



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: Pamela Weaver Best, Legal Counsel
Whitney Bishop Fairbanks, Assistant Legal Counsel
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Jo McCants, Assistant Legal Counsel
Matt Osborne, Assistant Legal Counsel
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DATE: September 30, 2014

RE: 2014 Legislative Changes for Court Costs and Fees

The General Assembly ended the 2014 short session with the enactment of minimal legislation affecting court costs. The few changes for costs were enacted by a handful of legislation including the primary budget bill for 2014, S.L. 2014-100 (Senate Bill 744, Appropriations Act of 2014, or "the Act"); S.L. 2014-102 (Senate Bill 853, Business Court Modernization Act); and S.L. 2014-119 (House Bill 369, Criminal Law Changes).² The changes to and effective dates for individual court cost provisions in S.L. 2014-100 and related legislation are set out below. This memorandum addresses only costs and cost procedures that are

¹ We ask that clerks provide a copy of this memo to local law enforcement agencies and to personnel in your offices. This memo also will be posted on the NCAOC website at www.nccourts.org/Courts/Trial/Costs/ and on the NCAOC intranet site for Judicial Branch personnel at <http://www.nccourts.org/Courts/Trial/Costs/Default.asp>.

² Full text of each act is online at <http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S744v9.pdf>; <http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S853v7.pdf>; and <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H369v9.pdf>.

changing; it does not include 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 relevant cost chart for each case type.

Because there are few changes to court costs, the frequently asked questions (FAQ) and their answers remain the same. The current cost charts for each case type were revised minimally. Previous charts, memos, and FAQs can be found under their respective years under the “Prior Court Costs” tab on the Administrative Office of the Courts’ (NCAOC) court costs page.³

New or changed costs are summarized below in order of effective date:

October 1, 2014

Civil

- Increase Complex Business Case Designation fee

December 1, 2014

Criminal

- New Private Hospital Toxicology fee
- New Private Hospital Employee Expert Witness fee
- Eliminate G.S. 15A-146 exception to filing fee for dismissals following conditional discharge and dismissal

Bills of costs will be updated and made available electronically overnight on **September 30** and **November 30, 2014**, respectively. 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. Updated instructions for **CourtFlow** will be distributed via e-mail.

Criminal Costs

NEW Private Hospital Toxicology fee and Private Hospital Analyst Expert Witness fee. G.S. 7A-304(a)(8a) and (13). [S.L. 2014-100, §18B.14(a).]

³ <http://www.nccourts.org/Courts/Trial/Costs/>. See the “Prior Court Costs” link at the left side of the page.

Effective for costs assessed or collected on or after **December 1, 2014**, S.L. 2014-100 creates a new \$600.00 fee for toxicology testing services performed by a private hospital under contract with a prosecutorial district. New G.S. 7A-304(a)(8a) makes the fee mandatory when the following three conditions are met:

1. the defendant is convicted,
2. the tests were performed as part of an investigation that led to the defendant's conviction, and
3. the tests were of the defendant's bodily fluid to determine the presence of alcohol or controlled substance.

The Court also must find that the work performed is “the equivalent of the same kind of work performed by the North Carolina State Crime Laboratory under subdivision (7) of [G.S. 7A-304(a)(7)].”

Also effective for costs assessed on or after December 1, 2014, S.L. 2014-100 creates a new \$600.00 fee to be assessed when an analyst employed by a private hospital testifies at trial about his or her analysis. The new fee under 7A-304(a)(13) applies only when the defendant is convicted and the expert provides testimony at the defendant's trial about a chemical analysis conducted pursuant to G.S. 20-139.1.

The private hospital employee expert witness fee under subdivision (13) is an additional fee and, in appropriate cases, should be assessed in addition to the new private hospital toxicology fee under subdivision (8a). For example, if an analyst employed by Local Hospital performs a chemical analysis pursuant to G.S. 20-139.1 and then testifies about that analysis at the defendant's trial, and the defendant is convicted, the court would assess a total of \$1,200.00—i.e., \$600.00 for the analysis and another \$600.00 for the analyst's appearance and testimony.

