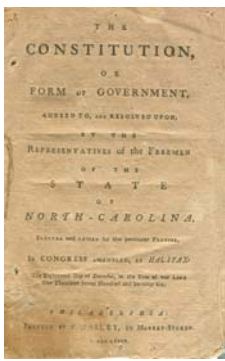


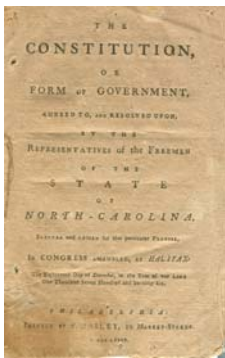
The Rise of Criminal Court User Fees in North Carolina





"All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." [Art. I, Sec. 18](#)





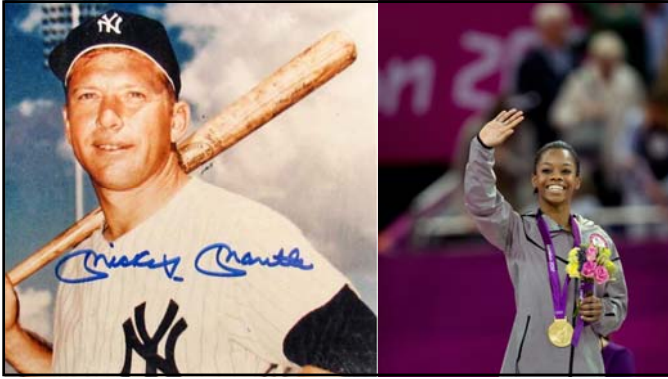
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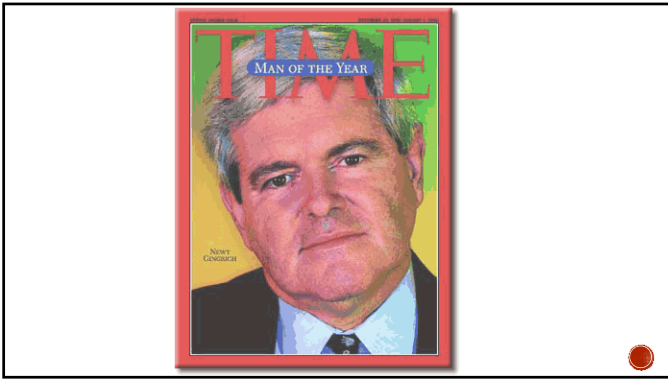




















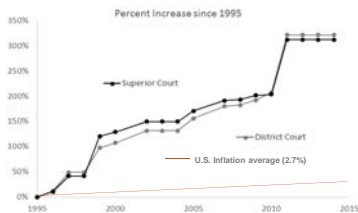


Minimum Criminal Court Fees Charged

Fee	1995	2016
Arrest/Service	\$5.00	\$5.00
Facilities	\$6.00	\$12.00
Technology upgrades		\$4.00
Misdemeanor Confinement Fund		\$18.00 * Moved into General Court of Justice fund
LEO Retirement/Insurance	\$7.25	\$7.50
Sheriff Pension	\$.75	\$1.25
Criminal Justice Education Commission		\$2.00
General Court of Justice	\$41.00	\$129.50 *Now \$147.50
Total	\$60.00	\$179.25



North Carolina Minimum Court Costs Over Twenty Years: 1995-2015



- Average Yearly Inflation Rate in United States 1995-2015 = 2.7%
- Average N. C. Criminal Court Costs Yearly Inflation Rate 1995-2015 = 15.3%



WHAT IF EVERYTHING ELSE WENT UP AT THE SAME RATE AS COURT COSTS

Item	1995	2015
U.S. postage stamp	\$.32	\$1.92 (\$.49 actual)
Gallon of gas	\$1.02	\$6.12 (\$2.82 actual)
Loaf of white bread	\$2.02	\$13.62 (\$2.27 actual)
Pound of coffee	\$4.07	\$24.42 (\$4.79 actual)
Average new car	\$15,500.00	\$93,000.00 (\$31,282.00 actual)
Average new home	\$113,150.00	\$628,900.00 (\$285,900.00 actual)
Salary	\$24,705.66	\$148,233.98 (\$44,888.16 actual)

