



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: August 2, 2010
AMENDED October 11, 2010

RE: Legislative Increases in Court Costs and Fees
EFFECTIVE October 1, 2010, unless otherwise noted.

The General Assembly has passed new legislation affecting court costs. The primary legislation affecting court costs is the 2010 budget bill, S.L. 2010-31² (Senate Bill 897, Appropriations Act of 2010, referred to herein as the "Act"), as amended by S.L. 2010-123 (Senate Bill 1202). Other legislation affecting court costs is noted below as needed.

Cost changes in the Act affect filings in civil, criminal and miscellaneous cases and are effective as of **October 1, 2010**, 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.

Two cost increases described below, for the judicial phone systems fee and the additional cost for conviction of motor vehicle offenses under Chapter 20, were effective July 1, 2010. For details of those increases, see the memo of June 25, 2010, "Legislative Increases in Phone Fees and Chapter 20 Violation Fee."

Attached is an updated cost and fee chart, effective October 1, 2010. Please note that there is one entirely new cost (a new DNA fee for criminal cases) in the chart and summarized below. The updated cost charts for 2010 and an electronic copy of this memo are available on the AOC intranet site at

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

² The text of a session law can be found on the General Assembly's website at the following link. 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>

<https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>, and on the NCAOC's internet web site at <http://www.nccourts.org/Courts/Trial/Costs>.

Bills of costs will be updated and made available electronically overnight on Thursday, September 30, 2010. **Other forms** affected by the cost changes (e.g., the AOC-CR-225, -226, and -425, for the increased attorney appointment fee described below) will be updated at the same time. The forms will be available for download in the PDF form directories of TAO-GUI/Conferences/AOC_Forms_Memos. The PDF versions will be available on the AOC'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 in CV cases; 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 with new cost information by October 1st. Cost updates will be included in the next release, which should be available for download in Fall 2010. Starting October 1, 2010, officers will need to write updated cost information manually on the defendant's copy of an eCitation until the next eCitation release is installed. The eCitation team will notify users of the cost changes to be made manually and when the new release will be available for download.

A brief summary 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 cost chart for that case type.

- **General Costs**

- Phone systems fee. As noted above, the judicial phone systems fee increased to \$4.00 in all cost groups to which it applies: criminal, civil, estates and special proceedings. This increase was effective on July 1, 2010, as enacted in 2009. S.L. 2009-451, § 15.20.(b), (e), (g) and (i).

The phone fee is one of the offense-specific costs for adult front-seat seat belt offenses, G.S. 20-135.2A, and offenses for helmet use and passengers on motorcycles and mopeds, G.S. 20-140.4, so those costs increased by \$1.00, effective July 1, 2010, to \$101.50. When the statutory fine for these offenses (\$25.50) is added, the total from July 1, 2010, through September 30, 2010, is \$127.00. Effective October 1, 2010, the \$5.00 increase to the General Court of Justice fee for district court will further increase the costs to \$106.50, for a total of \$132.00.

Although foreclosures are filed as special proceedings, the phone systems fee does not apply to foreclosure filing fees. The phone fee applies only to special proceedings for which costs are assessed under G.S. 7A-306. Foreclosure filing fees are assessed under G.S. 7A-308, which does not include the phone systems fee.

- **Criminal Costs**

- Waiver exception. Cost changes for criminal offenses and infractions are subject to 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 or other criminal processes 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 process. S.L. 2010-123, § 6.1.
- Waiver list updates. The annually-updated list of TRAFFIC OFFENSES FOR WHICH COURT APPEARANCE MAY BE WAIVED (the "waiver list") will be updated by the conference of chief district court judges at their Fall meeting. Until that update is published, the costs listed for front seat belt offenses (waiver list item No. B.9) and helmet/passenger offenses for motorcycles and mopeds (waiver list item No. B.17) will be inaccurate. As stated above for the phone systems fee, the costs for those offenses will be \$106.50 when assessed or collected on or after October 1, 2010. The waiver exception applies to these offenses, so waivers on those offenses for

processes issued prior to October 1, 2010, should be assessed the costs applicable at the time the citation or other criminal process was issued.

