



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Legal and Legislative
Services Division

Peter E. Powell
Legal and Legislative Administrator

PO Box 2448, Raleigh, NC 27602
T 919 890-1300 F 919 890-1914

MEMORANDUM

(via E-Mail)

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

FROM: Pete E. Powell, Legal Counsel
Pamela Weaver Best, Deputy Legal Counsel
Jo McCants, Associate Legal Counsel
Matt Osborne, Associate Legal Counsel
Troy Page, Associate Legal Counsel
Mariah West, Associate Legal Counsel

DATE: August 26, 2009

RE: Legislative Increases in Court Costs and Fees
EFFECTIVE September 1, 2009, unless otherwise noted.

The General Assembly has passed new legislation affecting court costs.¹ Attached is an updated costs and fees chart reflecting new and updated costs and fees. Please note that there are **some entirely new costs and fees** in the chart, enacted by [S.L. 2009-451](#) (Senate Bill 202, Current Operations and Capital Improvements Appropriations Act of 2009, hereafter the "Act"), and by other legislation noted below. The Act provides for two stages of cost changes in several of the statutes governing court costs: one stage effective in 2009 and another in 2010. Cost changes and increases effective in 2010 will be detailed in an updated cost chart next year. The cost charts for 2009-2010 are available on the AOC web site: <http://www.nccourts.org/Courts/Trial/Costs>.

Cost changes in the Act affect filings in civil, criminal, estates, and special proceedings and take effect on **September 1, 2009**, unless otherwise noted on the attached charts. All changed costs and fees **must** be collected on all filings on or after that date, unless otherwise noted.

Bill of Costs forms will be updated and made available electronically overnight by **Tuesday, September 1, 2009**. The forms will be available in TAO-GUI/Conferences/AOC_Forms_Memos in the criminal PDF, civil PDF, estate PDF and special proceedings PDF forms directories. The PDF versions will be available also on the AOC's web site at www.nccourts.org.

FMS and Cash Receipting will be updated overnight when the new and increased fees take effect. New account numbers will be posted in the FMS Message Center at the appropriate time. The **eCitation** program will be updated so that the citations contain the appropriate costs and fees; officers must download the updates before the citations will print the new amounts. **VCAP** is being updated to account for increased costs

¹ We respectfully request that clerks' offices provide a copy of this memorandum to local law enforcement agencies and appropriate personnel in your offices.

in CV cases; any additional instructions, if needed, will be distributed by the VCAP team. Update instructions for **CourtFlow** will be distributed via TAO e-mail.

As mentioned above, S.L. 2009-451 made numerous changes to the costs and fees assessed and collected by the courts. Due to the number of changes, minor increases in existing costs and fees will not be described in detail, here; see the attached chart for those increases to existing costs and fees.

However, a number of costs and fees, both new and existing, bear mentioning due to particular features of their application or collection and are described below. For each item below, the citation of "Act §##" designates the relevant section number (##) of the Act that enacts or amends the cost or fee described.

- **General Costs**

The following new costs or cost increases apply to multiple case types or are to be collected generally, rather than associated with any particular case filing.

- The phone systems fee, enacted in 2008, will increase from \$1.00 to \$3.00 in all cost groups to which it applies: criminal, civil, estate and special proceedings. Act §15.20.(a), (d), (f), (h).
- Court collection assistance fee. G.S. 7A-321(d). For all costs and fees collected by the courts under Chapter 7A, Article 28 (Uniform Costs and Fees in the Trial Divisions) or Chapter 20 and not already designated by law for the General Fund or for the support of the Judicial Department or its agencies, the courts must deduct a 10% collection assistance fee and remit the fee to the State Treasurer for support of the General Court of Justice. **Note:** This 10% is *not* an additional 10% to be assessed against the payor, but rather a reallocation of a portion of the costs and fees collected on behalf of other State and local government entities. The clerk's office should *not* add 10% to the amounts assessed for the affected costs and fees. Act §15.20.(m).

FMS is being programmed to perform this function automatically when payments are disbursed from the affected accounts. The clerk's office does not need to perform this calculation manually.

The Act makes the collection assistance fee effective July 1, 2009. As enacted, the courts should recoup 10% of disbursements from the affected accounts for the months of July and August. However, this effective date is amended to September 1, 2009, by House Bill 836, Modify Appropriations Act. House Bill 836 has been ratified but not signed by the Governor as of the date of this memorandum, but the Governor's office has given no indication that it will be vetoed. If House Bill 836 is signed by the Governor or is allowed to become law without her signature 30 days after the General Assembly's adjournment (which occurred on August 11, 2009), the collection assistance fee will be effective September 1. The AOC therefore will implement the FMS programming changes necessary to begin the 10% collection as of that date. If the Governor should veto House Bill 836, then the July 1 effective date will apply, and the AOC will provide further instructions about recouping 10% of previous disbursements from the affected accounts.