Agenda

- Statutory authority for levying court fees
- Three types of fees
- Common fees all defendants (including those certified by the court as indigent; i.e. unable to pay) are required to pay
- Examples of how these fees add up
- How indigent and non-indigent defendants are treated differently
- Which fees are mandatory and which one's can be waived or reduced?
 - ✓ Statutes, Regulations & Case Law
 - Fee waiver reporting requirements
 - NCGS § 7A-304 - Costs in criminal actions
 - NCGS § 15A-1363. Remission of a fine or costs
 - NCGS § 15A-1364. Response to nonpayment
 - Bearden v. Georgia, 461 U.S. 660 (1983)

NCGS § 7A-304 - Costs in criminal actions

(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, ... the following costs shall be assessed and collected.

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NCGS § 7A-304 - Costs in criminal actions

(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, ... the following costs shall be assessed and collected.



In other words, costs and fees apply by default and can only be waived "upon entry of written order, supported by findings of fact and conclusions of law".

THREE TYPES OF FEES



NON-WAIVABLE

LIKE THE \$60.00 PUBLIC DEFENDER APPOINTMENT FEE



"The mandatory sixty-dollar (\$60.00) fee may not be remitted or revoked by the court ..." *NCGS* § 7A-455.1(b)

OR THE PROCESSING FEE FOR A LIMITED DRIVING PRIVILEGE



"... the applicant or petitioner must pay, in addition to any other costs associated with obtaining the privilege, a processing fee of one hundred dollars (\$100.00). ... The failure to pay this fee shall render the privilege invalid." *NCGS* § 20-20.2

WAIVABLE

LIKE THE LAW ENFORCEMENT RETIREMENT FUND FEE

"Only upon entry of 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 ..." *NCGS* § 7A-304(a)



**OR THE ATTORNEY FEE
\$55.00 - \$85.00 PER HOUR**

"**If, in the opinion of the court,** an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for that person by assigned counsel, ... **the court shall order the partially indigent person to pay such portion** to the clerk of superior court for transmission to the State treasury." *NCGS* § 7A-455(a)



UNCLEAR

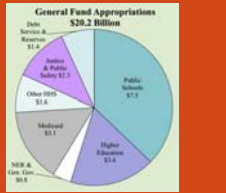
LIKE THE WORTHLESS CHECK COLLECTION FEE

"A community mediation center may establish and charge fees for its services in the collection of worthless checks as part of a program established under this section ..." *NCGS* § 14-107.2(b1)



GENERAL FUND

\$147.50 - \$154.50



STATE BAR LEGAL AID ACCOUNT

\$2.45



FACILITIES FEE

\$12.00 - \$30.00



PHONE SYSTEM FEE

\$4.00



MISDEMEANOR CONFINEMENT FUND FEE

\$18.00

* Since 2015 rolled into the "General Court of Justice" fee.



LEO RETIREMENT/INSURANCE FEE

\$7.50



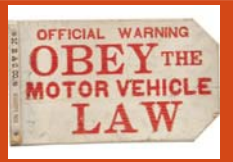
LEO TRAINING FEE

\$2.00



CHAPTER 20 FEE

\$10.00



DNA FEE

\$2.00



SUBPOENA FEE

\$5.00 for each witness



GRAND TOTAL

\$240.00 - \$255.00



OTHER FEES



APPOINTMENT OF COUNSEL FEE

\$60.00

A video thumbnail showing a man with glasses speaking. A large red rectangular box covers the left side of the frame. The video player interface is visible at the bottom of the thumbnail.

CIVIL REVOCATION FEE

\$100.00

A video thumbnail showing a North Carolina license with a large red "REVOKED" stamp across it. A large red rectangular box covers the left side of the frame. The video player interface is visible at the bottom of the thumbnail.

