



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS*

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## **MEMORANDUM**

(via E-Mail)

TO: Clerks of Superior Court<sup>1</sup>  
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, Assistant Legal Counsel  
Jo McCants, Assistant Legal Counsel  
Matt Osborne, Assistant Legal Counsel  
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DATE: July 30, 2013

RE: 2013 Legislative Changes for Court Costs and Fees

The General Assembly has ended the 2013 session and has enacted legislation affecting court costs. The primary legislation affecting court costs is the 2013 budget bill, Session Law (S.L.) 2013-360 (Senate Bill 402, Appropriations Act of 2013, referred to hereafter as the "Act"), as amended by S.L. 2013-363 (House Bill 112, Modifications/2013 Appropriations Act).<sup>2</sup> So that all court cost changes for 2013 will be found in a single location, this memo addresses cost changes from S.L. 2013-360, S.L. 2013-363, and other legislation recently enacted, as well as cost changes that previously were covered in the interim cost memos (both civil and criminal) distributed on July 1.<sup>3</sup>

The Act was signed into law on the afternoon of Friday, July 26, 2013, and included several provisions amending or enacting court costs. However, S.L. 2013-363 further amends several of those provisions. In particular, S.L. 2013-363 changes the effective dates for some of the Act's cost changes and enacts additional cost provisions. Therefore this memo, the NCAOC's court cost charts, and all changes to NCAOC's forms and automated applications reflect cost changes as provided in the Act, as further amended by S.L. 2013-363. Any conflicting provisions in the two bills will be implemented according to the content of S.L. 2013-363, not according to conflicting content in the Act; see, e.g., the

<sup>1</sup> This memo also will be posted on the NCAOC website at [www.nccourts.org/Courts/Trial/Costs/](http://www.nccourts.org/Courts/Trial/Costs/) and on the NCAOC intranet site for Judicial Branch personnel at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>. We ask that clerks provide a copy of this memo to local law enforcement agencies and to personnel in your offices. Law enforcement officials and personnel of agencies outside the Judicial Branch should consult with their own agency counsel about any potential impact of cost changes on their duties or operations.

<sup>2</sup> Full texts of the two enacted bills are available online at <http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S402v7.pdf> and <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H112v4.pdf>, respectively. The text of any 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/gascritps/EnactedLegislation/ELTOC.pl?sType=Law>

<sup>3</sup> The civil and criminal interim memos are available on the internet at <http://www.nccourts.org/Courts/Trial/Costs/> and on the NCAOC intranet site for Judicial Branch personnel at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>.

variation in the effective date of changes to the divorce fee of G.S. 7A-305(a2), discussed below under "Civil Costs."

A more detailed description of each change to court costs for 2013 is provided later in this memo, but the cost changes resulting from the Act, S.L. 2013-363, and other legislation are summarized immediately below in order of effective date.

**Jun. 26, 2013 Criminal**

- Community service imposed on a post-release supervisee by the Post-Release Supervision and Parole Commission is assessed community service fee.

**Jul. 1, 2013 Civil**

- Counter- and crossclaim fees apply to third-party complaints.
- Exemption from alias and pluries summons/endorsement fee amended to apply only to actions commenced or prosecuted by IV-D child support agencies.

**Civil, SP and Estates**

- Counties and municipalities required to advance filing fees.

**Criminal**

- Amend criminal partial payment distribution priority.
- Cosmetic changes to criminal cost provisions that refer to the SBI Crime Laboratory (now the "State Crime Laboratory").
- EHA imposed on a post-release supervisee by Post-Release Supervision and Parole Commission is assessed EHA fees.

**Aug. 1, 2013 Civil, SP and Estates**

- Motion fee assessed for filing of "notice of hearing" on a motion, not for the filing of the motion, itself.

**Criminal**

- Change to allocation of the LEO Training and Certification fee (internal to DOJ, only; no court action required).
- NEW Lab Analyst Expert Witness fee.

**Aug. 25, 2013 Civil**

- Change to allocation of \$75 divorce fee.

**Sep. 1, 2013 Criminal**

- NEW Electronic House Arrest (EHA) daily fee for probationers.
- EHA fees expanded to apply to EHA under G.S. 15A-1343(a1).
- NEW (and increased) fees for expunction petitions.

**Jan. 1, 2014 Civil**

- Clarify responsible party for payment of the Business Court fee.

As shown above, there are several different effective dates for the changes to court costs. Those effective dates are restated below for each individual cost change. For each cost change discussed below, a citation of "Act § ##" indicates the relevant section number (##) of the Act that affects the cost or fee described. Other legislation affecting court costs is cited in full.