- **Criminal Costs**

- Waiver exception. For criminal costs, the Act includes the "waiver exception" of previous years. Defendants who waive their appearance and pay costs and fines after the effective date of the Act for citations issued prior to the effective date must pay only the *lesser* of the new costs or the costs specified on the defendant's copy of the citation or criminal process. Act §15.20.(n).
- Attorney appointment fee. G.S. 7A-455.1(b). The \$50.00 appointment fee will be mandatory and "may not be remitted or revoked by the court." Act §15.171(a).
- Adult seat belt/motorcycle helmet violations. G.S. 20-135.2A(e) and 20-141.4. Previously, these two offenses required a fixed fine of \$25.00 and fixed costs of \$75.00. Effective September 1, 2009, these offenses will require a fixed fine of \$25.50 and assessment of three cost items under G.S. 7A-304(a): the General Court of Justice fee of (a)(4) (\$95.50 or \$102.50), the phone systems fee of (a)(2a) (\$3.00), and the new law enforcement training and certification fee of (a)(3b) (\$2.00). Act §15.20.(j) and (k).

Note: FMS will not have new related code sets to account for these fee combinations, so the three costs will have to be assessed individually on the bills of costs for these offenses.

- Community service fee. The Act increases the community service to \$225.00 in all of the relevant statutes: G.S. 15A-1371, G.S. 20-179.4, and G.S. 143B-262.4. The increase is effective September 1, 2009 (without qualification). The effective date is amended by House Bill 836, Modify Appropriations Act, to be September 1, 2009, and applicable “to persons ordered to perform community service on or after that date.” As described above for the new collection assistance fee, House Bill 836 has not yet been signed by the Governor. However, to make the increased fee applicable to persons ordered to perform community service prior to September 1 (but who do not pay the fee until after that date) would be contrary to the sentencing judgments that imposed the fee. The AOC therefore interprets the fee increase in the Act to be effective as specified in House Bill 836 – to only those offenders ordered to perform community service on or after the effective date. House Bill 836 merely clarifies the effective date’s application. Act §19.26.

Note: S.L. 2009-372 (Senate Bill 920, Probation Reform) also amends the affected statutes, effective December 1, 2009, to specify the amount of the community service fee only in G.S. 143B-262.4, incorporate that fee by reference in G.S. 15A-1371, and repeal G.S. 20-179.4 (incorporating the DWI community service requirement in G.S. 143B-262.4). The net effect of both bills is as provided in the Act – the community service fee will be \$225.00, effective September 1, 2009.

- Increased split sentence jail costs. G.S. 7A-313 requires that, “Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts.” This applies to offenders ordered to serve a sentence of special probation (“split sentence”) under G.S. 15A-1351(a) in a local confinement facility. To date, the per diem fee assessed under this provision was \$18.00 per day, which was the rate at which DOC has reimbursed local jails since 1997, pursuant to G.S. 148-32.1(a), for holding convicted offenders serving active sentences of more than 30 days (but less than 90 days). Note that this is different from the “backlog” rate under G.S. 148-29 that DOC reimburses counties for holding an offender awaiting transfer to a DOC facility (currently \$40.00 per day).

The Act repeals G.S. 148-32.1(a), effective September 1, 2009. However, the Act does not repeal or amend G.S. 7A-313. Due to the repeal of the statute underlying the \$18.00 per diem reimbursement for convicted misdemeanants, the only “per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts,” as provided in G.S. 7A-313, is now the \$40.00 per diem assessed for “backlog” offenders pursuant to G.S. 148-29. Therefore an offender ordered on or after Sep. 1, 2009, to serve a split sentence in a local jail as a condition of probation and to pay jail fees as a condition of that probation, must be charged the per diem rate of \$40.00; offenders ordered prior to September 1 to serve a split sentence in a local jail should be assessed the previous \$18.00 daily rate for their sentence, even if some portion of the split is served after that date. Costs for pre-conviction confinement still will be assessed at \$5.00 per day, as also provided in G.S. 7A-313.¹ Act §19.22A.

- Restitution priority. Pursuant to a reevaluation of the default priorities for disbursement of monies received in criminal cases under G.S. 7A-304(d)(1), FMS has been reprogrammed, effective July 2009, to set restitution to victims as the first priority by default. Restitution to non-victims (e.g., hospitals, law enforcement for purchase money in undercover drug purchases, etc.) remains in its statutorily-prescribed ranking below payments to local government entities. **Note:** This bullet does

¹ This effective increase in the per diem jail fee was not debated as part of the budget process in the General Assembly, and it appears to be an unintended consequence of the repeal of G.S. 148-32.1. However, given that G.S. 7A-313 was not amended or qualified, we can conclude only that \$40.00 is now the statutorily-mandated rate for offenders serving split sentences in local jails as a condition of probation.

not describe any section of the Act, but is included because it explains a recent change that affects the priority of payment of items on the criminal bills of costs, including new items.

