



IMPLEMENTATION OF WAIVER NOTICES

SESSION LAW 2018-5, §18B.1

REPORT PREPARED BY
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS
OCTOBER 1, 2018



About the North Carolina Judicial Branch

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

About the North Carolina Administrative Office of the Courts

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.

INTRODUCTION

Section 18B.1 of Session Law 2018-5 requires the North Carolina Administrative Office of the Courts (“NCAOC”) to submit a report on the implementation of notice of waiver of costs pursuant to a newly created subsection (a2) in 7A-304. Specifically, the statute provides as follows:

NOTICE OF FEE WAIVER/IMPLEMENTATION REPORT

SECTION 18B.1. G.S. 7A-304 is amended by adding a new subsection to read:
“(a2) The Administrative Office of the Courts shall report on October 1, 2018, and annually thereafter, to the Joint Legislative Oversight Committee on Justice and Public Safety on the implementation of the notice of waiver of costs to the government entities directly affected as required by subsection (a) of this section.

G.S. 7A-304(a) in turn provides:

... 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 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.

NCAOC respectfully submits this report pursuant to the legislative mandate in the newly created G.S. 7A-304(a2).

IMPLEMENTATION OF NOTICE

After the special provision was enacted, NCAOC implemented a process to send all directly affected government entities a monthly notice by first-class mail. The notice provides links to the criminal calendars webpage and identifies the process for an entity to be heard regarding the waiver or remittance of court fines or costs. A copy of the notice is attached as Appendix A.

The notice includes Form AOC-257-A, which allows an entity to provide a standing response concerning waivers or remissions of court costs or fines pursuant to G.S. 7A-304(a). The options for response on AOC-257-A include the following:

- Objection to waiver or remission of any cost under G.S. 7A-304 or fine that may be due the agency, or a lack of objection to any waiver or remission, for which the agency defers to the court’s discretion
- Request to discontinue mailed notices under G.S. 7A-304(a), to continue to receive mailed notices, or to resume receipt of mailed notices previously discontinued



NCAOC initially identified 615 government entities entitled to notice pursuant to G.S. 7A-304(a2) and began sending notices to those entities. Approximately 145 entities have responded to the notice as of September 1, 2018, with 81 entities opting to have the notices discontinued. NCAOC keeps a central registry of responses to the notices and makes the AOC-257-A form and Registry of Responses available at <http://nccourts.org/costwaiver>.

POLICY CONSIDERATIONS

The administration of justice requires judges to have the discretion necessary to impose an appropriate sentence based on the particular circumstances of each case. Costs, fines, and fees represent a critical component of an individual's sentence.

On a national level, the Conference of Chief Justices and the Conference of State Court Administrators established The National Task Force on Fines, Fees, and Bail Practices (the "Task Force") in 2016. The Task Force subsequently adopted a series of principles designed to facilitate "more fair, transparent, and efficient methods of judicial practice regarding bail practices and the imposition and collection of legal financial obligations." The Conference of Chief Justices and the Conference of State Court Administrators passed a resolution in January 2018 adopting the Task Force's *Principles on Fines, Fees, and Bail Practices*.¹

Judicial discretion is central to a fair, transparent and efficient system of justice. The Task Force addressed the importance of such discretion in Principle 6.2.

Principle 6.2. Judicial Discretion with Respect to Legal Financial Obligations. State law and court rule should provide for judicial discretion in the imposition of legal financial obligations. States should avoid adopting mandatory fines, fees, costs, and other legal financial obligations for misdemeanors and traffic-related and other low-level offenses and infractions. Judges should have authority and discretion to modify the amount of fines, fees and costs imposed based on an individual's income and ability to pay. Judges should also have authority and discretion to modify sanctions after sentencing if an individual's circumstances change and their ability to comply with a legal financial obligation becomes a hardship.

SUMMARY

The administration of justice requires that judges have the discretion to impose an appropriate sentence based on the particular circumstances of each individual case. That discretion extends to elements of sentencing related to costs, fines, fees and other financial obligations. NCAOC submits this report pursuant to G.S. 7A-304(a2), respectfully noting concerns about the administrative and fiscal burdens imposed by the provision.

¹Adopted by the CCJ/COSCA Access, Fairness and Public Trust Committee on January 31, 2018.