COMMUNITY SERVICE FEE

\$250.00



ALCOHOL MONITORING FEE

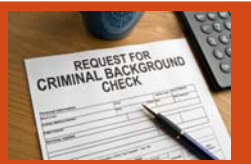
Varies:

- Capped at \$1,000.00 for offenses committed before 1 December 2011
- No limit for offenses committed after 1 December 2011



CRIMINAL RECORD CHECK FEE

\$25.00



DISPUTE RESOLUTION FEE

\$60.00 per mediation



EXPUNCTION FEE

\$175.00



FAILURE TO APPEAR FEE

\$200.00



FAILURE TO COMPLY FEE

\$50.00



HOUSE ARREST FEE

\$90.00

* Plus \$4.37 per day for electronic monitoring



IMPAIRED DRIVING FEE

\$100.00



IMPROPER EQUIPMENT FEE

\$50.00



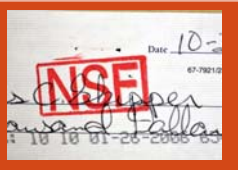
SEAT BELT VIOLATION FEE

\$25.50 front seat
\$10.00 rear seat (Fine not fee)



WORTHLESS CHECK PROGRAM FEE

\$60.00



WORTHLESS CHECK COLLECTION FEE

Fee decided locally



INSTALLMENT PAYMENTS FEE

\$20.00



JAIL FEE – PRE-CONVICTION

\$10.00 per 24 hours or fraction thereof



JAIL FEE – SPLIT SENTENCE

\$40.00 per day



LIMITED DRIVING PRIVILEGE FEE

\$100.00

STATE OF NORTH CAROLINA	
County _____	
IN THE MATTER OF _____	
LIMITED DRIVING PRIVILEGE PRETRIAL REVOCATION JAIL/ALTERNATIVE OFFENSE	
Name	_____
Sex	_____
Age	_____
DOB	_____
Address	_____
City	_____
State	_____
Zip	_____
Signature	_____
Date	_____

PRETRIAL RELEASE SERVICE FEE

\$15.00



POST RELEASE SUPERVISION FEE

\$40.00 per month

**ADULT
SUPERVISION
REQUIRED**



SATELLITE BASED MONITORING FEE

\$90.00



CRIME LAB FEE

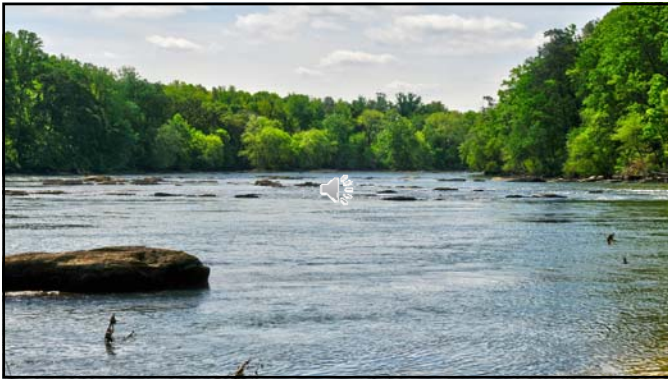
\$600.00 – State lab
\$600.00 – Local lab
\$600.00 – Private hospital lab



LAB ANALYST WITNESS FEE

\$600.00 - State
\$600.00 - Local
\$600.00 - Hospital





"WE LAID RUBBER ON THE GEORGIA ASPHALT"

NCGS § 20-140
Reckless Driving



“DOWN BY THE RIVER ON A FRIDAY NIGHT”

NCGS § 14-159.13

Second degree trespassing



“PYRAMID OF CANS IN THE PALE MOON LIGHT”

NCGS § 14-399

Littering

NCGS § 18B-301 or
Local Ordinance § 18B-300(c)



Open Container



“NEVER HAD A PLAN JUST LIVIN’ FOR THE MINUTE”

NCGS § 14-336 Vagrants and Tramps

Repealed in 1983



WHAT IS THE SENTENCE FOR THIS "CRIME SPREE"?



MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVEL		
	I No Prior Convictions	II One to Four Prior Convictions	III Five or More Prior Convictions
A1	CEA 1 - 60 days	CEA 1 - 75 days	CEA 1 - 150 days
1	C 1 - 45 days	CEA 1 - 45 days	CEA 1 - 120 days
2	C 1 - 30 days	CI 1 - 45 days	CEA 1 - 60 days
3	C 1 - 10 days	CI 1 - 15 days	CEA 1 - 20 days

A - Active Punishment I - Intermediate Punishment C - Community Punishment
Cells with slash allow either disposition at the discretion of the judge.