- General Court of Justice fee for district court. G.S. 7A-304(a)(4). The district court's criminal General Court of Justice fee will increase by \$5.00, from \$95.50 to \$100.50, effective October 1, 2010. Of the total fee, \$3.00 will continue to be distributed to the N.C. State Bar's civil legal assistance programs (\$2.05) and domestic violence legal services programs (\$0.95). Act § 15.5.(a).
- Failure to comply (FTC) fee. G.S. 7A-304(a)(6).³ The FTC fee for failure to pay any monetary obligation of the court's judgment within 20 days of the date specified in that judgment will increase from the current \$25.00 to \$50.00 when the FTC fee is assessed or collected on or after October 1, 2010. There is no change to the failure to appear fee. Act § 15.5.(a).
- Traffic offense fee. G.S. 7A-304(a)(4a). As noted above, the additional cost for conviction of criminal offenses and infractions under Chapter 20 (motor vehicle offenses) increased from \$5.00 to \$10.00, effective July 1, 2010. This fee does 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 altogether (e.g., failure to burn headlights when windshield wipers are on, G.S. 20-129(a)(4)). S.L. 2009-451, § 15.20.(b).
- Community service fee. G.S. 143B-262.4. The Act increases the community service fee from \$225.00 to \$250.00. The increased fee applies when the order to perform community service is entered on or after October 1, 2010. Act § 19.4, as amended by S.L. 2010-123, § 6.3.⁴
- Supervision fees. G.S. 15A-1343(c1), 15A-1368.4(f), and 15A-1374(c). The supervision fee will increase from \$30.00 per month to \$40.00 per month, effective October 1, 2010. The increase applies to persons placed on probation, parole, or post-release supervision prior to, on, or after that date, so the monthly accrual of supervision fees will increase to \$40.00 for all supervisees. The accrual will occur automatically in FMS, so no action is required on the part of the clerk. The increase applies only to fees that accrue **on or after** October 1, 2010, so there will be no adjustments to supervision fees that accrue through September 2010. Those fees, whether already paid or in arrears, will remain at \$30.00 per month. Act § 19.3.(a).
- Attorney appointment fee. G.S. 7A-455.1(b). The appointment fee will increase from the current \$50.00 to \$60.00, of which \$55.00 is credited to the Indigent Persons' Attorney Fee Fund, and \$5.00 is credited to the Court Information Technology Fund. This increase applies to appointment fees "assessed or collected" on or after the effective date of October 1, 2010, which the NCAOC and Indigent Defense Services understand to mean appointment fees assessed for convictions that occur on or after that date. Appointment fees assessed in a court's judgment prior to October 1, 2010, but collected after that date will remain at the amount assessed in the judgment (*i.e.*, \$50.00). Act § 15.11.
- NEW Criminal Costs and Fees.
 - DNA fee. G.S. 7A-304(a)(9). The General Assembly enacted a new process for collection of DNA samples at arrest for certain offenses. S.L. 2010-94 (House Bill 1403). To support this process, a new \$2.00 fee is assessed at conviction for **all** criminal offenses (not just those for which DNA is taken), to be remitted to the Department of Justice. The new cost applies to conviction of **criminal offenses only**; it does not apply if the defendant is found responsible for only an infraction(s). The new fee is effective October 1, 2010, and is subject to the "waiver exception" described above. S.L. 2010-147, § 7.1.

³ Note: This memo amended October 11, 2010, to correct a typographical error in this citation, formerly listed as G.S. 7A-306(a)(6).

⁴ The community service fee applies to persons ordered to perform community service as a condition of probation or as a condition of parole. As amended in 2009, G.S. 143B-262.4(c) provided that the fee for community service as a condition of *probation* was to be paid in the county of conviction, but the fee for community service as a condition of *parole* was to be paid in the county where the offender was released on parole. One of the technical corrections bills for 2010, S.L. 2010-96, § 28.(c), corrected this discrepancy to specify that *all* community service fees are to be paid to the clerk in the county of conviction.

