



IMPLEMENTATION OF WAIVER NOTICES

G.S. 7A-304

REPORT PREPARED BY
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS
OCTOBER 1, 2019



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

G.S. 7A-304(a2) 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 G.S. 7A-304(a). Specifically, subsection (a2) provides as set forth below.

(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.

Subsection (a), in turn, provides as follows:

... 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.

IMPLEMENTATION OF NOTICE

After subsection (a) was enacted in 2017, 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 available at <http://nccourts.gov/costwaiver>. NCAOC has mailed more than 12,600 notices by first-class mail since November 1, 2017.

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 220 entities have responded to the notice as of September 1, 2019, with 116 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.gov/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.



[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

