



ADMINISTRATIVE OFFICE OF THE COURTS

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## MEMORANDUM

TO: Superior Court Judges, District Court Judges, Clerks of Superior Court, District Attorneys, Public Defenders

FROM: Jonathan Harris, General Counsel

DATE: November 13, 2017

SUBJECT: New Fee Waiver Provision in the 2017 Appropriations Act

### Introduction and Overview

The 2017 Appropriations Act (the Budget Act) added new procedural requirements for waiving court costs and fines in criminal cases. The new requirements are effective December 1, 2017. In general, prior to waiving court costs or fines, a court must send notice to all government entities directly affected by such waiver that they have the opportunity to be heard and object to the waiver. The notice must be provided at least 15 days prior to the hearing.

For purposes of brevity, this new provision will be referred to as the “Fee Waiver” provision throughout the memo.

The memo begins by detailing certain aspects of the Fee Waiver provision. It then gives general guidance for implementation.

### The Fee Waiver Provision in the Budget Act<sup>1</sup>

#### FEE WAIVER

**SECTION 18B.6.(a)** G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. No costs may be assessed when a case is dismissed. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8), (8a), (11), (12), or (13) of this section. No court may waive or remit all or part of any court fines or costs without providing notice and opportunity to be heard by all government entities directly affected. The court shall provide notice to the government entities directly affected of (i) the date and 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. Notice

<sup>1</sup> Session Law 2017-57, Sections 18B.6.(a) and (b) (<https://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2017-2018/SL2017-57.html>).



shall be made to the government entities affected by first-class mail to the address provided for receipt of court costs paid pursuant to the order.

**SECTION 18B.6.(b)** This section becomes effective December 1, 2017, and applies to all cases arising on or after that date.

### **Interpretation of “Cases Arising on or After”**

The Fee Waiver provision applies to all cases “arising on or after” December 1, 2017. The NCAOC interprets this to mean that a case “arises” when it is at any point where the court is contemplating waiving costs. The NCAOC doesn’t consider this to mean cases “filed” or offenses committed on or after December 1, 2017.

### **Written Orders with Findings Are Still Required**

The Fee Waiver provision does not change the requirement in G.S. 7A-304(a) that costs may be waived only upon entry of a written order, supported by findings of facts and conclusions of law, determining that there is just cause.

### **Costs vs. Fines**

The Fee Waiver provision amended G.S. 7A-304—Costs in Criminal Actions. This statute contains a list of costs to be assessed upon conviction or plea. Fines are not listed in this statute; however, the Fee Waiver provision speaks of waiving or remitting “court fines or costs.”

Generally speaking, G.S. 15A-1361 gives judges the discretion to impose or not to impose a fine upon conviction. There are a few criminal statutes that contain mandatory fines. But in most cases, when a fine is not imposed, a judge has not “waived” a fine, rather, the judge is exercising his or her discretion not to impose one.

Though the inclusion of “fines” in a “costs” statute might generate some confusion, for purposes of the Fee Waiver provision, the NCAOC believes that including the county finance office or the county school board in the parties who receive notice sufficiently addresses this issue. In the List of County and Municipal Entities Directly Affected,<sup>2</sup> counties already have fines going to either the county finance office or to the county school board.

### **Bright Line Rule to Identify Government Entities “Directly Affected” by Waiver**

The NCAOC considers the entity that initially receives a fee in G.S. 7A-304(a) from the courts to be a government entity “directly affected.” There may be other government entities somewhere down the line that receive part of a fee or otherwise benefit from the collection of a fee, but those entities don’t appear to be encompassed by the word “directly.”

### **State and Local Government Entity Addresses Have Been Gathered by the NCAOC**

The Fee Waiver provision states “[n]otice shall be made to the government entities affected by first-class mail to the address provided for receipt of court costs paid pursuant to the order.”

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<sup>2</sup> This list has been sent as a separate attachment to this memo. It contains the list of county and municipal entities that receive a fee from criminal court, listed by county.

The NCAOC has collected the state and local addresses where notices should be sent. The List of County and Municipal Entities Directly Affected contains the local addresses. The List of State Entities Directly Affected<sup>3</sup> contains the state addresses. Both have been sent as attachments to this memo. They will also be posted on Juno with this memo.

## How Many “Directly Affected” Government Entities Are There?

Directly affected government entities break down into two general categories—state government entities and local government entities. State entities affected are the same in every jurisdiction. Local entities affected are different in every jurisdiction due to the different municipalities in each county. Please see the accompanying charts<sup>4</sup> for more detail on which types of government entities receive fees.