The descriptions below describe only the cost procedures that are changing; this memo is not a comprehensive description of all of the costs that might apply to a particular case. For the total costs to be assessed in a particular case, see the relevant cost chart for each case type. Distributed with this memo is an updated cost and fee chart, with costs effective as of August 1, 2013, except where otherwise noted in the chart. The updated cost charts and an electronic copy of this memo will be available on the NCAOC website at <http://www.nccourts.org/Courts/Trial/Costs> and on the intranet site for Judicial Branch personnel at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>.

**Bills of costs** will be updated and made available electronically overnight on **July 31, 2013**. Any other forms affected by the cost changes (e.g., cover sheets and criminal judgment forms) will be updated during the regular forms revision cycle this Fall; form changes will be publicized as they become effective. 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 as individual cost changes take effect. Any new account numbers will be posted in the FMS Message Center at the appropriate time. Update instructions for **CourtFlow** will be distributed via e-mail.

- **General Costs**

- Motion fee assessed for filing of a "notice of hearing," not for the motion. Act § 18B.17.

In 2011,<sup>4</sup> the General Assembly enacted a \$20.00 fee for the filing of most motions in non-criminal proceedings. On July 1, 2013,<sup>5</sup> a memo was sent to court officials regarding changes to the motion fee. This memo further discusses the changes to the motion fee effective July 1, 2013, as well as changes to the fee effective August 1, 2013.

The changes to the motion fee are the most significant changes to civil, special proceeding and estate filing fees from this legislative session. There is no longer a fee for filing a motion, instead the \$20 filing fee will be triggered by the filing of a notice of hearing on a motion.<sup>6</sup>

Effective August 1, 2013, the Act changes how the payment of a motion fee will be triggered. Pursuant to S.L. 2011-145, § 31.23, the motion fee originally was due when a non-exempt motion was filed. On or after August 1, 2013, the fee becomes due only when a notice of hearing on a motion is filed. This change is effective for motions and notices of hearing filed on or after August 1, 2013. If a motion is filed on or before July 31, 2013, the motion fee should be collected for that motion. If a motion is filed on or after August 1, 2013, no fee is to be collected for the filing of the motion, itself, but at the time that a notice of hearing is filed for that motion, the fee of twenty dollars (\$20.00) is to be collected.<sup>7</sup>

This change to the motion fee, assessing it only upon the filing of a notice of hearing on the motion, applies in the same manner to estates and special proceedings as it does to civil matters.

The motion/notice of hearing fee applies only once per motion or notice of hearing on a motion.<sup>8</sup> This means that if the fee was paid for the filing of a motion prior to August 1, 2013, the fee would not be paid again later when a notice of hearing was filed on that motion. If a notice of hearing is issued and the hearing is continued, the fee is not charged on subsequent notices of hearing for continued hearings for the previously noticed motion.

Exemptions from the Motion/Notice of Hearing Fee.<sup>9</sup>

Several categories of filings are exempt from paying the motion/notice of hearing fee:

- Debtors Designating Exemptions. S.L. 2013-225 and Act § 18B.17.

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<sup>4</sup> See the memo of June 28, 2011, "2011 Court Costs Memo – effective July 1, 2011," at <http://www.nccourts.org/Courts/Trial/Costs/PriorCC/CCost2011.asp> and on the NCAOC intranet site for Judicial Branch personnel at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>.

<sup>5</sup> Available online via the links in footnote 3 on page 1 of this memo.

<sup>6</sup> A list of Frequently Asked Questions (FAQs) pertaining to the motion/notice of hearing fee will be posted online with this memo. Please refer to the FAQ for answers to specific questions related to changes to the motion/notice of hearing fee.

<sup>7</sup> Again, see the 2013 Court Costs FAQ described in the preceding footnote for different permutations of when the motion/notice of hearing fee would and would not apply.

<sup>8</sup> Section 18B.17 of the Act amends all three of the motion fee provisions, G.S. 7A-305(f) (civil), G.S. 7A-306(g) (special proceedings), and G.S. 7A-307(a)(4) (estates), to provide that, "No more than one fee shall be assessed for any motion for which a notice of hearing is filed, regardless of whether the hearing is continued, rescheduled or otherwise delayed."

<sup>9</sup> In addition to the explanations in this memo, a summary of the exemptions from the motion/notice of hearing fee has been included as an appendix to the 2013 court cost charts for civil actions, special proceedings, and estates.