WHAT IS THE MONETARY COST OF THIS "CRIME SPREE"?



TOTAL = \$794.30 + SUBPOENAS, INSTALLMENT FEES, COMMUNITY SERVICE FEES AND PUBLIC DEFENDER FEES

- \$60.00 Appointment of counsel fee
- \$129.50 General fund fee x 4
- \$2.45 State bar legal aid fee x 4
- \$12.00 Facilities fee x 4
- \$4.00 Phone system fee x 4
- \$18.00 Misdemeanor confinement fund x 4
- \$7.50 LEO retirement fee x 4
- \$2.00 LEO training fee x 4
- \$10.00 Chapter 20 fee
- \$28.00 Criminal record check fee
- ? \$5.00 Subpoena fee (each witness)
- ? \$20.00 Installment payments fee
- ? \$250.00 Community service fee
- ? Public Defender fee ? Hours x \$55.00



SUPERIOR COURT EXAMPLE

- The defendant is convicted after trial of three armed robberies – Class D, level IV
- She gets three consecutive, bottom of the presumptive sentences of 78-106 months
- Then the judge says: "I'll order all costs and attorney's fees but I'll convert them to a civil judgment".



STANDARD COSTS FOR SUPERIOR COURT TRIAL

- Application fee = \$60.00
- Court costs = \$198.00
- Service of process fees = \$25.00
- Lab fee = \$600.00
- Witness fee = \$600.00
- 200 days in jail x \$10.00 each = \$2,000.00
- 40 hours of attorney time x \$70.00 = \$2,800.00

Total = \$6,283.00



Remember the kids who stacked
"a pyramid of cans in the pale moon light"?



NORTH CAROLINA'S TWO-TIER FINES & FEES SYSTEM

For those with money:

Immediate payment of the \$794.30 often ends the criminal case

- Unsupervised probation
- No further fees imposed
- No risk of re-arrest without new criminal conduct

For the indigent:


Inability to pay \$794.30 up-front results in supervised probation (and fees-\$40.00 per month) which can be extended until payment in full

Installment fees often increase amount owed simply because the defendant didn't have the money up front

Warrant fees, jail fees, application fees, attorney fees, phone fees etc. if re-arrested for nonpayment




**SOME FEES ARE
WAIVABLE**




**SOME FEES ARE
WAIVABLE**

"Upon entry of written order, supported by findings of fact and conclusions of law." *NCGS* § 7A-304



NCGS § 7A-83.7

Dispute resolution fee	\$60.00 per mediation
------------------------	-----------------------



NCGS §7A-304

1. Service of process	11. Pretrial services
2. Facilities	12. Failure to appear
3. Phone/technology	13. Failure to comply
4. Misdemeanor confinement	14. Crime lab
5. LEO/Sheriff retirement	15. DNA Databank
6. LEO/Sheriff training	16. Impaired driving
7. General court of justice (General fund)	17. Chemical/forensic analysis
8. General court of justice (Legal Aid)	18. Jail fee (pretrial)
9. Chapter 20	19. Trial transcript
10. Improper equipment	20. Installment
	\$2.45 - \$600.00



NCGS § 7A-313

Jail (split sentence)	\$40.00 per day
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NCGS § 7A-455

Attorney	\$55.00 - \$85.00 per hour
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NCGS §15A-1343

1. Probation supervision	\$40.00 per month
2. Electronic house arrest	\$90.00



FEE WAIVERS UNDER *NCGS* § 7A-304 MUST BE REPORTED



ANNUAL REPORT ON CRIMINAL COURT COST WAIVERS

§ 7A-350. Annual report on criminal court cost waivers.

The Administrative Office of the Courts shall maintain records of all cases in which a judge makes a finding of just cause to grant a waiver of criminal court costs under G.S. 7A-304(a) and shall report on those waivers to the chairs of the House of Representatives and Senate Appropriations Committees on Justice and Public Safety and the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year. The report shall aggregate the waivers by the district in which the waiver or waivers were granted and by the name of each judge granting a waiver or waivers. (2015-241, s. 18A.3(a).)



