

NORTH CAROLINA 2007 SESSION LAWS  
2007 GENERAL ASSEMBLY FIRST SESSION

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S.L. 2007-212  
H.B. No. 21

LIABILITY FOR COURT COSTS--ALLOWANCE--COURT'S DISCRETION

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 6-19 reads as rewritten:

<< NC ST § 6-19 >>

§ 6-19. When costs allowed as of course to defendant

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section~~ **G.S. 6-18** unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them.

**SECTION 2.** G.S. 6-20 reads as rewritten:

<< NC ST § 6-20 >>

§ 6-20. Costs allowed or not, in discretion of court

~~In other actions,~~ **In actions where allowance of costs is not otherwise provided by the General Statutes,** costs may be allowed ~~or not,~~ in the discretion of the ~~court.~~ **Costs awarded by the court are subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), unless specifically provided for otherwise in the General Statutes.**

**SECTION 3.** G.S. 7A-305(d) reads as rewritten:

<< NC ST § 7A-305 >>

(Publication page references are not available for this document.)

(d) The following expenses, when incurred, are ~~also~~ assessable or recoverable, as the case may be. **The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:**

- (1) Witness fees, as provided by law.
- (2) Jail fees, as provided by law.
- (3) Counsel fees, as provided by law.
- (4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars (\$50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of **mediators appointed by the court, mediators agreed upon by the parties,** guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

**(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and for the cost of deposition transcripts.**

**(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings.**

**Nothing in this subsection or in G.S. 6-20 shall be construed to limit the trial court's authority to award fees and expenses in connection with pretrial discovery matters as provided in Rule 26(b) or Rule 37 of the Rules of Civil Procedure, and no award of costs made pursuant to this section or pursuant to G.S. 6-20 shall reverse or modify any such orders entered in connection with pretrial discovery.**

**SECTION 4.** This act becomes effective August 1, 2007, and applies to all motions for costs filed on or after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 2007.

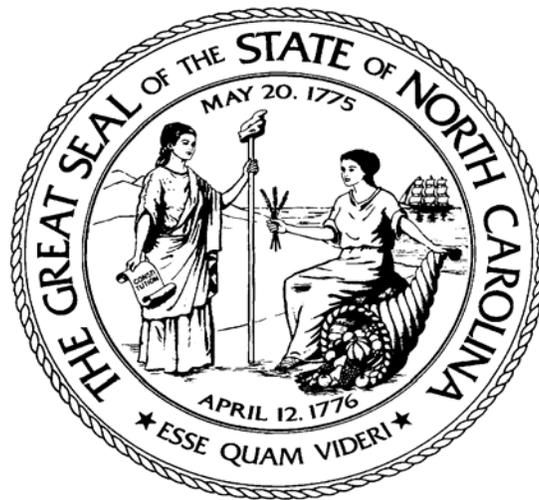
Approved 7:49 p.m. this 11th day of July, 2007

NC LEGIS 2007-212 (2007)

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# HOUSE SELECT COMMITTEE TO STUDY THE RECOVERY OF CIVIL COSTS



## FINAL REPORT TO THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

December 2006

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STATE OF NORTH CAROLINA  
HOUSE SELECT COMMITTEE TO STUDY THE RECOVERY OF  
CIVIL COSTS



December 18, 2006

TO THE MEMBERS OF THE 2007 North Carolina House of Representatives:

Attached for your consideration is the report of the House Select Committee to Study the recovery of Civil Costs established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1).

Respectfully submitted,

---

Representative Rick Glazier  
Chair

**James B. Black  
Speaker**



**Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096**

---

**HOUSE SELECT COMMITTEE TO STUDY THE RECOVERY OF CIVIL COSTS**

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA  
HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee to Study the Recovery of Civil Costs (hereinafter "Select Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6 and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

Section 2. The Select Committee shall be composed of the seven members listed below and appointed by the Speaker of the House of Representatives.