As discussed in the interim civil costs memo,<sup>10</sup> since July 1, 2013, debtors have not been required to pay the \$20 motion fee to claim exemptions under G.S. 1C-1602 or G.S. 1C-1603 in order to preserve portions of their property from being used to satisfy a judgment in any civil, special proceeding, or estate matter. Even if the debtor is not indigent, they have not been required to pay the motion fee to file a motion to designate exemptions. Effective for notices of hearing on motions to designate exemptions filed on or after August 1, 2013, this exemption applies equally to the notice of hearing; that notice is exempt from the motion fee.

- IV-D Child Support Agencies. S.L. 2013-225 and Act § 18B.17.

When first enacted in 2011, the fee for a motion in a civil proceeding did not apply to “actions commenced or prosecuted pursuant to Article 9 of Chapter 110 of the General Statutes,” S.L. 2011-391, § 66.1. This meant that certain child support actions were exempt entirely from the motion fee. While actions under Article 9 of Chapter 110 generally are IV-D actions, some proceedings for income withholding in non-IV-D actions (*i.e.*, between private parties) also fall under that Article, so they also were exempt from the motion fee. The 2011 legislation did not specify that the exemption was limited to only IV-D agencies, therefore, any filer of a motion in an action commenced under Article 9 of Chapter 110 was exempt from paying the fee, including the non-custodial parent in child support enforcement actions.

As discussed in the interim civil costs memo of July 1, 2013,<sup>11</sup> since July 1, 2013, only the IV-D agency, itself, is exempt from paying the motion fee for motions filed by the child support agency. Effective for notices of hearing filed by the child support agency on or after August 1, 2013, this exemption applies equally to the notices of hearing. Any other filer (*e.g.*, a parent) must pay the fee, unless another exemption applies, such as indigency or if the motion is solely for the taxing of costs, as discussed below.

- Indigents. G.S. 1-110.

Just as prior to the passage of S.L. 2013-225 and the Act, if the filer has been authorized to proceed as an indigent, they may file their motion or notice of hearing without paying the fee in advance.

- Exemption for Motion Content. G.S. 7A-305(f), 7A-306(g), and 7A-307(a)(4).

Just as prior to the passage of S.L. 2013-225 and the Act, if the motion is one listed in G.S. 7A-308,<sup>12</sup> or if it requests only the taxing of costs, including attorneys' fees, the filer may file their motion or notice of hearing on the motion without paying the filing fee in advance.

- **Criminal Costs**

- State Crime Laboratory fee and DNA fee (crime lab name change). G.S. 7A-304(a)(7) and (9). Act § 17.6.(g).

This is a cosmetic change, only. It does not change the courts' assessment of the affected fees or their collection and disbursement. The Act removes the State Crime Lab from the State Bureau of Investigation (SBI) but keeps the Lab within the Department of Justice (DOJ). Because of its removal from the SBI, the Act renames the lab as the “State Crime Laboratory” (formerly the “State Bureau of Investigation Crime Laboratory”).

Effective July 1, the Act therefore updates references in G.S. 7A-304(a) to the “State Bureau of Investigation” laboratory to specify the “State Crime Laboratory,” but there are no substantive changes to the fees. The State lab fee and the DNA fee will continue to be allocated for the use of the DOJ, so the fees will be assessed, collected and disbursed with no changes to current procedures.

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<sup>10</sup> Available online via the links in footnote 3 on page 1 of this memo.

<sup>11</sup> Available online via the links in footnote 3 on page 1 of this memo.

<sup>12</sup> The motions under G.S. 7A-308 that are exempt from the motion/notice of hearing fee are listed in the appendix to the court cost charts.

- Law Enforcement Training and Certification fee. G.S. 7A-304(a)(3b). Act § 18B.18.

Like the State Crime Lab fee above, for the courts' purposes this is a cosmetic change, only. The law enforcement officer (LEO) training and certification fee of G.S. 7A-304(a)(3b) currently is allocated separately for the use of two different commissions: the Criminal Justice Education and Standards Commission and the Sheriffs' Education and Training Standards Commission. Effective August 1, the Act removes the Sheriffs' Education and Training Standards Commission as a partial recipient of the fee and directs that the entire fee be used for the Criminal Justice Education and Standards Commission. However, the amount of the fee (\$2.00) is not changed, and the entire fee already is allocated to the DOJ, so this change has no direct effect on the courts. The training and certification fee will continue to be assessed, collected and disbursed with no changes to current procedures.

- Community Service fee changes. G.S. 15A-1368.4 and G.S. 143B-708. S.L. 2013-196.

S.L. 2013-196 (SB 494, Community Service/Post-Release Supervision), effective June 26, 2013, allows the Post-Release Supervision and Parole Commission to impose community service as a condition of post-release supervision for certain offenders.<sup>13</sup> If the Commission assesses the community service fee when imposing this condition in a particular case, it should be paid in the county of the original conviction in the same manner as community service fees paid by parolees.

