

**2011 COSTS AND FEES CHANGES - FREQUENTLY ASKED QUESTIONS**

PURSUANT TO S.L. 2010-145

(AS AMENDED BY S.L. 2011-192 (HB 642), S.L. 2011-391 (HB 22), AND OTHER LEGISLATION)

COSTS EFFECTIVE JULY 1, 2011

FAQ Prepared July 5, 2011

**Note:** All of the answers to the following frequently asked questions (FAQ) reflect the interpretation of the relevant fee provisions by the Administrative Office of the Courts (NCAOC). Individual orders of the court may direct otherwise, and should be followed notwithstanding any advice below. Any party's dispute concerning the validity of a court's judgment must be addressed to the court, not to the clerk.

**I. CRIMINAL COSTS – G.S. 7A-304 AND RELATED STATUTES**

QUESTION	ANSWER
<b>A. General Criminal Cost Questions</b>	
Q: What are the basic court costs when assessed on or after July 1, 2011?	A: Basic court costs for each type of conviction are provided in the "Criminal Costs Summary," appended to the end of the annual court costs chart.
Q: If the defendant was convicted in court and the court assessed costs prior to July 1, 2011, but the court gave the defendant until after July 1 to pay, does the defendant have to pay the new costs when he comes in to pay?	A: No. The defendant's obligations were fixed in the court's judgment, so he pays the costs specified in the judgment.
Q: We heard there was a new fee for improper equipment, higher jail fees, a DWI fee, and other new costs. Where are they in the chart?	A: Several new court costs were ratified in legislation that does not take effect until later in the year. Other proposed fees were not enacted at all. The NCAOC will distribute additional information on new and amended court costs closer to the effective dates of those changes.
Q: Does the new requirement that the judge make a "written finding of just cause" to waive costs apply when the judge strikes a failure to appear?	A: No.  The requirement of written findings applies only when the court waives a cost or fee assessed under G.S. 7A-304. If the court strikes the FTA entirely, then there is no fee to waive.  If, on the other hand, the court does not strike the FTA from the case, but instead just forgives the FTA fee when entering judgment, the written finding would be required.
Q: Does the requirement of a "written finding of just cause" apply when the judge waives <i>any</i> cost or fee?	A: No. The requirement of written findings of just cause applies only to costs "under <i>this section</i> " (emphasis added), meaning G.S. 7A-304. The written finding of just cause therefore is required <i>only</i> when the court waives one or more of the following:  <ul style="list-style-type: none"> <li>▪ Service of process fee</li> <li>▪ Facilities fee</li> <li>▪ Phone systems fee</li> <li>▪ LEO retirement/benefit fees</li> <li>▪ LEO training/cert. fee</li> <li>▪ General Court of Justice fee</li> <li>▪ Chapter 20 fee</li> <li>▪ Pretrial services fee</li> <li>▪ FTA fee (but see above)</li> <li>▪ FTC fee</li> <li>▪ SBI or local lab test fee</li> <li>▪ DNA fee</li> <li>▪ Witness fee</li> <li>▪ Jail fee</li> <li>▪ Blood test fee</li> </ul>

QUESTION	ANSWER
<b>B. The “Waiver Exception,” G.S. 7A-304(g).</b> S.L. 2011-145, § 31.23B, as enacted by S.L. 2011-391 § 63.(b).	
Q: The effective date on the new costs just says “July 1, 2011.” Do defendants who plead guilty or responsible by waiver have to pay the new costs if they waive after that date?	A: No. The “waiver exception” has now been codified in the criminal costs statute.  Effective July 1, 2011, G.S. 7A-304(g) provides that, for defendants who waive in cases “in which the citation or other criminal process was issued before the effective date [of the change in costs],” the costs are those in effect after the change or those specified on the defendant’s copy of the process, whichever is <i>less</i> .  So defendants who waive on citations or other processes issued prior to July 1, 2011, should be assessed the costs in effect at the time the process was issued. However, if the defendant attempts to waive more than 20 days after a failure to appear, the waiver exception does not apply; see the next question.
Q: Does the waiver exception apply to older cases in which the defendant failed to appear but is allowed to plead guilty as if it were a waiver on or after July 1, 2011?	A: No. If the person failed to appear and twenty days have passed since the court date on which he failed to appear, he must pay the new costs amounts. However, he pays the fine that was in effect at the time of the offense.  Under the codified waiver exception, G.S. 7A-304(g), defendants who waive are allowed to pay the old costs only if they waive “within the time limit imposed by G.S. 7A-304(a)(6)” (the FTA provision), so defendants in FTA status no longer get the benefit of the waiver exception and must pay the new costs (plus the FTA fee).  However, because the State and federal constitutions prohibit increasing a person’s punishment retroactively, the courts must assess the fine for the offense in effect at the time of the offense.  Therefore the rule for any person in FTA status who is allowed to pay off an old charge as if it was a waiver is “old fine, new costs.”
Q: Does the waiver exception apply to a defendant who is waiving a worthless check offense on a process issued prior to July 1?	A: No. The waiver exception applies only to timely waivers of “waiver list offenses” under G.S. 7A-180(4) and G.S. 7A-273(2). Worthless check offenses are waived under other subsections of those statutes that are not covered by the waiver exception, so worthless check defendants must pay the new costs even when waiving.