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**MOST FEES MAY
BE REMITTED**



NCGS § 15A-1363. Remission of a fine or costs.

A defendant who has been required to pay a fine or costs, including a requirement to pay fine or costs as a condition of probation, or a prosecutor, may at any time petition the sentencing court for a remission or revocation of the fine or costs or any unpaid portion of it. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or costs no longer exist, that it would otherwise be unjust to require payment, or that the proper administration of justice requires resolution of the case, the court may remit or revoke the fine or costs or the unpaid portion in whole or in part or may modify the method of payment.



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**MOST FEES CAN
BE MODIFIED**



NCGS § 15A-1364. Response to nonpayment.

...

(c) Modification of Fine or Costs.

If it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant's part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order:

- (1) Allowing the defendant additional time for payment; or
- (2) Reducing the amount of the fine or costs or of each installment; or
- (3) Revoking the fine or costs or the unpaid portion in whole or in part



NCGS § 15A-1364. Response to nonpayment.

...

(c) Modification of Fine or Costs.

If it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant's part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order:

- (1) Allowing the defendant additional time for payment; or
- (2) Reducing the amount of the fine or costs or of each installment; or
- (3) Revoking the fine or costs or the unpaid portion in whole or in part



**REMITTED AND MODIFIED
FEES ARE NOT REPORTED**



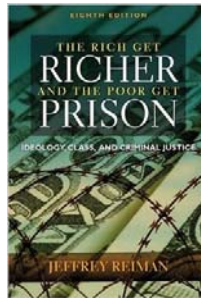
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**HOW DO I
DEMONSTRATE TO
A JUDGE THAT MY
CLIENT IS REALLY
TOO POOR TO PAY
THESE FEES?**





HOLD INDIGENCY HEARINGS




Bearden v. Georgia, 461 U.S. 660 (1983)












Beardon v. Georgia, 461 U.S. 660 (1983)
 Unanimous decision
 Majority opinion by Justice O'Connor









Beardon v. Georgia, 461 U.S. 660 (1983)
 Unanimous decision
 Majority opinion by Justice O'Connor

“We hold, therefore, that in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay.”

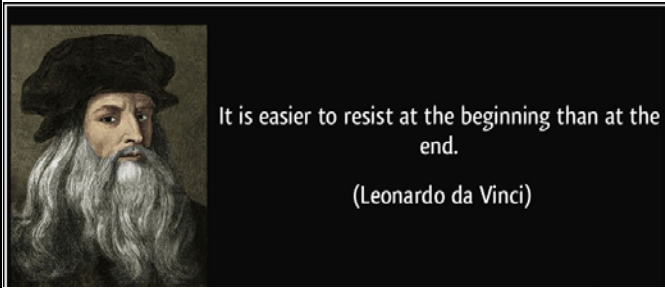
Beardon v. Georgia, 461 U.S. 660, 673-74 (1983).



“To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.”

Bearden v. Georgia, 461 U.S. 660, 673-74 (1983).





It is easier to resist at the beginning than at the end.

(Leonardo da Vinci)



TWO REASONS



1. Sentencing is often held close in time to the “indigency hearing” the court has already held. * This is especially true in District Court.

TWO REASONS

2. Remission or modification hearings are held after imposition of the sentence.

- a) It's often difficult to get the case back on the calendar without a violation of sentencing conditions; and
- b) Because the defendant's liberty isn't at risk they aren't entitled to court-appointed counsel.

WHAT DOES AN ORDER TO WAIVE FEES LOOK LIKE?

Must be in writing "supported by findings of fact and conclusions of law, determining that there is just cause"
NCGS § 7A-304(a)

AOC FORM CR-618

STATE OF NORTH CAROLINA

County: _____

Case No: _____

STATE VERSE: _____

ADDITIONAL FINDINGS

The Court makes the following additional findings:

After hearing evidence from the prosecution and defense, the court concludes that the defendant's current financial condition makes paying optional court fees impossible. Under these circumstances, to require payment from this defendant would be contrary to the fundamental fairness required by the Fourteenth Amendment. Therefore, I find just cause to waive all criminal court fees covered by NCGS § 7A-304(a), NCGS § 7A-313, NCGS § 7A-435 & NCGS § 15A-1343.