Appendix A

Notice to Government Entities Receiving Court Costs and Fines



[This page intentionally left blank]





ADMINISTRATIVE OFFICE OF THE COURTS

JONATHAN REDFORD HARRIS
GENERAL COUNSEL
OFFICE OF GENERAL COUNSEL

PO BOX 2448, RALEIGH, NC 27602
O 919-890-1300
F 919-890-1914
JONATHAN.R.HARRIS@NCCOURTS.ORG

February 15, 2018

Re: Notice to Government Entities Receiving Court Costs and Fines

To Whom It May Concern—

The North Carolina Administrative Office of the Courts (NCAOC) is sending you this notice because you have been identified as a state or local government entity that may receive court costs or fines imposed in criminal and infraction cases. Effective December 1, 2017, government entities “directly affected” by any waiver or remission of court costs and fines are entitled to notice and the opportunity to be heard, through counsel, on any such waiver or remission.¹

By this notice, you are advised that at any setting of criminal court, a court may waive or remit costs and fines. Below is a link to the NCAOC’s online criminal calendars webpage, searchable by county.

<http://www1.aoc.state.nc.us/www/calendars/Criminal.html>

If an entity chooses to send counsel to a session of criminal court, counsel shall notify the courtroom clerk that he or she is present and requests the opportunity to be heard on any waiver.

In the interest of providing both (i) an efficient mechanism for government entities to express their preferences on such waivers without appearing in court and (ii) a single resource that trial court officials may consult about each entity’s position, the NCAOC will maintain a statewide registry of entity responses generated from the form on the back of this notice. The registry will be made available online on February 16th at: <http://nccourts.org/costwaiver>

Any entity wishing to register a standing objection or a lack of objection to waivers/remissions may do so by completing the form on the back of this notice, by and through counsel for the entity, and returning it by mail or email. Entities may also note if they would like to stop receiving these notices from the NCAOC. Entities that do not waive future mailed notices will continue to receive notices monthly. Any objection or lack of objection can be rescinded and replaced at any time by subsequent submission of this form. An electronic copy of this form will be available on the same website as the registry of entity responses.

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

Name And Address Of Submitting Agency (type or print)

**GOVERNMENT AGENCY
STANDING RESPONSE TO WAIVER / REMISSION
OF COURT COSTS AND FINES**

G.S. 7A-304(a)

Notes to Submitting Counsel:

1. Counsel should submit standing responses only for agencies or political subdivisions for which counsel has clear authority to represent the agency's interests before the trial division, and this response must identify clearly the agency(ies) on whose behalf it is submitted. *E.g.*, a standing response by counsel for a county school board should identify the county board of education clearly as the agency in interest, not merely "County X," as it is unclear whether or not such a response purports to represent the county's interests for court costs to which it might be entitled under G.S. 7A-304 that are not disbursed for the use of the schools.
2. Responses should be submitted by **legal counsel for the agency, only**. To the extent this response may be considered by a court of the trial division, in order to avoid potential unauthorized practice of law by agency personnel not authorized to represent the agency before the courts, responses from non-counsel will not be included in the online registry.
3. Return completed forms with ink signature via mail or email to:
NCAOC – Office of General Counsel
Attn: Court Cost Waiver Standing Response
PO Box 2448
Raleigh, NC 27602
Email Address:
Waiver.Response@nccourts.org
4. Agencies may change their standing response at any time by submission of a subsequent response form, by and through appropriate counsel. A registry of current standing responses will be available online at: <http://nccourts.org/costwaiver>.

AGENCY RESPONSE

Now comes the above-named government entity, by and through counsel, and requests that the following standing responses concerning waivers or remissions of court costs or fines pursuant to G.S. 7A-304(a) be provided to the trial courts as the agency's position on any waiver/remission of a cost or fine to which the agency may be entitled. This standing response is subordinate to personal appearance by agency counsel at any individual hearing at which such waiver or remission may be considered, in which case the agency's position shall be the one expressed at such hearing, notwithstanding any content of this standing response to the contrary.

- ☐ 1. **Standing Objection/Waiver of Objection.** The above-named agency hereby registers its *(check one)*
- ☐ a. objection to waiver or remission of any cost under G.S. 7A-304 or fine that may be due the agency.
- ☐ b. lack of objection to any waiver or remission, for which the agency defers to the court's discretion.
- ☐ 2. **Waiver/Request for Notice.** The agency hereby requests that mailed notices under G.S. 7A-304(a) from the Administrative Office of the Courts be *(check one)*
- ☐ a. **Discontinued.** The agency no longer wishes to receive monthly notices.
- ☐ b. **Continued/Resumed.** The agency wishes to continue receiving mailed notices, or to resume receipt of notices for which receipt was previously discontinued.

Signature		Date
Counsel Name (type or print)	Title	Bar No.
Firm Name (if applicable)	Address (if different from above)	
Telephone No.		

[This page intentionally left blank]



North Carolina Administrative Office of the Courts

P.O. Box 2448

Raleigh, NC 27602

www.nccourts.org

919 890 1000