QUESTION	ANSWER
<p>Q: What if the charging officer wrote an incorrect costs amount on the citation? Must the clerk charge the amount written by the officer?</p>	<p>A: No. Although the text of the waiver exception provides that the defendant may pay the lesser of the costs in G.S. 7A-304 or those “specified in the notice portion of the ... citation or other criminal process,” a law enforcement officer has no authority to alter the costs amounts set by the General Assembly, so an inadvertent entry of incorrect costs does not change what the defendant owes.</p> <p>If the officer lists an amount that is too high, the clerk will need to refund any overpayment by the defendant. If the officer lists an amount that is too low, the clerk will need to obtain the difference from the defendant.</p>
<p>Q: Does the waiver exception apply if the defendant waives after the district attorney has entered a misdemeanor statement of charges (including a reduction noted on the original citation or other process) to replace the original charge?</p>	<p>A: The law is not clear, but the NCAOC takes the position that the waiver exception applies in this situation. The waiver exception applies when:</p> <ol style="list-style-type: none"> <li>1. The offense is a misdemeanor or infraction;</li> <li>2. The defendant pleads guilty by waiver; and</li> <li>3. The “citation or other criminal process” was issued before the effective date of an increase in costs.</li> </ol> <p>Although a misdemeanor statement of charges supersedes a previous criminal pleading, G.S. 15A-922(a), a statement of charges is not a “criminal process” as defined in G.S. 15A-301. So if the original process was issued prior to July 1, 2011, the waiver exception would appear to apply.</p> <p>Note that the clerk should assess the fine and costs applicable to the amended charge(s) on the misdemeanor statement (or amended citation), not the original charge(s) on the original process.</p>
<p>Q: Does it matter if the misdemeanor statement was filed on or after July 1, 2011?</p>	<p>A: No. If the original process was issued prior to July 1, the waiver exception applies, even if the modification of the charge occurs after that date.</p>
<p><b>C. AOC-CR-381 – Criminal Bill of Costs</b></p>	
<p>Q: Why does the bill of costs list the General Court of Justice fee (GCJF) as \$2.45 less than the amount in the costs chart?</p>	<p>A: The GCJF includes \$2.45 allocated to the State Bar for provision of civil legal services to indigents. Because that portion of the GCJF is allocated to a specific agency rather than the General Fund, it is listed on the criminal bill of costs with the appropriate account numbers for proper distribution in each of the three GCJF line items (magistrate, district, and superior).</p>

II. CIVIL COSTS – G.S. 7A-305

QUESTION	ANSWER
<b>A. General Civil Cost Questions</b>	
<p><b>Note:</b> For questions about cover sheets that are not specific to the assessment of court costs, see the memo “Revisions to Cover Sheet Requirements,” June 28, 2011, posted with the 2011 court cost documentation at <a href="http://www.nccourts.org/Courts/Trial/Costs/">http://www.nccourts.org/Courts/Trial/Costs/</a>.</p>	
<p>Q: Our Sheriff insists that they are now entitled to \$30.00 for civil service of process. The cost chart still says \$15.00. Who's right?</p>	<p>A: Unless further amended by subsequent legislation, the civil service of process fee will rise to \$30.00 effective August 1, not July 1. That fee increase was contingent on House Bill 642, and, pursuant to section 7.(n) of that bill, is not effective until August 1.</p>
<p>Q: What is the basic filing fee for divorce?</p>	<p>A: \$225.00. G.S. 7A-305(a2) provides that the divorce fee “shall be in addition to any other costs assessed under this section.” Therefore the base filing fee is the sum of the divorce fee of subsection (a2) (\$75.00) and the regular District Court filing fees (now \$150.00): \$225.00.</p>
<p>Q: Plaintiff wants to file an amended complaint, and leave of the court is not required because a response hasn't been served or isn't required. Does plaintiff have to pay any additional filing fees?</p>	<p>A: No. There will be no fee charged for the Plaintiff to amend their complaint without leave of the court. Note that the motion fee of G.S. 7A-305(f) would apply if the Plaintiff applied to the court (by motion) for permission to file an amended complaint. But if the Plaintiff is filing the amended complaint and no action is required from the court to allow them to file an amended complaint, there is no charge.</p>
<p>Q: Plaintiff just filed an amended complaint to add a new claim against the defendant. Does the clerk assess the civil filing fees again?</p>	<p>A: No. However, if Plaintiff requests an alias and pluries summons or endorsement to serve the amended complaint, the fee for issuance of an alias and pluries summons or endorsement applies.</p>
<p>Q: Plaintiff just filed an amended complaint to add a new defendant to the suit. Does the clerk assess the civil filing fees again?</p>	<p>A: No. However, like the previous answer, if Plaintiff requests an alias and pluries summons or endorsement to serve the amended complaint, the fee for issuance of an alias and pluries summons or endorsement applies.</p>