 SIGNATURE OF JUDGE

STATE OF NORTH CAROLINA

County: _____

Case No: _____

STATE VERSE: _____

ADDITIONAL FINDINGS

The Court makes the following additional findings:

After hearing evidence from the prosecution and defense, the court concludes that the defendant's current financial condition makes paying optional court fees impossible. Under these circumstances, to require payment from this defendant would be contrary to the fundamental fairness required by the Fourteenth Amendment. Therefore, I find just cause to waive all criminal court fees covered by NCGS § 7A-304(a), NCGS § 7A-313, NCGS § 7A-435 & NCGS § 15A-1343.

 SIGNATURE OF JUDGE

The "additional findings" form will then satisfy NCGS § 7A-304(a)'s requirement of a:

"written order, supported by findings of fact and conclusions of law, determining that there is just cause"

STATE OF NORTH CAROLINA

County: _____

Case No: _____

STATE VERSE: _____

ADDITIONAL FINDINGS

The Court makes the following additional findings:

*After hearing evidence from the prosecution and defense, **the court concludes that the defendant's current financial condition makes paying optional court fees impossible.** Under these circumstances, to require payment from this defendant would be contrary to the fundamental fairness required by the Fourteenth Amendment. Therefore, I find just cause to waive all criminal court fees covered by NCGS § 7A-304(a), NCGS § 7A-313, NCGS § 7A-435 & NCGS § 15A-1343.*

 SIGNATURE OF JUDGE

The "additional findings" form will then satisfy NCGS § 7A-304(a)'s requirement of a:

"written order, supported by **findings of fact** and conclusions of law, determining that there is just cause"

STATE OF NORTH CAROLINA

County: _____


STATE VERDICT

ADDITIONAL FINDINGS

The Court makes the following additional finding:

After hearing evidence from the prosecution and defense, the court concludes that the defendant's current financial condition makes paying optional court fees impossible. Under these circumstances, to require payment from this defendant would be contrary to the fundamental fairness required by the Fourteenth Amendment. Therefore, I find just cause to waive all criminal court fees covered by NCGS § 7A-304(a), NCGS § 7A-313, NCGS § 7A-455 & NCGS § 15A-1343.

 SIGNATURE OF JUDGE



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“written order, supported by findings of fact and **conclusions of law**, determining that there is just cause”

STATE OF NORTH CAROLINA

County: _____


STATE VERDICT

ADDITIONAL FINDINGS

The Court makes the following additional finding:

*After hearing evidence from the prosecution and defense, the court concludes that the defendant's current financial condition makes paying optional court fees impossible. Under these circumstances, to require payment from this defendant would be contrary to the fundamental fairness required by the Fourteenth Amendment. Therefore, **I find just cause** to waive all criminal court fees covered by NCGS § 7A-304(a), NCGS § 7A-313, NCGS § 7A-455 & NCGS § 15A-1343.*


 SIGNATURE OF JUDGE



The “additional findings” form will then satisfy NCGS § 7A-304(a)’s requirement of a:

“written order, supported by findings of fact and conclusions of law, determining that there is **just cause**”

WHAT IF THE JUDGE THINKS YOUR CLIENT SHOULD PAY AT LEAST SOME OF THE FEES?



Objecting to fees that don't seem to apply in a particular case

Communicating threats:
NCGS § 14-227.1

Don't generally involve law enforcement so you may have success arguing that your client shouldn't have to pay fees like the LEO retirement or LEO training fees



Or

Probation:
NCGS § 15A-1343

Argue that since your client got probation she shouldn't have to pay the "misdemeanor confinement fund fee."



Or

DNA fee:
NCGS § 7A-304(a)(9)

Argue that since no DNA was collected or tested your indigent client shouldn't have to pay the "DNA fee."