As with other costs under G.S. 7A-304, waiver or reduction of the private hospital toxicology and private hospital employee expert witness fees 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). Both fees are remitted to the State Treasurer for the support of the General Court of Justice.

The lab analyst expert witness fee is a “cost” under G.S. 7A-304(a). Court costs are assessed only upon conviction. The point of assessment is the date of entry of the judgment of conviction, so the fee should be assessed when the entry of the judgment of conviction occurs on or after **December 1, 2014**, regardless of when the actual testimony at trial occurred.

Transfer of State Bureau of Investigation. Various. [S.L. 2014-100, §17.1.]

Effective July 1, 2014, S.L. 2014-100 transferred the State Bureau of Investigation (SBI) to the Department of Public Safety (DPS) and nested the Alcohol Law Enforcement Section (ALE) as branch under the SBI. The Act also made numerous conforming changes to the General Statutes through repeal and revision.

While the transfers will affect the disbursement of money collected pursuant to various fees, they should have little to no effect on the day-to-day business of the courts. For example, Section 17.1.(n) amended several expunction statutes by replacing “Department of Justice” with “Department of Public Safety.” While the change affects where the \$175.00 expunction fees ends up, it does not affect when the fee is to be assessed, the amount of the fee (\$175.00), or the amount of the disbursement (\$52.50 to AOC and \$122.50 to now DPS).⁴

To the extent the transfer will require revisions to AOC forms, those revisions will be made during the annual fall revision cycle.

Expunction Fees. G.S. 15A-146 [S.L. 2014-119, §2.(d)]

There were no changes to the fees assessed for the filing of expunction petitions. In any expunction case where a fee is assessed upon filing of the petition, the amount is unchanged from 2013. However, G.S. 15A-146 was amended by S.L. 2014-119 to require the petitioner to pay the \$175.00 when filing a petition for expunction of a charge that resulted in a dismissal pursuant to a successful conditional discharge. Previously, G.S. 15A-146(d) only required the petitioner to pay the fee when she sought to expunge a charge that resulted in dismissal pursuant to a deferred prosecution. Beginning December 1, 2014, the \$175.00 should be assessed if the dismissal is the result of compliance with either a conditional discharge or deferred prosecution.

Civil Costs

Change to divorce fee allocation. G.S. 7A-305(a2). [S.L. 2013-363, §7.1.]

There were no new changes to the divorce fee allocation in 2014; however, Session Law 2013-360 (Appropriations Act of 2013) changed the fee’s allocation in a two-stage process, the second of which took effect on July 1, 2014. For complaints filed between August 1, 2013 and July 1, 2014, \$35.00 was allocated for the Fund for Displaced Homemakers and \$40.00 for the Domestic Violence Center Fund. Effective July 1, 2014, the second step eliminated the Fund for Displaced Homemakers entirely. The entire fee now is allocated to the Domestic Violence Center for filings on or after that date.

This re-allocation requires no change in the clerk’s procedures for receipting divorce fees as the fee still must be remitted to the State Treasurer. The MFCR/FMS related code for the divorce fee was updated to the new allocation when entered on or after July 1, 2014.

Complex Business Designation fee. 7A-305. [S.L. 2014-102, §4]

Effective October 1, 2014, the fee for designation of a case as a complex business case matter will increase. For actions commenced or petitions filed on or before September 30, 2014, the business court fee is \$1,000.00. For actions commenced or petitions filed on or after October 1, 2014, the business court fee is \$1,100.00. Upon assignment to a business court judge, the party filing the designation shall pay the applicable fee. If the case is designated as a complex business court case pursuant to the court’s own motion or Rules 2.1 and 2.2 of the

⁴ Please see 2013 Legislative Changes for Court Costs and Fees for a comprehensive discussion of current expunction fees.

General Rules of Practice for the Superior and District Courts, the plaintiff shall be responsible for the payment of the fee.