QUESTION	ANSWER
<p>Q: A party wants to file a complaint (or a counterclaim, cross-claim, or motion), or request an alias &amp; pluries summons or endorsement, but the party doesn't have the fees and hasn't been approved to proceed as an indigent. Should the clerk take the filing or refuse it?</p>	<p>A: This is within discretion of the clerk.</p> <p>Costs should always be paid at the time of filing for any filing for which a fee is due. G.S. 7A-305(c) states, "The clerk of superior court, at the time of the filing of the papers initiating the action ..., shall collect as advance court costs, the facilities fee, General Court of Justice fee... except in suits by an indigent." This requires the filing party to pay the fee when the document is filed.</p> <p>In the Rules of Record Keeping, Rule 3.4, Advanced Costs, Comment B states "The clerk may refuse to file any action not accompanied by all appropriate fees. Where no advance fee is included with a complaint filed by mail, or when the amount sent is less than required, the clerk has the option to accept the filing for payment at a later time or refuse the case for filing. In either situation the clerk should notify the plaintiff or the plaintiff's attorney. If the complaint is accepted for filing, the clerk should note the fact that the notice was sent to the plaintiff on the face of the complaint."</p> <p>Because the fees for cross-claim or counterclaim, alias and pluries summons, endorsement to summons, and motions are all new to the courts and to litigants and attorneys, it may take some time for persons filing these documents to realize an additional fee is needed. In accordance with Rule 3.4 the elected Clerk has the discretion to either accept a filing with payment at a later time or to reject the filing.</p>
<p><b>B. Counterclaim and Cross-Claim Fees - G.S. 7A-305(a5)</b></p>	
<p>Q: Does the counterclaim fee apply if a party files a document that only contains an answer or reply, without any motions and without asserting any claims of his own?</p>	<p>A: No. There are no fees for an answer or reply that asserts no claims and makes no motions.</p>
<p>Q: What if a party files an answer with either a counterclaim <b>or</b> a cross-claim?</p>	<p>A: The filing fee for a counterclaim/cross-claim must be assessed.</p>
<p>Q: What if a party files an answer with both a counterclaim <b>and</b> a cross-claim?</p>	<p>A: Only <b>one</b> counterclaim/cross-claim filing fee should be assessed. The fees of subsection (a5) apply only to "a pleading containing one <i>or more</i> counterclaims or cross-claims" (emphasis added), so the fee is assessed only once for the <i>pleading</i>, not based on the number of claims asserted therein.</p>
<p>Q: What if the defendant's answer includes a counterclaim and a motion to dismiss the plaintiff's case. Does defendant pay both the counterclaim fee and the motion fee?</p>	<p>A: Yes. G.S. 7A-305(a5) applies to any "pleading containing one or more counterclaims or cross-claims," so the counterclaim fees apply to the defendant's pleading.</p> <p>In addition, G.S. 7A-305(f) assesses the motion fee for "any filing containing one or more motions," unless the motion is exempt by law. The defendant's answer is a filing, and a motion to dismiss is not one of the exempt motion types, so the motion fee also must be assessed for the defendant's answer.</p>