Asking that only fees applicable to a particular case be levied

Harassing phone calls:
NCGS § 14-196

Argue that since your client is indigent all fees should be waived except the "phone system fee" to show the importance of using the phone system correctly.



Or

Drive while license revoked:
NCGS § 20-28

Argue that the legislature specifically included a "chapter 20" fee so, even though he is indigent, it's understandable to punish him with this fee but not the others.



Asking to waive fees because your client is unable to work

- Medical records
- Mental Health records



Asking to waive fees because your client is disabled and collects only Social Security Disability

▪ Section 207 of the Social Security Act (42 U.S.C 407) states: "The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and **none of the monies paid or payable** or rights existing under this title **shall be subject to execution, levy, attachment, garnishment, or other legal process**, or to the operation of any bankruptcy or insolvency law."



Provide evidence that incarcerating indigent defendants who are unable to pay often costs more than what the government can ever hope to recover.

▪ If your client owes \$500.00 and is incarcerated for 30 days at \$72.00 per day for not paying, the State/County will lose \$1,660 minimum.



Spending dollars to collect pennies

▪ \$72 x 30 = \$2,160
▪ - \$500 = **-\$ 1,660**



Constitutional Arguments Sixth Amendment - Gideon

▪ Requiring payment of a mandatory attorney appointment fee is unconstitutional because it "chills" a defendant's assertion of their right to constitutionally guaranteed counsel.

chilling effect legal definition

PHRASE

In constitutional law, the inhibition or discouragement of the legitimate exercise of a constitutional right, especially one protected by the First Amendment to the United States Constitution, by the potential or threatened prosecution under, or application of, a law or sanction.

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Nope!

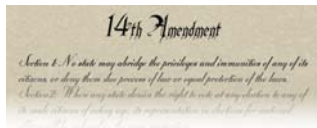
▪ **State v. Webb, 358 N.C. 92 (2004)**

▪ Mandatory appointment fee “did not have an unconstitutional chilling effect on a defendant's constitutional rights to counsel and notice.”



Constitutional Arguments Due Process

▪ Mandatory fees that do not take into account the defendant's ability to pay violate the Due Process clause.



Maybe?

▪ Argue that the Fourteenth Amendment requires a hearing on the record into a defendant's actual ability to pay before a fee is assessed.



▪ **Bearden v. Georgia, 461 U.S. 660, 673-74 (1983).**



IF FEES ARE WAIVED, HOW WILL THAT EFFECT INDIGENT DEFENDANTS?



Remember the folks who were "down by the river on a Friday night"?



~~TOTAL = \$704.30~~ - JURORS, INSTALLMENT FEES, COMMUNITY SERVICE FEES AND PUBLIC DEFENDER FEES

TOTAL = \$60.00

- \$60.00 Appointment of counsel fee
- ~~\$100.00 General fund fee x 4~~
- ~~\$2.45 State bar legal aid fee x 4~~
- ~~\$12.00 Facility fee x 4~~
- ~~\$4.00 Phone system fee x 4~~
- ~~\$10.00 Misdemeanor confinement fund x 4~~
- ~~\$7.50 LEO retirement fee x 4~~
- ~~\$2.00 LEO training fee x 4~~
- ~~\$10.00 Chapter 20 fee~~
- ~~\$28.00 Criminal record check fee~~
- ? \$5.00 Subpoena fee (each witness)
- ? \$20.00 Installment payments fee
- ? \$250.00 Community service fee
- ? Public Defender fee 2 Hours x \$55.00



ARMED ROBBERY DEFENDANT



COSTS FOR ARMED ROBBERY DEFENDANT

- Application fee = \$60.00
 - Court costs = \$198.00
 - Service of process fees = \$250.00
 - Lab fee = \$600.00
 - Witness fee = \$600.00
 - 200 days in prison at \$4.00 = \$800.00
 - 40 hours of attorney time x \$70.00 = \$2,800.00
- When she gets out of prison in about 20 years she'll owe, not \$30,000.00 but \$158.00!**
- Total = \$6,283.00**

Make
A
Difference

Express yourself!



QUESTIONS
COMMENTS
CONCERNS