In addition, to accommodate legislative changes since 2009 to the community service statutes and to the fee under G.S. 143B-708 (formerly G.S. 143B-262.4), all community service fees assessed from this point forward should be assessed under account code 24202; for all future bills of cost, clerks should stop using account code 24201 (formerly for community service imposed under G.S. 20-179.4, repealed in 2009).<sup>14</sup> Since 2009, all community service fees are assessed pursuant to G.S. 143B-708, and all such fees are disbursed to the State's General Fund, so there is no need for two different account codes for community service fees.

- Amend criminal partial payment distribution priority to be uniform. G.S. 7A-304(d), 15A-1343(b). S.L. 2013-225.

As discussed in the interim criminal costs memo of July 1, 2013,<sup>15</sup> the default priority of G.S. 7A-304(d), for satisfaction of monetary obligations imposed in a judgment for a criminal offense or infraction, now applies uniformly to all cases, regardless of offense date. See the prior memo for details.

- **NEW Criminal Cost and Fee Provisions**

- Lab analyst expert witness fee - State and local government labs. G.S. 7A-304(a)(11) and (12). Act § 18B.19.

Effective for costs assessed on or after August 1, 2013, and in addition to the existing fee for laboratory services performed by the State Crime Laboratory, G.S. 7A-304(a)(7), or by a local laboratory operated by a local government or group of local governments, G.S. 7A-304(a)(8), the Act creates a new \$600.00 fee to be assessed when an analyst employed by a State or local government laboratory actually testifies at trial about his or her analysis. The fee applies only when the expert witness:

- is employed by the State Crime Laboratory, G.S. 7A-304(a)(11), or a local crime laboratory operated by a local government or group of local governments, G.S. 7A-304(a)(12);

<sup>13</sup> Full text of the enacted bill is available online at <http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S494v5.pdf>. Previously, community service was not allowed as a condition of post-release supervision.

<sup>14</sup> There is no need to alter or amend existing bills of cost in FMS that include account 24201. Account 24201 will remain active in order to permit receipting and disbursement of community service fee obligations already entered under that code, but it should not be used for new bills of costs. The criminal bill of cost forms, AOC-CR-381 and AOC-CR-381AS, amended August 1, 2013, will list community service fees under account 24202, only.

<sup>15</sup> Available online via the links in footnote 3 on page 1 of this memo.

- completes a chemical analysis pursuant to G.S. 20-139.1 or a forensic analysis pursuant to G.S. 8-58.20; and
- provides testimony about that analysis in a defendant's trial.

As noted above, the new \$600.00 fee for a lab analyst's testimony - under subdivision (a)(11) for an analyst from the State lab or (a)(12) for an analyst from a local government lab - is to be assessed in addition to the \$600.00 lab fee assessed for the chemical or forensic analysis, itself, under subdivisions (a)(7) and (a)(8). For example, if an analyst from the State Crime Laboratory performs a forensic analysis under G.S. 8-58.20 and then testifies about that analysis at the defendant's trial, the court would assess a total of \$1,200.00: \$600.00 for the analysis under subdivision (a)(7) and another \$600.00 for the analyst's appearance and testimony under subdivision (a)(11).

As with other costs under G.S. 7A-304, waiver or reduction of the lab analyst expert witness fee requires "entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause" for the waiver or reduction. G.S. 7A-304(a).

- Electronic House Arrest (EHA) daily fee. G.S. 15A-1343(c2). Act § 16C.16, amended by S.L. 2013-363, § 6.7.(c).

Effective for persons "placed on house arrest with electronic monitoring" by the court as a condition of probation under G.S. 15A-1343 on or after September 1, 2013,<sup>16</sup> the Act adds a new, daily fee to be assessed for the EHA.<sup>17</sup> This new "EHA Daily Fee" will be disbursed to the Department of Public Safety (DPS) "to cover the costs of providing the electronic monitoring."

The EHA Daily Fee is assessed in addition to the one-time fee for EHA (currently \$90.00), so a probationer newly placed on EHA as a condition of probation on or after September 1 should be assessed the one-time \$90.00 EHA fee plus the new daily fee.

The fee is limited to DPS' "actual cost" of providing the monitoring service. The current cost to DPS for EHA provided by their third-party vendor is \$4.37 per day.<sup>18</sup> Therefore in the judgment or order imposing EHA, the court should multiply the rate of \$4.37 by the number of days the defendant will be on EHA and enter that amount as part of the costs in the judgment or order.<sup>19</sup>

Because it is not found in G.S. 7A-304, the EHA daily fee does not require the written findings of "just cause" to waive or reduce it for a particular defendant. However, G.S. 15A-1343(c2) limits waivers of the fees for EHA (both the one-time fee and the daily fee) by providing that, "The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic monitoring"; the statute does not require specific written findings to support the waiver.