- **NEW Criminal Costs and Fees.**
 - Law enforcement (LEO) training and certification fee. G.S. 7A-304(a)(3b). This \$2.00 fee is to be remitted to the Department of Justice for support of the Criminal Justice Education Standards Commission and the Sheriffs Education and Training Standards Commission. This fee is in addition to the LEO benefit and retirement fees already assessed under G.S. 7A-304(a)(3) and (3a). Act §15.20.(a).
 - Traffic offense fee. G.S. 7A-304(a)(4a). For conviction of offenses under Chapter 20 (Motor Vehicles), an additional \$5.00 is to be assessed and remitted to the State Treasurer for support of the General Court of Justice. This fee will not apply if the offense in question carries specified costs (e.g., front seatbelt offenses, G.S. 20-135.2A(e)) or is exempt from court costs (e.g., failure to burn headlights when windshield wipers are on, G.S. 20-129(a)(4)). Act §15.20.(a).
 - Failure to comply (FTC) fee. G.S. 7A-304(a)(6). Previously repealed in 2007, the FTC fee has been re-enacted as a \$25.00 fee (rather than the previous \$50.00) and will apply to **all** cases, not just motor vehicle offenses. The fee must be assessed for any defendant who fails to pay fines, costs or penalties within 20 days of the date specified in the court's judgment; if the conviction was for a violation under Chapter 20, the clerk also must report the FTC to DMV pursuant to G.S. 20-24.2(a)(2). Act §15.20.(a).
- Note:** The same section of the Act increases the failure to appear (FTA) fee to \$200.00.
- Installment payments fee. G.S. 7A-304(f). When monetary obligations are assessed after conviction in a criminal or infraction case, the defendant can pay the monies in full at the time of assessment or at a later time on an installment plan arranged with the court (e.g., as a condition of probation or as a "time to pay" arrangement). If all monies are not paid in full at the time of assessment, the court must assess a one-time fee of \$20.00 to defray the expense of tracking payments under such an arrangement. Act §15.20.(c).

- **Civil Costs**

- Small claims GCJ fee has decreased. G.S. 7A-305(a)(2). The General Court of Justice (GCJ) fee for small claims cases has been lowered from \$63.00 to \$55.00, to encourage filings in that division, when authorized, rather than as more costly District Court cases. Act §15.20.(d).
- Business court fee increase. G.S. 7A-305(a)(2). The fee for assignment to a special superior court judge as a complex business case under G.S. 7A-45.3 requires assessment of a \$1,000.00 fee (increased from \$200.00). Act §15.20.(d).

- **Estates Costs**

- **NEW.** S.L. 2009-444 (Senate Bill 606, Notice to Creditors without Estate Admin) enacted a new Article 29 of Chapter 28A of the General Statutes, creating a new procedure for a "limited personal representative" to settle a decedent's debts when the decedent (testate or intestate) left no property subject to probate. Pursuant to G.S. 7A-307(a)(2d), the court must assess a fee of \$20.00 for a petition to serve as a limited personal representative under the new article. This is the only fee assessed for such petitions. **This fee is effective October 1, 2009**, and applicable to estates of persons dying on or after that date.
- Independent of cost changes, the threshold amount for affidavits of collection, G.S. 28A-25-1, has been increased to \$20,000 (from \$10,000), and \$30,000 (from \$20,000) for a surviving spouse who is the sole heir. This increased threshold is **effective October 1, 2009**, and applicable to estates of persons dying on or after that date. S.L. 2009-175 (House Bill 203, Increase Small Estate Amount).

- **Special Proceedings Costs**

- Increased foreclosure fee. G.S. 7A-308(a)(1). Although technically a miscellaneous cost under G.S. 7A-308, the fee for foreclosure under power of sale in a deed of trust or mortgage, filed as a special proceeding (SP), has been doubled from \$75.00 to \$150.00. The additional assessment based on sale price (\$0.45 per \$100.00 of final sale price) is unchanged. Act §15.20.(l).

- **Miscellaneous Costs**

- The Act does not add any new miscellaneous costs under G.S. 7A-308, but increases the foreclosure filing fee as described above and the cost of a criminal record search. See the attached chart for the new fee amounts. Act §15.20.(l).
- S.L. 2009-317 (House Bill 447, Extend IDS Copy Exemption) clarifies that the exemption from copy costs under G.S. 7A-308(b1) for attorneys appointed by the court to represent indigents also applies to counsel who are representing indigents under contract with Indigent Defense Services. This provision was effective July 17, 2009.

If you have any questions, please contact AOC's Court Services Analyst (CSA) or Financial Management Analyst (FMA) for your county.

cc	Judge John W. Smith, Director	Ann Anderson, SOG
	Gregg Stahl, Senior Deputy Director	Michael Crowell, SOG
	Basil McVey, Deputy Director, Field Services	Shea Denning, SOG
	McKinley Wooten, Deputy Director, Program Services	Jim Drennan, SOG
	Sharon Gladwell, Communications Director	Bob Farb, SOG
	Rex Whaley, Financial Services Officer	Cheryl Howell, SOG
	Cliff Layman, Chief Information Officer	Dona Lewandowski, SOG
		Jamie Markham, SOG
		John Rubin, SOG
		Jessie Smith, SOG
		Jeff Welty, SOG

/Attachments (Court Costs and Fees Chart)