated cost and fee chart, effective August 1, 2011. So that all of the costs and fees will be found in one place, this cost chart **replaces** the cost chart that was effective July 1, 2011. The updated cost charts and an electronic copy of this memo are available online on the same web pages with the previous court cost documentation: on the Administrative Office of the Courts' (NCAOC) website at <http://www.nccourts.org/Courts/Trial/Costs> and on the NCAOC intranet site at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>.

¹ We ask that clerks provide a copy of this memo to local law enforcement agencies and to personnel in your offices.

² The text of a session law can be found on the General Assembly's website at the link below. Select the applicable year and enter the session law number in the "Look-Up" fields at the top of the page.

<http://www.ncleg.net/gascripts/EnactedLegislation/ELTOC.pl?sType=Law>

³ S.L. 2011-145, § 31.26.(g), as enacted by S.L. 2011-192, § 7.(n).

This is not the final cost memo for 2011. In addition to the cost changes effective July 1 and August 1, other legislation affecting court costs will take effect later in the year.⁴ Unless further amended by other legislation, the next changes to court costs will take effect in December. A **supplemental costs memo and updated cost chart** will be distributed in advance of the effective dates of further changes.

Bills of costs will be updated and made available electronically overnight on Friday, July 29, 2011. Other forms affected by the cost changes (e.g., the criminal judgment forms) will be updated during the regular forms revision cycle this Fall. PDF versions of updated forms will be available on the NCAOC's web site at <http://www.nccourts.org/forms/FormSearch.asp>.

FMS and **Cash Receipting** will be updated overnight when the new and increased fees take effect. Any new account numbers will be posted in the FMS Message Center at the appropriate time. **VCAP** is being updated to account for increased costs; any additional instructions, if needed, will be distributed by the VCAP team. Update instructions for **CourtFlow** will be distributed via e-mail.

The eCITATION® program **will not be updated automatically** for the cost increases that take effect August 1. Criminal court costs (for both Chapter 20 and non-Chapter 20 offenses) will be updated automatically. Court costs for infraction offenses will **not** be updated automatically. Cost increases for infractions will be updated in the next release of eCITATION, which should be available for download in September 2011. In the interim, an alternative method for update will be made available on midnight July 31, 2011. The eCITATION team will distribute a separate notice to users about that update. Officers who are unable to apply that update will need to write updated cost information manually on the defendant's copy of the citation until the next eCITATION release.

Costs will be updated for **payNCticket.org** as of August 1, but defendants who waive appearance and plead guilty or responsible via payNCticket.org for citations or other criminal processes issued prior to August 1, and who have not failed to appear for more than 20 days, will have the benefit of the "waiver exception" (see "Waiver Exception," below) and pay only the costs in effect at the time the citation or other process was issued.

A description of the changes to costs and fees is provided below. A citation of "Act § ##" indicates the relevant section number (##) of the Act that enacts or amends the cost or fee described. Other legislation affecting court costs is cited in full. The summaries below describe only cost items that are changing; it is not a comprehensive description of the costs that apply to a particular case. For the total costs to be assessed in a particular case, see the attached cost chart for each case type (criminal, civil, special proceedings, or estates).

- **General Costs**

- Non-criminal service of process fees. G.S. 7A-311. For civil actions and special proceedings under G.S. 7A-311, and for estates (for which the same service fees are assessed pursuant to G.S. 7A-307(c)(4)), the service of process fee will increase from \$15.00 to \$30.00, effective August 1. Act § 31.26.(d).

- **Criminal Costs**

- Waiver exception. G.S. 7A-304(g). Like the cost changes effective July 1, 2011, the cost changes for criminal offenses and infractions of August 1, 2011, are subject to the "waiver exception." A defendant who waives appearance and pays costs and fines after the effective date of any legislation that changes criminal court costs, and whose citation or other criminal process was issued prior to the effective date of the legislation, is required to pay only the lesser of the new costs or the costs specified on the defendant's copy of the process. S.L. 2011-391, § 63.(b).

Note that a defendant who has failed to appear (FTA) in court as required and then failed to appear or dispose of the charge for more than 20 days thereafter (and therefore has also been assessed the FTA fee of G.S. 7A-306(a)(6)) is no longer eligible for the waiver exception and must pay the court costs in effect as of the date of disposition of the case.

⁴ See, e.g., § 4 of S.L. 2011-191 (House Bill 49, Laura's Law), effective December 1, 2011.

Because criminal costs will change twice in rapid succession in 2011 (on July 1 and August 1), there will be some defendants whose citations or other processes were issued prior to July 1, 2011, who will waive their appearances on or after August 1. The two steps of cost increases in between the issue of any such citation and the eventual waiver do not change the effect of the waiver exception: if a defendant (i) waives appearance and pays the fine and costs before the clerk or magistrate, and (ii) is not in FTA status, the defendant is to be assessed only the costs in effect at the time the citation or other process was issued.