- EHA fees expanded to EHA under G.S. 15A-1343(a1). G.S. 15A-1343(c2). Act § 16C.16, amended by S.L. 2013-363, § 6.7.(a).

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<sup>16</sup> As noted in this memo's introduction, the Act's changes to court costs were further modified by S.L. 2013-363. The Act makes the changes for EHA fees effective August 1, 2013, but S.L. 2013-363 amends that provision to make the changes effective September 1, 2013. The NCAOC therefore will implement the change on September 1. Court officials will note that the new EHA Daily Fee will appear on the criminal bills of cost, forms AOC-CR-381 and AOC-CR-381AS, on August 1, but the bills of cost are being revised in August to account for other fee changes. The EHA daily fee does not apply until September 1.

<sup>17</sup> The imposition of the daily fee therefore depends on the date of entry of the order placing the person on EHA as a special condition of probation; the fee's imposition is not determined by the date of offense.

<sup>18</sup> The DPS is in the second year of a three-year contract with the current EHA vendor. The DPS and the NCAOC will notify court officials of any future changes in the daily cost as a result of any changes in the contract or vendor.

<sup>19</sup> The criminal bills of costs (AOC-CR-381 and AOC-CR-381AS) will provide individual line items for calculation of the EHA Daily Fee, but the daily fee and the one-time fee of \$90.00 should be subtotaled and entered as a single amount in the "EHA Fee" field of the appropriate judgment form. This subtotal amount will be entered in the field for "EHA Fee" automatically (or in the "Appt. Fee/Misc" field on forms that lack a separate field for EHA fees) when using CourtFlow to prepare the judgment.

The court may impose EHA as a condition of probation under two statutory provisions: G.S. 15A-1343(b1) (special conditions of probation) and subsection (a1) of the same statute (community and intermediate probation conditions). Subsection (a1) was enacted in 2011 as part of the Justice Reinvestment Act, S.L. 2011-192. As enacted in S.L. 2011-192, subsection (a1) did not provide for the assessment of EHA fee under G.S. 15A-1343(c2). The fee therefore applied only when EHA was imposed as a “special condition” of probation under G.S. 15A-1343(b1). The EHA fee did not apply to EHA as a “community and intermediate” condition of probation under subsection (a1), nor did it apply when EHA was imposed pursuant to a probation officer’s delegated authority under G.S. 15A-1343.2.

As described above, § 16C.16 of the Act amends G.S. 15A-1343(c2) to impose the EHA daily fee. S.L. 2013-363, § 6.7.(a), further amends subsection (c2) to apply the EHA fees to both subsections (b1) and (a1). Like the EHA daily fee, this change is effective for persons placed on EHA on or after September 1, 2013. Therefore the EHA fees - both the one-time \$90.00 fee and the new daily fee - will apply equally to EHA as special condition of probation (subsection (b1)) and as a community and intermediate condition of probation (subsection (a1)) when imposed on or after September 1, 2013.<sup>20</sup>

However, the EHA fees still do not apply to EHA imposed pursuant to a probation officer’s delegated authority under G.S. 15A-1343.2, so the clerk should not add any EHA fees to the defendant’s obligations when EHA is imposed by a probation officer.

- o Electronic House Arrest for Post-Release Supervision. G.S. 15A-1368.4. S.L. 2013-363, § 6.7.(b).

In addition to amending the EHA fee provisions as described above, S.L. 2013-363 amends G.S. 15A-1368.4(e)(13) (EHA as a condition of post-release supervision). Previously the post-release supervision condition for EHA did not provide for assessment of the fee. Retroactively effective to July 1, 2013, S.L. 2013-363 amends G.S. 15A-1368.4(e)(13) to provide that, when the Post-Release Supervision and Parole Commission (the Commission) imposes EHA, the post-releasee must pay the EHA fees, both one-time and daily, unless exempted by the Commission. The fees are imposed in the same amounts and with the same recipients (the General Fund and DPS) as the fees for EHA as a condition of probation, so any payments received by the clerk’s office for a post-releasee’s EHA fees should be receipted and disbursed through the same accounts as EHA fees for probationers.

- o Expunction fees. G.S. Chapter 15A, Article 5. Act § 18B.16.

