



ADMINISTRATIVE OFFICE 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: Jonathan Harris, General Counsel
Amy Funderburk, Assistant Legal Counsel
Elizabeth Croom, Assistant Legal Counsel
Deana Fleming, Assistant Legal Counsel
Tina Krasner, Assistant Legal Counsel
Jo McCants, Assistant Legal Counsel
Matt Osborne, Assistant Legal Counsel
Troy Page, Assistant Legal Counsel
Laura Allison Smith, Assistant Legal Counsel

DATE: July 31, 2017

RE: 2017 Legislative Changes for Court Costs and Fees

The General Assembly enacted the following legislation affecting court costs during this past legislative session:

- SB 257 (S.L. 2017-57, Appropriations Act of 2017)²
- HB 528 (S.L. 2017-___, 2017 Budget Technical Corrections Act)³
 - HB 528 became law at 12:01 a.m. this morning. At the time of publishing, HB 528 has not yet been assigned a session law number. For this reason, it will be referred to as “HB 528” throughout this memo.
- HB 236 (S.L. 2017-158, NCAOC Omnibus Bill)⁴

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 <http://ncga.state.nc.us/Sessions/2017/Bills/Senate/PDF/S257v9.pdf>

³ <http://ncga.state.nc.us/Sessions/2017/Bills/House/PDF/H528v5.pdf>

⁴ <http://ncga.state.nc.us/Sessions/2017/Bills/House/PDF/H236v6.pdf>



This memo may not be the only costs memo for 2017. The General Assembly plans to convene twice more this year, on August 3 and September 6. In the event any further legislation is enacted affecting court costs, additional guidance will be provided in a supplemental court costs memo.

This memo only addresses costs and cost procedures that are *changing* on a particular date. 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. 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.⁵

Effective Dates

The effective dates of the cost changes contained in these three bills vary. Some cost changes in the Appropriations Act became effective when the Act became law on June 28, 2017. But as we explained in our June 30, 2017 communication to judicial officials, due to the number of adjustments that must be made to our automated systems, immediate implementation of those changes was not possible.

Therefore, for those costs changes made effective on June 28, 2017, AOC will implement those costs changes on August 1, 2017. The effective dates for other changes will be noted throughout the memo.

Bills of Costs

Bills of costs will be updated and made available electronically overnight on July 31, 2017. Any other forms affected by the cost changes will be updated during the regular forms revision cycle this year; 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>.

Financial Management System (FMS) and Cash Receipting

FMS and cash receipting will be updated overnight on July 31, 2017. Any new account numbers will be posted in the FMS Message Center at the appropriate time. Any necessary instructions about changes to other applications will be distributed by the relevant application team.

Repeal of the Access to Civil Justice Act and Resulting Changes in the Allocations of Costs

Section 18B.10.(c) of S.L. 2017-57 repealed the Access to Civil Justice Act (formerly Chapter 7A, Article 37A of the N.C. General Statutes). Prior to the repeal of the Act, \$1.50 from the General Court of Justice fee (GCJ fee) paid in criminal cases, civil actions (including counterclaims, third-party complaints, and cross-claims), special proceedings, and estates was allocated to the North Carolina State Bar to fund legal aid services described under the Act.

With repeal of the Act and the enactment of related legislation, the General Assembly has removed the \$1.50 GCJ fee allocation to the North Carolina State Bar for each type of case, action, and proceeding listed below.⁶ **The removal of the \$1.50 GCJ fee allocations DOES NOT CHANGE the total amount of**

⁵ <http://www.nccourts.org/Courts/Trial/Costs/> See the “Prior Court Costs” link at the left side of the page.

⁶ The \$0.95 allocation from the GCJ fee to the North Carolina State Bar for the provision of domestic violence legal services described under G.S. 7A-474.18 is **not affected** by the removal of the \$1.50 allocation for legal services described in the Access to Civil Justice Act.

the GCJ fee a party or a convicted defendant pays to the Clerk. Court cost totals and amounts are not changing. Only the allocation of the GCJ fee changes. The former \$1.50 allocations will now stay in the General Fund.

The following is a summary of the allocation changes:

- Section 18B.10.(a) of S.L. 2017-57 removes from G.S. 7A-304(a)(4) the \$1.50 GCJ fee allocation for costs paid in criminal cases. This applies to criminal cases before a magistrate and cases in district and superior court.
- Section 18B.10.(b) of S.L. 2017-57 removes from G.S. 7A-305(a)(2) the \$1.50 GCJ fee allocation for costs paid when pleadings are filed to initiate civil actions. This applies to civil suits in magistrate's court, district court and superior court.
- Section 5.4A.(a) of HB 528 removes from G.S. 7A-305(a5)(3) the \$1.50 GCJ fee allocation for costs paid when a civil party files a pleading containing one or more counterclaims, third-party complaints, or cross-claims. This applies to civil suits in magistrate's court, district court and superior court.
- Section 5.4A.(b) of HB 528 removes from G.S. 7A-306(a)(2) the \$1.50 GCJ fee allocation for costs paid in special proceedings.
- Section 5.4A.(c) of HB 528 removes from G.S. 7A-307(a)(2) the \$1.50 GCJ fee allocation for costs paid in estate administration and other estate proceedings.

The changes contained in S.L. 2017-57 were made effective on June 28, 2017. The changes contained in HB 528 were made effective July 31, 2017. But as discussed in the "Effective Dates" section above, the implementation date for all of these changes will be August 1, 2017.