- **Civil Costs**

- General Court of Justice fees. G.S. 7A-305(a)(2). Effective October 1, 2010, the General Court of Justice fee for civil superior court matters will increase from \$93.00 to \$125.00, and the fee for civil district court cases will increase from \$73.00 to \$80.00. There are no changes to the filing fee for small claims cases or the special assessment for complex business cases. Of the total fee, \$3.00 will continue to be distributed to the N.C. State Bar's civil legal assistance programs (\$2.05) and domestic violence legal services programs (\$0.95). Act § 15.5.(b).
- Filing fees for counterclaims in domestic violence cases. G.S. 7A-305(a1). Court costs may not be assessed for the initiation of a domestic violence action. G.S. 50B-2(a). Other claims for relief (e.g., divorce) filed by subsequent pleading in the same case require the payment of civil filing fees. G.S. 7A-305(a1). However, as enacted in 2007, G.S. 7A-305(a1) provided that the civil filing fees applied only to claims "filed by *amendment* to the original action" (emphasis added). Therefore additional claims made by amendment to the petitioner's original complaint required the payment of filing fees, but counterclaims by the respondent did not. The Act amends G.S. 7A-305(a1) to add that when any counterclaim is filed in a proceeding under Chapter 50B (domestic violence), civil filing fees apply to the counterclaim in the same manner as to additional claims by the petitioner, unless the counterclaim asserts only claims for which relief may be granted under Chapter 50B. The effect of this change is that for any action initiated under Chapter 50B, the first party in the case to assert a non-50B claim on or after October 1, 2010, must pay the applicable civil filing fees, whether that new claim is made in an amendment to the original pleading or by counterclaim. Act § 15.8.
- Resumption of former name. G.S. 50-12(e). A fee of \$10.00 is required for notice of resumption of a former name under G.S. 7A-308(a)(6). However, applications for resumption of former name under G.S. 50-12 (e.g., as an additional claim with or subsequent to a complaint for divorce) currently require no fee. The Act amends G.S. 50-12 to require the payment of a \$10.00 fee for any request for resumption of a former name made under that section on or after October 1, 2010. Act § 15.9.
- Attorney fees/alimony awards. G.S. 50-16.4. Although not a court cost, the Act amends the court's authority to award attorney fees in alimony actions to clarify that the court may award attorney fees to be paid by the supporting spouse. The amendment strikes the phrase "for the benefit of [the dependent] spouse" in response to a 2006 opinion of the Court of Appeals,⁵ which held that the court could not award attorney fees when the dependent spouse was represented by pro bono counsel for which the dependent spouse had incurred no expense. The apparent intent of the legislation is to allow an award of counsel fees to cover the costs of counsel who represent dependent spouses pro bono. This amendment is effective October 1, 2010, and applies to fees for services rendered on or after that date. S.L. 2010-14.

- **Estates Costs**

- Except for the phone systems fee noted above, there are no changes to estates costs.

- **Special Proceedings Costs**

- Except for the phone systems fee noted above, there are no changes to special proceedings costs.

- **Miscellaneous Costs**

- Filing fee for paternity agreements, voluntary support agreements, etc. G.S. 7A-308(a)(18). For several years, there has been a discrepancy between two statutes that specify the fee for filing "agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133," such as paternity acknowledgements and voluntary support agreements. Since 2002,

⁵ *Patronelli v. Patronelli*, 175 N.C. App. 320, 623 S.E.2d 322 (2006).

G.S. 7A-308(a)(18) has required a fee of \$6.00, while G.S. 110-134 specified a fee of \$4.00.⁶ Most counties correctly have been assessing the higher fee under G.S. 7A-308. The Act amends G.S. 110-134 to confirm this practice, specifying that the fee for such filings is “equal to that provided in G.S. 7A-308(a)(18).” Act § 15.6.

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)

⁶ The discrepancy was created by S.L. 2002-126, § 29A.13.1, which increased the fee under G.S. 7A-308 but failed to make a conforming change in G.S. 110-134.