Effective for criminal<sup>21</sup> expunction petitions filed on or after September 1, 2013, the Act adds a fee to some (but not all) of the expunction statutes that currently lack fees, and it will increase the existing fee for two of the statutes that currently require a fee. The new and increased fees of \$175.00 will be allocated to the DOJ (\$122.50) and the NCAOC (\$52.50) to help cover some of the costs of processing expunction petitions. Each of the new and amended fee provisions in the affected statutes provides that the fee “does not apply to petitions filed by an indigent.”<sup>22</sup>

Effective September 1, 2013, the fees in the table below are to be assessed for any expunction petition filed on or after that date. Except for petitions filed under G.S. 15A-146 (further explained below), the fee shown for a particular statute applies to any petition filed

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<sup>20</sup> The Community and Intermediate Probation Conditions are found on form AOC-CR-603C, Page Two, for which the EHA condition currently includes a note that the clerk should not assess the EHA fee for EHA imposed under subsection (a1), unless ordered to do so by the court. Effective for orders placing the probationer on EHA entered on or after September 1, 2013, the clerk should disregard that note and assess the fees (both one-time and daily) unless they are waived by the court. The judgment forms will be updated in the regular forms revision cycle this Fall.

<sup>21</sup> The changes apply only to expunctions of criminal records. The Act does not change the provisions for expunction of juvenile delinquency/undisciplined records under Chapter 7B, Article 32. There is no fee for the filing of a petition to expunge juvenile records under Article 32.

<sup>22</sup> The clerk should evaluate a request to petition for expunction as an indigent in the same way that the clerk evaluates requests to sue as an indigent in civil cases under G.S. 1-110.

under that statute, regardless of the basis for the petition or the subsection of the statute under which it was filed. *E.g.*, there are three different expunction provisions under G.S. 15A-145.3, in subsections (a), (b) and (c); the fee applies to any petition filed under that statute on or after September 1, regardless of the subsection under which the petitioner files it.

Four expunction statutes are unchanged by the Act: G.S. 15A-147 (expunction for identity theft), G.S. 15A-148 (expunction of DNA records after pardon of innocence or reversal and dismissal by the appellate division), G.S. 15A-149 (expunction for pardon of innocence) and G.S. 15A-145.5 (expunction of conviction for non-violent felony or non-violent misdemeanor). There is no fee for a petition under G.S. 15A-147, 15A-148, or 15A-149. The current fee under G.S. 15A-145.5 (\$175.00) will remain unchanged, and unlike the other fees added or increased by the Act, the fee under G.S. 15A-145.5 still will be disbursed to the General Fund, not to the DOJ and NCAOC. Although their fee provisions are not changing, these four statutes are listed in the table below so that all of the expunction statutes and their fees (or lack thereof) will be listed in the same place for ease of reference.

The NCAOC instruction sheets for petitions under two of the statutes listed below (the AOC-CR-264I for G.S. 15A-145; and the AOC-CR-266I for G.S. 15A-145.2) currently list the fees in effect for petitions under those statutes. Effective September 1, 2013, the Act will change those fees. The sheets will be updated this Fall in the NCAOC's regular update process for criminal forms, but starting with petitions filed on or after September 1, 2013, and until the sheets are updated, the clerk should ignore the fee amounts on any instruction sheet dated earlier than September 2013 and instead assess the amounts listed in the table below.

| Expunction Statute           | AOC Form         | Current Fee, through Aug. 30 | New Fee, eff. Sep. 1        | FMS/MFCR Account Number |
|------------------------------|------------------|------------------------------|-----------------------------|-------------------------|
| G.S. 15A-145                 | AOC-CR-264       | \$125.00                     | \$175.00                    | EXP <sup>23</sup>       |
| G.S. 15A-145.1               | AOC-CR-269       | None                         | \$175.00                    | EXP                     |
| G.S. 15A-145.2               | AOC-CR-266       | \$65.00                      | \$175.00                    | EXP                     |
| G.S. 15A-145.3               | AOC-CR-268       | None                         | \$175.00                    | EXP                     |
| G.S. 15A-145.4               | AOC-CR-279       | None                         | \$175.00                    | EXP                     |
| G.S. 15A-145.5               | AOC-CR-281       | \$175.00                     | \$175.00                    | 21400 <sup>24</sup>     |
| G.S. 15A-145.6 <sup>25</sup> | To Be Determined | None                         | None                        | n/a                     |
| G.S. 15A-146                 | AOC-CR-264       | None                         | \$175.00<br>(but see below) | EXP                     |
| G.S. 15A-147                 | AOC-CR-263       | None                         | None                        | n/a                     |
| G.S. 15A-148                 | None             | None                         | None                        | n/a                     |
| G.S. 15A-149                 | AOC-CR-265       | None                         | None                        | n/a                     |