Criminal Court Costs

NEW Criminal Digital Forensics Laboratory Fees and Digital Forensics Analyst Expert Witness Fees

S.L. 2017-57, Section 18B.5.(a) creates two new \$600.00 digital forensics fees, one for when the services of the State Crime Laboratory are used, and one for when the services of a local crime lab are used. Section 18B.5.(a) also creates two new \$600.00 digital forensics expert witness fees, one for when experts employed by the State Crime Laboratory testify, and one for when experts employed by a local crime laboratory testify. These new fees are to be assessed by a district or superior court judge upon a defendant's conviction, or when costs are assessed against the prosecuting witness.

Digital Forensic Fees

S.L. 2017-57, Section 18B.5.(a) codifies the two new digital forensic fees by adding two subsections to G.S. 7A-304(a)—subsection (9a) (State labs) and subsection (9b) (local labs). These fees shall be assessed only in cases where, as a part of the investigation leading to the defendant's conviction, a state or local laboratory has performed digital forensics. This includes the seizure, forensic imaging, and acquisition and analysis of digital media.

For local labs, in addition to the conditions set forth above, the court must find that the work performed at the local government's laboratory is the equivalent to the digital forensics work performed by the State crime laboratory prior to assessing the local fee.

Expert Witness Fees for Digital Forensics Testimony

S.L. 2017-57, Section 18B.5.(a) amends G.S. 7A-304(a)(11) and (a)(12) to add \$600.00 expert witness fees for digital forensics testimony—(a)(11) for State lab experts, (a)(12) for local lab experts. These fees are to be assessed upon a defendant's conviction when a digital forensics analyst provides expert witness testimony about the digital forensics analysis in the defendant's trial.

Remission of Fees to the Department of Justice or a Local Government Unit

As with other criminal lab and expert witness fees in G.S. 7A-304(a), the State digital forensics and expert witness fees are remitted to the Department of Justice. The local digital forensics and expert witness fees are remitted to the general fund of the local governmental unit that operated the local laboratory used.

Effective Date of the Fees

The fees described above were made effective on June 28, 2017. But as discussed in the "Effective Dates" section on page 2, the implementation date for these changes is August 1, 2017.

NEW Process for Waiver or Remission of Criminal Court Fines or Costs (Fee Waiver Provision)

Effective December 1, 2017, and applicable to all cases arising on or after that date, prior to waiving or remitting all or any part of any criminal fines or costs under G.S. 7A-304(a), a court is required to provide all government entities directly affected by the waiver notice and an opportunity to be heard. The court is required to provide to these government entities (i) the date and the time of the hearing and (ii) the right to be heard and make an objection to the remission or waiver of all or part of the order of court costs at least 15 days prior to hearing.

The court is required to provide this notice to the affected government entities by first-class mail to the address provided for receipt of court costs paid pursuant to the order.

There are several legal and technical complexities raised by this new waiver provision. NCAOC is still evaluating these issues and will provide additional guidance on this topic prior to the provision's effective date of December 1, 2017.

Criminal Cost Allocation Change Due to the Repeal of the Access to Justice Act

Refer to the "Repeal of the Access to Civil Justice Act and Resulting Changes in Allocations of Costs" section on page 2 to see the \$1.50 GCJ fee allocation change for criminal cases.

Civil Court Costs

There were no changes to civil costs paid by a party, except for the \$1.50 GCJ fee allocation change noted in the "Repeal of the Access to Civil Justice Act and Resulting Changes in Allocations of Costs" section on page 2.

Special Proceedings Court Costs

There were no changes to special proceedings costs paid by a party, except for the \$1.50 GCJ fee allocation change noted in the “Repeal of the Access to Civil Justice Act and Resulting Changes in Allocations of Costs” section on page 2.

Estates Court Costs

NEW Removal of the Requirement to Pay Certain Fees Upon the Filing of Inventories and Accounts

The estates costs provisions of G.S. 7A-307 apply to the administration of various types of estates, including, but not limited to, estates of decedents, minors, and incompetents. There were no changes to the amounts and categories of estates costs paid in these matters. However, the requirement that certain fees must be paid at the time of the filing of an inventory or account has been removed.

Previously, the Clerk was required to collect the fees referenced in G.S. 7A-307(a)(2) and 7A-307(b) when the inventory was filed with the Clerk. Section 13 of S.L. 2017-158 amends G.S. 7A-307(a)(2) and 7A-307(b) to remove this requirement. For additional gross estate amounts received after the filing of the inventory, the amendment also eliminates the requirement that additional gross estate fees must be paid at the time of the filing of the account or report that discloses the additional value.

The current statutory method of computing the gross estate fee due and the minimum and maximum total fees remains unchanged. These changes also do not affect when fees are paid in collections of personal property by affidavit or when the sole asset of the estate is a cause of action (wrongful death estates, for example).

With the elimination of the requirements to pay gross estate fees upon the filing of an inventory, report, or account, the fees computed based on all inventories and accounts would have to be paid, at a minimum, before a Final Account is approved.

The effective date of this provision was July 21, 2017 and applies to inventories and accounts filed on or after that date.

Estates Cost Allocation Change Due to the Repeal of the Access to Justice Act

Refer to the “Repeal of the Access to Civil Justice Act and Resulting Changes in Allocations of Costs” section on page 2 to see the \$1.50 GCJ fee allocation change for estate proceedings.

For Further Assistance

Court officials with questions or concerns about the costs and fee changes described should contact NCAOC’s Training & Development Field Support Analyst (formerly Court Services Analyst) assigned to their county. The most current County/District Field Assignments can be found at the following Juno link:

<http://juno.nccourts.org/sites/default/files/Directories%20Files/county-district-field-assignments.pdf>.