- Jail fees increased. G.S. 7A-313. Effective August 1, 2011, the per diem rate for *pre*-trial jail fees will increase from \$5.00 to \$10.00. Act § 31.26.(e).

Because criminal costs are “assessed” at the entry of judgment, any jail fees assessed in a judgment entered on or after August 1, 2011, should be assessed at the \$10.00 per diem rate for all pre-trial jail days, even if some or all of the jail days were served prior to August 1.

Jail fees assessed for special probation (split sentences) spent in a local jail *post*-conviction will continue to be assessed at the current \$40.00 per diem rate, pursuant to G.S. 7A-313 and S.L. 2011-145, sec. 18.5.

- **NEW Criminal Cost and Fee Provisions.**

- Misdemeanant Confinement Fund fee. G.S. 7A-304(a)(2b). For conviction or finding of responsibility in the **District Court only**, the Act creates a new fee of \$18.00, to be remitted to the Department of Correction for the new Statewide Misdemeanant Confinement Fund under G.S. 148-10.4. Act § 31.26.(b). Unlike other fees collected by the courts and remitted to other agencies of State or local governments, the fee is not subject to the 10% collection assistance fee of G.S. 7A-321. Act § 31.26.(f1), as enacted by S.L. 2011-192, § 7.(p).

Notwithstanding its name, this fee applies to both criminal offenses and infractions. It is **not**, however, doubled under the cumulative costs provision of G.S. 7A-304(b) if the case is appealed to Superior Court and results in a subsequent conviction. Further, this fee does **not** apply to seat belt and motorcycle/moped helmet and passenger offenses; those offenses bear only the costs specified in G.S. 20-135.2A(e) and G.S. 20-140.4(c), and the new fee was not added to those statutes. Finally, because it is codified in G.S. 7A-304, waiver of the Misdemeanant Confinement Fund fee requires a written finding of just cause, pursuant to G.S. 7A-304(a).

- Improper equipment fee. G.S. 7A-304(a)(4b). The Act creates a new fee of \$50.00 to be assessed for conviction of any “improper equipment offense” under Chapter 20. Act § 31.26.(c). Unlike other fees collected by the courts and remitted to other agencies of State or local governments, the fee is not subject to the 10% collection assistance fee of G.S. 7A-321. Act § 31.26.(f1), as enacted by S.L. 2011-192, § 7.(p).

This fee is **not** limited to cases in which the improper equipment conviction results from a plea agreement or reduction from an original charge. The fee is to be assessed whenever the defendant is convicted of (or found responsible for) any improper equipment offense, whether that offense was the original charge in the case or a reduction from a different charge.

The Act does not specify what constitutes an “improper equipment” offense. However, the Chief District Court Judges have traditionally limited “improper equipment offenses” on the list of waivable traffic offenses to equipment violations found in Part 9 of Article 3 of Chapter 20.⁵ The judges have, however, distinguished “equipment violations” in Part 9 from “height, length and width” violations in that same Part.⁶ Using the waiver list as guidance, the NCAOC interprets the “improper equipment” fee to apply to any offense in Part 9 *other* than (i) violations relating to vehicle height, length and width and (ii) violations that otherwise could be considered equipment violations, but for which the equipment element of the offense is

⁵ See Traffic Offenses for which Court Appearance May Be Waived (December 1, 2010), Item B.37., at: <http://www.nccourts.org/Forms/Documents/1219.pdf>.

⁶ See Traffic Offenses for which Court Appearance May Be Waived (December 1, 2010), Item B.36.

derivative of the height, width or length nature of the offense. An example of the latter would be violations of G.S. 20-117 (flags and lights at the end of loads), for which the equipment (the flag) is required only because of a load that has extended the overall length of the vehicle.

A list of improper equipment offenses fitting the criteria described above is appended to the updated court costs chart as "Appendix – Chapter 20 Improper Equipment Offenses." Unless the judge entering judgment orders otherwise, the clerk (or magistrate) assessing costs should assess the improper equipment fee for any defendant convicted/responsible for any of the listed offenses.

Finally, because it is codified in G.S. 7A-304, waiver of the improper equipment fee requires a written finding of just cause, pursuant to G.S. 7A-304(a).

- **Civil Costs**
 - See "Non-criminal service of process fees" on page two, above.
- **Special Proceedings Costs**
 - See "Non-criminal service of process fees" on page two, above.
- **Estates Costs**
 - See "Non-criminal service of process fees" on page two, above.
- **Miscellaneous Costs**
 - There are no new or amended fees under G.S. 7A-308 for August 1.

If you have any questions about the cost and fee changes described above, please contact NCAOC's Court Services Analyst (CSA) or Financial Management Analyst (FMA) for your county.

cc Judge John W. Smith, Director
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/Attachments (Court Costs and Fees Chart)