The fee for an expunction under G.S. 15A-146 will be assessed only when the petition asks the court to expunge a charge "dismissed pursuant to compliance with a deferred prosecution agreement." G.S. 15A-146(d). Petitions under G.S. 15A-146 therefore will be exempt from the fee if the charge(s) to be expunged ended in an acquittal or was dismissed for any other reason, such as a dismissal after a successful conditional discharge (*e.g.*, for cyber-bullying under G.S. 14-458.1 or 14-458.2) or a dismissal by the State or the court for any reason other than a deferred prosecution. To assist the clerk with assessment of

<sup>23</sup> Mainframe Cash Receipting (MFCR) provides the related code "EXP" for expunction petitions. Using the EXP related code will allocate the expunction fee automatically between the accounts for the DOJ portion (account 24328) and the NCAOC portion (account 24685).

<sup>24</sup> The Act does not amend G.S. 15A-145.5, for which subsection (g) provides that the \$175.00 fee is disbursed to the General Fund. Therefore the clerk should continue to receipt fees for petitions under G.S. 15A-145.5 to account 21400, rather than to the new account code(s) for the other new/amended expunction fees.

<sup>25</sup> G.S. 15A-145.6, a new expunction statute enacted by S.L. 2013-368 (Senate Bill 683, Safe Harbor/Victims of Human Trafficking), does not become law until October 1, 2013. The NCAOC will distribute a separate memo about expunction changes in September, including G.S. 15A-145.6. A new petition form for G.S. 15A-145.6 will be published October 1, and petitions under that statute will require no fee.



the fee on the appropriate petitions, form AOC-CR-264 will be updated later this year to include an assertion for the petitioner to indicate whether or not the charge(s) was dismissed pursuant to a deferred prosecution; until that time, the clerk should assess the fee unless the petitioner provides written verification (either on the petition or separately) that all dismissed charges in the petition were dismissed for a reason other than a deferred prosecution.

- **Civil Costs**

- Counties and municipalities to advance court costs and fees. G.S. 7A-317. S.L. 2013-225.

As discussed in the interim civil costs memo of July 1, 2013,<sup>26</sup> and pursuant to S.L. 2013-225, for costs in civil, estates and special proceedings, counties and municipalities are no longer exempt from advancing court costs at the time of filing. The clerk may allow the county or municipality to pay costs within 45 days of filing, but must withhold facilities fees from the filing entity for any costs not paid within 90 days after the date of filing. See the memo of July 1 for details.

- Counter- and crossclaim fees apply to third-party complaints. G.S. 7A-305(a5). S.L. 2013-225.

As discussed in the interim civil costs memo of July 1, 2013,<sup>27</sup> the civil filing fees of G.S. 7A-305(a5), now must be assessed for third-party complaints. The fees of G.S. 7A-305(a5) previously applied only to counterclaims and crossclaims. See the memo of July 1 for details.

- Motion fee changes. G.S. 7A-305(f) and Act § 18.17.(a).

See “General Costs” above, for changes to the fee for motions and notices of hearing in civil proceedings.

- Change to divorce fee allocation. G.S. 7A-305(a2). Act § 30.2, amended by S.L. 2013-363, § 7.1.

For complaints for absolute divorce, in addition to the civil filing fees, a fee of seventy-five dollars (\$75.00) must be assessed against any person filing a claim for absolute divorce. The Act does not change the amount of the current divorce fee, but it changes the fee’s allocation in a two-stage process.

The fee still must be remitted to the State Treasurer, but the Act changes the allocation of the fee to thirty-five dollars (\$35.00) for the Fund for Displaced Homemakers and forty dollars (\$40.00) for the Domestic Violence Center Fund, from the previous allocation of \$55 to the Displaced Homemakers and \$20 to the Domestic Violence Center. This re-allocation applies to any complaint containing a claim for absolute divorce and filed on or after August 25, 2013, but it requires no change in the clerk’s procedures for receipting divorce fees; the MFCR/FMS related code for the divorce fee will be updated to the new allocation when entered on or after August 25, 2013.<sup>28</sup>

The effective date of August 25 is due to S.L. 2013-363’s changes to the effective date of the divorce fee provision in the Act. The Act provides that the re-allocation is effective July 1, 2013.<sup>29</sup> However, S.L. 2013-363 amended that provision to make the re-allocation effective “30 days after this act [S.L. 2013-360] becomes law.” As noted in the introduction to this memo, the Act, S.L. 2013-360, was signed into law on Friday, July 26, 2013. Therefore the re-allocation of the divorce fee will take effect on Sunday, August 25, 2013, and will apply starting with divorce pleadings filed on the next business day on Monday, August 26, 2013.