### ***State Government Entities***

The NCAOC has identified four state government entities that receive fees:

- 1) The Administrative Office of the Courts
- 2) The State Treasurer
- 3) The Department of Justice
- 4) The North Carolina State Bar

### ***Local Government Entities***

Identifying local government entities that receive fees is more complicated than identifying state entities. Local government fees go to the particular local entity that provided a service. This can be the county or a municipality within a county. It appears from looking at the List of County and Municipal Entities Directly Affected that most counties have fewer than 10 such entities. Identifying the proper local government entity for the purpose of notice entails asking the following questions:

- 1) (For arrests) Which entities made an arrest? Municipal officer or county officer?
- 2) (For service of process) Which entities served process? Municipal officer or county officer?
- 3) (For facilities fee) Where was judgment rendered? County courthouse or municipal facility?
- 4) (For municipal/county crime lab fees) Was a municipal or county crime lab used? Did a county or municipal crime lab expert witness testify at trial? Did a county or municipal crime lab perform digital forensics?
- 5) (For pre-trial release fee) Which county provided the pre-trial release services (if any)?
- 6) (For fines) In which county did the offense take place?

While a court could attempt to answer these questions for each case, the NCAOC believes the better approach is to send notice to the same group of parties each time a notice is sent. The section below, “Deciding Which Local Entities Should Receive Notice,” explains this approach in further detail.

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<sup>3</sup> This list has been sent as a separate attachment to the memo.

<sup>4</sup> Charts entitled “State Government Entities Receiving Court Fees” and “Local Government Entities Receiving Court Fees.”

## General Guidance for Implementation

The Costs Memo sent out by the Office of General Counsel this past summer stated that the NCAOC would be giving guidance on the Fee Waiver provision later this fall. The NCAOC delayed guidance due to the belief that, with the General Assembly coming back into session twice before the effective date, there was a chance the provision could be modified. No modifications occurred.

In the meantime, the NCAOC has had conversations with elected judicial officials in an attempt to determine the best way to implement this provision. These conversations, along with the NCAOC's own internal conversations, have confirmed that implementation of this provision poses numerous operational difficulties for our criminal courts.

The NCAOC has examined multiple options for compliance over many weeks. Each new idea seems to bring its own set of operational/legal issues. Many of you have already had, or are having, internal conversations at your local courthouses to determine how best to comply.

There is not a one-size-fits-all solution for implementation. The NCAOC believes the best approach in this case is for the NCAOC to send a monthly general notice to all state and local directly affected government entities. This monthly NCAOC notice can then be supplemented by any additional notice and hearing accommodations for local entities that a local jurisdiction, in consultation with the local entities, elects to implement. In lieu of adopting additional local accommodations, local jurisdictions may elect to rely solely on the NCAOC notice.

The monthly NCAOC general notice will contain the following:

- 1) The NCAOC will send, via first class mail, notices to all state and local government entities directly affected on November 16, 2017, and 15 days prior to the first of the month for every month thereafter.
- 2) The notice will provide a link to the NCAOC's online criminal calendars webpage. It will state that courts may assess costs and fines at any given criminal setting, and that courts also may consider waiving these costs and fines.
- 3) The notice will state that any government entity directly affected has the right to appear through counsel at any session of criminal court at any time, and such counsel will have the opportunity to be heard on any fee waiver a judge may be considering at the time.
- 4) If a government entity's counsel is present at court, counsel shall notify the courtroom clerk that he or she is present and requests the opportunity to be heard on any waiver.
- 5) The notice will also state that government entities may receive additional notices from a local jurisdiction.

Any local accommodations for notice and hearing will be in addition to the notice sent out by the NCAOC. The NCAOC encourages local jurisdictions to work with county and municipal entities if these entities request a different form or frequency of notice. If a local jurisdiction decides to send additional notices, the local jurisdiction will be solely responsible for sending them and determining the process for doing so. The NCAOC will defer to local jurisdictions on the particulars of all local accommodations.

## **Deciding Which Local Entities Should Receive Notice**

If a local jurisdiction, in consultation with local entities, elects to send additional notices to local entities, the NCAOC believes the best way to streamline this process is to send a notice to the same group of local entities every time a notice is required, instead of analyzing each case to determine what fee went where.

In looking at the attached charts of the entities that receive fees, some entities receive more than one fee. If an entity receives different types of fees at one address, the NCAOC believes that sending one notice to that address is sufficient to cover all types of fees received by that entity. On the List of County and Municipal Entities Directly Affected, duplicate addresses have been removed.

## **Conclusion**

The NCAOC believes the guidance put forth in this memo—an NCAOC general notice plus any local accommodations—provides the maximum flexibility to local jurisdictions to implement the Fee Waiver provision. The NCAOC asks that each of you do your best to keep track of how many (and which) entities appear to contest waivers. The NCAOC also asks that you keep track of postage costs associated with any local notices sent out. Please note any other difficulties with administering this new provision. The intent is to report this information back to the General Assembly to assist them in evaluating the fiscal impact of the Fee Waiver provision.