QUESTION	ANSWER
<p>Q: What if the defendant's counterclaims are the same issues as in the plaintiff's complaint?</p> <p>For example, if the plaintiff files for divorce, and then the defendant files an answer that counterclaims for divorce (and nothing else), does the defendant have to pay the counterclaim fees?</p>	<p>A: Yes. Subsection (a5) applies to any "pleading containing one or more counterclaims or cross-claims." The presence of <i>any</i> counterclaim in the pleading triggers the fee, even if the relief requested in the counterclaim is substantively the same as in the plaintiff's complaint.</p>
<p>Q: Plaintiff filed a complaint and paid the filing fees. Defendant filed a counterclaim against plaintiff and paid the counterclaim fee. Plaintiff now wants to file an answer to defendant's counterclaim, and the answer includes a cross-claim against a third party. Does plaintiff pay the cross-claim fee, even though he already paid the filing fees for his complaint?</p>	<p>A: Yes. Subsection (a5) applies to any "pleading containing one or more counterclaims or cross-claims." Because the plaintiff's answer contains a cross-claim, the filing fees of subsection (a5) must be assessed.</p>
<p>Q: A third-party defendant files an answer to a cross-claim, and the answer includes a counterclaim or cross-claim. Must the third-party defendant pay the counter/cross-claim fees?</p>	<p>A: Yes. As explained above, because the pleading contains a counterclaim or cross-claim, the fees apply.</p>

<b>C. Civil Motion Fee - G.S. 7A-305(f)</b>	
<b>1. General Motion Fee Questions</b>	
Q: What if a motion is made orally in open court? Does the motion fee apply?	A: No. The motion fee, codified in G.S. 7A-305, 7A-306, and 7A-307, applies only to “any filing containing one or more motions.” Oral motions are not “filings,” so they do not trigger the fee.
Q: What if it is a clerk or judge who makes the motion? Does the motion fee apply?	A: No. Motions made <i>ex mero motu</i> (of the court’s own accord) by the presiding official do not trigger the fee.
Q: Is the motion fee assessed if the motion is contained in a party’s answer or reply?	A: Yes. The motion fee applies to “any filing containing one or more motions,” so the fee must be assessed, unless the motion is exempt from the fee by law (see the appendix to the relevant cost chart for a list of exempt motions).
Q: A party has filed multiple motions in a single document, and none of them is exempt from the motion fee. Is the fee assessed separately for each motion in the filing?	A: No. The fee applies to “any filing” containing one or more motions. The fee is assessed only once for the filing.
Q: A party has filed multiple motions, each in a separate document. Is the fee assessed separately for each motion?	A: Yes. The fee applies to “any filing” containing one or more motions. Because the party has made multiple filings, the fee applies separately to each filing that contains a non-exempt motion.
Q: I read that the motion fee isn't required in estates cases where there will be no hearing on the motion. What about civil cases and special proceedings?	A: The no hearing exception <u>only</u> applies in estates, it does not apply to special proceedings or civil cases.
<b>2. Child Support Motion Fee Exemption</b>	
Q: Does the motion fee apply to motions filed in a IV-D child support case?	A: No. IV-D cases ( <i>e.g.</i> , if Child Support Enforcement represents the mother or father) are governed by G.S. Chapter 110, Article 9, so the fee does not apply to them.
Q: Does the motion fee apply to <b>non-IV-D</b> cases?	A: Yes. If neither the mother nor father is represented by Child Support Enforcement, the clerk should charge the motion fee.  However, the fee does not apply to a motion for income withholding under G.S. 110-136.5, even in a non-IV-D case; that specific remedy is in Chapter 110, Article 9, so it is exempt from the motion fee.

<p>Q: If child support is just one issue in a case, does the motion fee apply to motions about other claims in the case, like divorce, equitable distribution, visitation, etc?</p>	<p>A: Yes. As noted above, the motion fee exemption for child support actions applies only to IV-D matters under G.S. Chapter 110, Article 9. All other domestic matters are subject to the motion fee.</p> <p>Note that if there are non-support issues in a case (<i>e.g.</i>, divorce), even child support motions in the case probably are not exempt from the motion fee. Child Support Enforcement typically does not intervene in a domestic case just for IV-D purposes; the IV-D action generally is a separate case. So if a case includes non-support domestic issues, it's probably not a IV-D case, and only a wage withholding motion (described in the previous question) would be exempt from the fee.</p>
<p><b>3. Questions about Specific Motions</b></p>	
<p>Q: Does the motion fee apply to a judgment debtor's motion to claim exemptions?</p>	<p>A: Yes. A judgment debtor will be charged the filing fee to file a motion to claim exemptions. However, if the judgment debtor files a petition to sue as an indigent and the court approves the petition, the motion fee would not apply.</p>
<p>Q: Does the motion fee apply to set-aside motions, petitions for remission, and the schools' motions for sanctions in bond forfeiture proceedings?</p>	<p>A: No. Although they originate in criminal cases, bond forfeiture proceedings are civil in nature. <i>State v. Pelletier</i>, 168 N.C. App. 218 (2005). However, forfeiture proceedings are not "civil actions" within the context of G.S. 7A-305, so the fees of that section do not apply.</p>
<p>Q: Does the motion fee apply to a motion for entry of default or a motion for default judgment?</p>	<p>A: Yes. (But if both motions are made in the same document, the fee is assessed only once.)</p>
<p>Q: Will the motion fee be charged for a Notice of Voluntary Dismissal?</p>	<p>A: No. If the filing is a Notice of Voluntary Dismissal rather than a Motion to Dismiss, no motion filing fee will be charged. A Notice of Voluntary Dismissal under Rule 41 of the NC Rules of Civil Procedure is not an application to the Court for an Order. Therefore, it is not a motion, and the motion fee is not charged.</p>
<p><b>D. Alias &amp; Pluries Summons/Endorsement Fee - G.S. 7A-308(a)(21)</b></p>	
<p>Q: In a case with two defendants listed on the same summons, what will the Clerk charge for the issuance of an alias and pluries summons or an endorsement? Will the fee be charged per summons or per defendant?</p>	<p>A: One fee per summons.</p> <p>Remember, the alias and pluries or endorsement fee is separate from the service fee charged by the sheriff. Although the service of process fee is charged per defendant (because each defendant will be served individually), the Clerk should charge the alias and pluries summons/endorsement fee per summons issued/endorsed, only. In this case, the clerk would charge one fee of \$15.00 for the alias and pluries summons or endorsement because the Clerk is only issuing one summons.</p>