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<sup>26</sup> Available online via the links in footnote 3 on page 1 of this memo.

<sup>27</sup> Available online via the links in footnote 3 on page 1 of this memo.

<sup>28</sup> However, if a divorce fee is paid on or after August 25, 2013, for a divorce complaint that was filed prior to that date (for example, if a complaint was accepted for filing but for some reason the full amount of the filing fees was not paid at filing), the clerk will need to adjust the allocation manually to the older allocation of \$55.00 to the Displaced Homemakers’ Fund and \$20.00 to the Domestic Violence Center. The allocation of the fee is determined by the date of filing of the pleading for absolute divorce, so pleadings filed prior to August 25, 2013, will follow the older allocation.

<sup>29</sup> Pursuant to the Act’s overall effective date in § 38.6.

In a second stage, the Act further adjusts the allocation of the divorce fee, effective July 1, 2014, to eliminate the Fund for Displaced Homemakers entirely and allocate the entire fee to the Domestic Violence Center for filings on or after that date.<sup>30</sup> This second stage was not altered in any way by S.L. 2013-363.

- Alias and pluries summons/endorsement fee.

See “Miscellaneous Costs,” below, for changes to the fee for alias and pluries summons and endorsements in civil proceedings.

- Clarify assessment of business court fee. G.S. 7A-305(a)(2). S.L. 2013-225.

Effective for pleadings and motions for designation as a complex business case filed on or after January 1, 2014, the Act clarifies that the \$1,000.00 fee for business court will be due from the party filing the notice or motion for complex business designation. The fee is due upon assignment of the case to a special superior court judge as a complex business case. If the assignment is made upon the court’s own motion, then the Act clarifies that plaintiff must pay the fee. Again, this change is not effective until January 1.<sup>31</sup>

- **Special Proceedings Costs**

- Motion fee changes. G.S. 7A-306(g). Act § 18.17.(b).

See “General Costs” above, for changes to the fee for motions and notices of hearing in special proceedings.

- **Estates Costs**

- Motion fee changes. G.S. 7A-307(a)(4). Act § 18.17.(c).

See “General Costs” above, for changes to the fee for motions and notices of hearing in estate proceedings.

- **Miscellaneous Costs**

- Alias and pluries summons/endorsement fee. G.S. 7A-308(a)(21).

When first enacted in 2011, the fee for an alias and pluries summons or endorsement in a civil proceeding<sup>32</sup> did not apply to “actions commenced or prosecuted pursuant to Article 9 of Chapter 110 of the General Statutes,” as provided in S.L. 2011-391, § 66.1. This meant that certain child support actions were exempt from the alias and pluries/endorsement fee. While actions under Article 9 of Chapter 110 generally are IV-D actions, some proceedings for income withholding in non-IV-D actions (*i.e.*, between private parties) also fall under that Article, so they also were exempt from the alias and pluries/endorsement fee.

As discussed in the interim civil costs memo,<sup>33</sup> effective July 1, 2013, S.L. 2013-225 repealed S.L. 2011-391, § 66.1, and instead amended G.S. 7A-308(a)(21) to provide that the alias and pluries/endorsement fee is assessed:

“In civil matters, except in actions commenced or prosecuted by a child support enforcement agency established pursuant to Part D of Title IV of the Social Security Act, all alias and pluries summons issued and all endorsements issued on an original summons.”

Therefore for any pleading filed on or after July 1, 2013, the exemption from the alias and pluries/endorsement fee applies only to an alias and pluries summons or endorsement issued in an action commenced or prosecuted by a IV-D child support enforcement agency. An alias and

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<sup>30</sup> The NCAOC will update the civil costs chart and FMS for the second stage of the re-allocation in July 2014.

<sup>31</sup> The NCAOC will update the civil costs chart and send a reminder to court officials prior to the January effective date of the change to the Business Court fee.

<sup>32</sup> The alias and pluries/endorsement fee is not assessed in special proceedings or estates cases.

<sup>33</sup> Available online via the links in footnote 3 on page 1 of this memo.

pluries summons or endorsement issued in any other civil action now requires that the party pay the alias and pluries or endorsement fee.

Court officials with questions about the cost and fee changes described in this memo should contact NCAOC's Court Services Analyst (CSA) or Financial Management Analyst (FMA) for the county. In addition, a list of Frequently Asked Questions (FAQ) will be posted online in the same locations as this memo and the cost charts; the FAQ will be updated periodically as recurring questions arise. Law enforcement officials and other entities outside the Judicial Branch should consult with their own counsel about any potential impact of cost changes on their duties or operations; the clerk's office and the NCAOC cannot advise entities outside the courts about their rights or responsibilities concerning court costs.