## List of State Entities Directly Affected

<b>Entity</b>	<b>Address 1</b>	<b>Address 2</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
North Carolina Administrative Office of the Courts	P.O. Box 2448	Attn: Jonathan Harris	Raleigh	NC	27602
North Carolina State Treasurer	3200 Atlantic Avenue	Attn: Sam Hayes	Raleigh	NC	27604
North Carolina Department of Justice	P.O. Box 629		Raleigh	NC	27602
North Carolina State Bar	217 E. Edenton Street		Raleigh	NC	27601

## Local Government Entities Receiving Court Fees

Local Government Entity	Fee Description	Statute	Amount
County	<b>Arrest or personal service of process</b> <i>(to the county where the arrest was made or processed served, unless completed by a municipal officer)</i>	G.S. 7A-304(a)(1)	\$5.00
County	<b>Facilities Fee</b> <i>(to the county in which judgment is rendered)</i>	G.S. 7A-304(a)(2)	\$30.00 (sup.) \$12.00 (dist./mag.)
County	<b>Pretrial Release Fee</b> <i>(to the county providing the pretrial services)</i>	G.S. 7A-304(a)(5)	\$15.00
County	<b>Local Gov't Lab Fee</b> <i>(if a county crime lab is used)</i>	G.S. 7A-304(a)(8)	\$600.00
County	<b>Local Lab Digital Forensics Fee</b> <i>(if a county lab performed digital forensics)</i>	G.S. 7A-304(a)(9b)	\$600.00
County	<b>Local Lab Analyst Expert Witness Fee</b> <i>(if a county lab expert witness testifies at trial)</i>	G.S. 7A-304(a)(12)	\$600.00
County	<b>Fines</b> <i>(for support of public schools)</i>	Art. IX, Sec. 7 of NC Constitution	Variable
County	<b>Jail Fees</b> <i>(if awaiting trial in county jail)</i>	G.S. 7A-304(c) G.S. 7A-313	\$10.00
Municipality	<b>Arrest or personal service of process</b> <i>(if made by a municipal officer)</i>	G.S. 7A-304(a)(1)	\$5.00
Municipality	<b>Facilities Fee</b> <i>(if judgment rendered in a municipal facility)</i>	G.S. 7A-304(a)(2)	\$30.00 (sup.) \$12.00 (dist./mag.)
Municipality	<b>Local Gov't Lab Fee</b> <i>(if a municipal crime lab is used)</i>	G.S. 7A-304(a)(8)	\$600.00
Municipality	<b>Local Lab Digital Forensics Fee</b> <i>(if a municipal lab performed digital forensics)</i>	G.S. 7A-304(a)(9b)	\$600.00
Municipality	<b>Local Lab Analyst Expert Witness Fee</b> <i>(if a municipal lab expert witness testifies at trial)</i>	G.S. 7A-304(a)(12)	\$600.00
Municipality	<b>Jail Fees</b> <i>(if awaiting trial in municipal jail)</i>	G.S. 7A-304(c) G.S. 7A-313	\$10.00

## State Government Entities Receiving Court Fees

State Government Entity	Fee Description	Statute	Amount
<b>Administrative Office of the Courts</b>	Telecommunications & Data Connectivity	G.S. 7A-304(a)(2a)	\$4.00
<b>State Treasurer</b>	LEO Ret./Ins.	G.S. 7A-304(a)(3)	\$6.25
	Sheriff Supplemental Pension Benefits	G.S. 7A-304(a)(3a)	\$1.25
	General Court of Justice Fee	G.S. 7A-304(a)(4)	\$153.55 (sup.) \$146.55 (dist./mag.)
	Ch. 20 fee	G.S. 7A-304(a)(4a)	\$10.00
	Improper Equipment Fee	G.S. 7A-304(a)(4b)	\$50.00
	Failure to Appear Fee	G.S. 7A-304(a)(6)	\$200.00
	Failure to Comply	G.S. 7A-304(a)(6)	\$50.00
	Private Hospital Lab Fee	G.S. 7A-304(a)(8a)	\$600.00
	Impaired Driving Fee	G.S. 7A-304(a)(10)	\$100.00
	Private Hospital Analyst Expert Witness	G.S. 7A-304(a)(13)	\$600.00
	Installment Fee	G.S. 7A-304(f)	\$20.00
<b>Department of Justice</b>	Sheriff Supplemental Pension Benefits	G.S. 7A-304(a)(3a)	\$1.25
	LEO Training & Certification Fee	G.S. 7A-304(a)(3b)	\$2.00
	State Crime Lab Fee	G.S. 7A-304(a)(7)	\$600.00
	State DNA Database/Databank	G.S. 7A-304(a)(9)	\$2.00
	State Crime Lab Digital Forensics	G.S. 7A-304(9a)	\$600.00
	State Lab Analyst Expert Witness Fee	G.S. 7A-304(a)(11)	\$600.00
<b>North Carolina State Bar</b>	General Court of Justice Fee (LAA)	G.S. 7A-304(a)(4)	\$0.95