



NORTH CAROLINA
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of the COURTS

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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, Assistant Legal Counsel
Jo McCants, Assistant Legal Counsel
Matt Osborne, Assistant Legal Counsel
Troy Page, Assistant Legal Counsel

DATE: July 1, 2013

RE: 2013 Court Costs - Interim Criminal Cost Legislation

Budget Status and Pending Court Cost Legislation

The General Assembly's 2013 session is ongoing. As of the date of this memo, there is still legislation pending that would affect court costs, mostly in the primary budget bill for 2013. However, the Senate and House of Representatives currently are in conference to resolve the differences in their competing versions of the budget bill, so it is unclear what changes to court costs will appear in the enacted budget or precisely when they will take effect. When the session is concluded, the Administrative Office of the Courts (NCAOC) will distribute a complete memo on court cost changes, updated court cost charts, and additional documentation about court costs. In the interim, this memo concerns a single change in the assessment and collection of costs and fees in criminal cases that is effective immediately.²

Change to Criminal Payment Priority Order - S.L. 2013-225 (HB 343)

Effective immediately, as a result of the enactment of S.L. 2013-225 (HB 343, Courts/Procedure and Fee Amendments),³ the monetary obligations from all criminal and infraction judgments will be paid according to the default priority order of G.S. 7A-304(d), unless otherwise ordered by the court, regardless of the offense date. This change eliminates the differences in the priority order established in 2012 that depended on whether the offense(s) of conviction occurred before or after December 1, 2012.

Background

G.S. 7A-304(d) sets out the default priority order in which monetary obligations imposed in criminal and infraction judgments must be satisfied, unless the court orders a different priority order in an

¹ This memo 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 <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>.

² In addition to the change to criminal payment priority described in this memo, S.L. 2013-225 (HB 343) amends several provisions concerning costs in civil actions, estates and special proceedings. Those changes are detailed in a separate memo with today's date, "2013 Court Costs - Interim Civil, Estate and SP Cost Legislation," which will be posted at the links in the preceding footnote.

³ Full text of the enacted bill is available online at <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H343v6.pdf>.

individual judgment. Prior to December 1, 2012, G.S. 15A-1343(b) (the regular conditions of probation) contained an exception to the default priority order, because it provided that costs associated with substance abuse monitoring or other special conditions of probation were not to be paid prior to other monetary obligations. G.S. 15A-1343(b) effectively pushed several costs owed to the State (fees for community service, electronic house arrest, etc.) into the last position of the payment priority order.

Last year, S.L. 2012-146 (HB 494, Continuous Alcohol Monitoring Law Changes) amended G.S. 15A-1343(b) to delete the requirement that costs associated with substance abuse treatment or special conditions of probation be paid last.⁴ Therefore costs previously paid last as a result of G.S. 15A-1343 were moved up in the priority order to where they otherwise would fall under G.S. 7A-304(d) (generally into the priority step for "Costs due the State" under sub-subdivision (d)(1)f.). However, that change was effective only for offenses committed on or after December 1, 2012. As a result, there have been two different priority orders for payment of monetary obligations since December 1, 2012: one priority order for offenses committed prior to that date, and one for offenses committed on or after it.

S.L. 2013-225 - One Priority Order from This Point Forward

On Sunday, June 30, 2013, the Governor signed into law S.L. 2013-225 (HB 343, Courts/Procedure and Fee Amendments). Section 6 of S.L. 2013-225 provides:

SECTION 6. Notwithstanding the effective date provided for by Section 11 of S.L. 2012-146, effective on the date this act becomes law, all amounts assessed or collected in criminal matters shall be disbursed in accordance with G.S. 15A-1343(b), as amended by Section 4 of S.L. 2012-146.

Therefore S.L. 2013-225 has eliminated the difference in priority order based on offense date. For all judgments entered on or after today, July 1, 2013, the clerk should prioritize payments according to the default priority order in effect since December 1, 2012 (previously applicable only to offenses committed on or after that date), unless otherwise ordered by the court in an individual judgment.⁵

No Changes to FMS

Since December 1, 2012, the default priority order for bills of cost established in FMS has complied with the priority order now in effect, so there will be no changes to the default priority order in FMS as a result of S.L. 2013-225. Bills of cost entered with the default priority order will no longer require manual adjustment based on offense date.

No Retroactive Changes Unless Ordered by the Court

The NCAOC will apply Section 6 of S.L. 2013-225 only prospectively to new judgments entered on or after its enactment. Section 6's provision that it applies to monies "assessed or collected" (emphasis added) on or after its effective date arguably would apply the change retroactively to a judgment entered for an offense committed prior to December 1, 2012. However, G.S. 7A-304(d) provides that the statutory priority order applies "unless otherwise ordered by the presiding judge." FMS has no way to determine whether or not a variation in the priority order for an individual case resulted from the presiding judge's order, so the NCAOC cannot give retroactive effect to Section 6 (*i.e.*, automatically adjusting the priority order for all still-pending monetary obligations) without risking an inadvertent alteration of a priority order specifically ordered by the court. The clerk should not adjust the priority order on bills of cost for judgments entered prior to July 1, 2013, unless ordered specifically to do so by the court.

Conclusion

Court officials with questions about the cost and fee changes described above should contact NCAOC's Court Services Analyst (CSA) or Financial Management Analyst (FMA) for the county.

⁴ For a complete discussion of the 2012 change in priority order, including a table showing the two different priority orders, see the memo of August 6, 2012, "2012 Legislative Changes for Court Costs and Fees" at <http://www.nccourts.org/Courts/Trial/Costs/PriorCC/>.

⁵ The default priority order now in effect for all cases is the order shown on the right-hand side of the priority chart ("Offenses Committed On or After Dec. 1, 2012") in the Appendix to the memo of August 6, 2012, linked in the preceding footnote. That priority order should be applied by default to all cases, regardless of offense date. The priority order on the left-hand side of that chart ("Offenses Committed Before Dec. 1, 2012") is no longer in effect and should not be applied to judgments entered from this point forward.