<p>Q: What if there are four defendants and the plaintiff has filled out two summonses because they can't fit all four defendants on one summons? Would the clerk charge one alias and pluries/endorsement fee, or two?</p>	<p>A: Two fees. In this case, the clerk will be issuing two summonses with two defendants on each. Therefore, the clerk will charge \$15.00 per summons for a total of \$30.00.</p>
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### III. SPECIAL PROCEEDING COSTS – G.S. 7A-306 AND G.S. 7A-308

QUESTION	ANSWER
<p><b>Note:</b> For questions about cover sheets, unrelated to court cost questions, see the memo “Revisions to Cover Sheet Requirements,” June 28, 2011, posted with the 2011 court cost documentation at <a href="http://www.nccourts.org/Courts/Trial/Costs/">http://www.nccourts.org/Courts/Trial/Costs/</a>.</p>	
<p><b>A. General Special Proceeding Cost Questions</b></p>	
<p>There are no frequently asked questions about general special proceeding fees at this time.</p>	
<p><b>B. Special Proceeding Motion Fee - G.S. 7A-306(g)</b></p>	
<p>See the questions and answers under section C.1., “General Motion Fee Questions” of “II. Civil Costs,” above. Except as noted below, the answers applicable for motion fee issues in general civil actions will apply equally to the motion fee in special proceedings.</p>	
<p>Q: Does the motion fee apply in foreclosures under power of sale?</p>	<p>A: No. In accordance with in G.S. 7A-306(f), the fees in G.S. 7A-306 (including the motion fee in subsection (g)) do not apply to foreclosures under power of sale in a deed of trust or mortgage.</p>

#### IV. ESTATE COSTS – G.S. 7A-307

QUESTION	ANSWER
<p><b>Note:</b> For questions about cover sheets, unrelated to court cost questions, see the memo “Revisions to Cover Sheet Requirements,” June 28, 2011, posted with the 2011 court cost documentation at <a href="http://www.nccourts.org/Courts/Trial/Costs/">http://www.nccourts.org/Courts/Trial/Costs/</a>.</p>	
<b>A. General Estate Cost Questions</b>	
<p>There are no frequently asked questions about general estate fees at this time.</p>	
<b>B. Estate Motion Fee - G.S. 7A-306(g)</b>	
<p>See the questions and answers under section C.1., “General Motion Fee Questions” of “II. Civil Costs,” above. Except as noted below, the answers applicable for motion fee issues in general civil actions will apply equally to the motion fee in estates.</p>	
<p>Q: When would the “no hearing” exclusion apply in an estates case? (<i>i.e.</i>, when would a party <b>not</b> have to pay the motion filing fee in an estate case?)</p>	<p>A: Motions in estate cases that do not require a hearing are exempt from the motion fee.</p> <p>The following situations involve motions that would not require a hearing and therefore do not require a motion fee:</p> <ul style="list-style-type: none"><li>▪ A motion for emergency removal of a guardian under G.S. 35A-1291.</li><li>▪ A motion for summary revocation of letters testamentary or administration under G.S. 28A-9-2.</li><li>▪ A motion to extend time to file an accounting in an estate file.</li></ul>

#### V. MISCELLANEOUS COSTS – G.S. 7A-308

QUESTION	ANSWER
<p>There are no frequently asked questions about miscellaneous fees at this time.</p>	