Representative Rick Glazier, Chair
Representative Deborah K. Ross, Vice Chair
Representative Jean Farmer-Butterfield
Representative Phillip Haire
Representative Earl Jones
Representative Tim Spear
Representative Bonner Stiller

Section 3. The Select Committee shall review and recommend a resolution to the conflict in North Carolina law regarding the recovery of costs in a civil case. The Select Committee shall study the conflict between G.S. 6-20 and G.S. 7A-305 and the appellate cases interpreting those statutes and recommend revisions to one or both statutes to resolve the conflict.

Section 4. The Select Committee shall meet upon the call of its Chair. A quorum of the Select Committee shall be a majority of its members, including the Chair.

Section 5. Members of the Select Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1. The expenses of the Select Committee including per diem, subsistence, travel allowances for Select Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations.

Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Select Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Select Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 6. The members of the Select Committee serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives shall fill vacancies and may dissolve the Select Committee at any time.

Section 7. The Legislative Services Officer shall assign professional and clerical staff to assist the Select Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Select Committee.

Section 8. The Select Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Select Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Section 9. The Select Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Select Committee in the State Legislative Building or the Legislative Office Building.

Section 10. The Select Committee may submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives, on or before December 31, 2006, by filing a copy of the report with the Office of the Speaker of the House of Representatives and the Legislative Library. The Select Committee shall terminate on December 31, 2006, or upon the filing of its final report, whichever occurs first.

Effective this 20th day of November, 2006.

A handwritten signature in blue ink, appearing to read "James B. Black", is written over a horizontal line. A vertical red line is positioned to the right of the signature.

James B. Black, Speaker

## **SUMMARY OF COMMITTEE PROCEEDINGS**

### **House Select Committee to Study the Recovery of Civil Costs**

**December 11, 2006 - 1:00 pm - Room 414**

Rep. Glazier, presiding

At the December 11, 2006 meeting, Committee Co-counsel Mr. Brad Krehely gave background on the committee's authorization and the apparent conflict in statutory and case law. Mr. Krehely explained that G.S. 6-20 leaves it to the court's discretion to award costs, while G.S. 7A-305 provides a list of costs that may be awarded by the trial court. Mr. Krehely also discussed related statutes addressing the issue of costs. In light of G.S. 6-20 and G.S. 7A-305, the North Carolina Court of Appeals has issued the following three conflicting lines of cases: (1) a strict statutory limit in which costs are not awarded unless set out in G.S. 7A-305; (2) a reasonable and necessary approach in which the court has discretion under G.S. 6-20 to award costs regardless of whether the costs appears on the list in G.S. 7A-305; and (3) a common law approach in which expenses listed under G.S. 7A-305 and also common law expenses recognized prior to 1983 are allowed. Mr. Krehely noted that the Supreme Court has refused to grant discretionary review of the issue. He ended with a brief overview of federal law.

Judge John Jolly, Wake County Superior Court, offered the Committee his thoughts on the issue. Judge Jolly asked the Committee to retain a judge's discretion to award costs if those costs are reasonable and necessary. He indicated the General Assembly needs to provide direction concerning what costs are appropriate. Otherwise, "mini-trials" of lawyers on the issue of costs could result.

Mr. Mark Boynton spoke to the Committee on behalf of the North Carolina Bar Association. He agreed that a judge's discretion should be retained but that some costs, such as deposition costs, should not be allowed without qualification. Mr. Boynton stated that the Bar Association has no official position on this issue, but is anxious to address the problem.

Mr. Dick Taylor, Chief Executive Officer, North Carolina of Trial Lawyers, indicated the Academy's support for discretion on the part of trial judges to award costs if the costs are reasonable and necessary. He also spoke in favor of including additional costs such as deposition costs, expert witness fees and some travel costs. However, he indicated that these costs should not be "open-ended."

Mr. Steve Coles, North Carolina Association of Defense Attorneys, told the Committee that the Bar Association, Academy of Trial Lawyers and Association of Defense Attorneys could work together to craft a solution to this issue. He suggested that a judge's discretion should be retained within outer limits provided by statute. Additional statutory clarification for some costs such as expert witness fees and deposition costs may be needed.

Rep. Glazier noted that this is an issue in need of legislative action. After some brief comments from Committee members, the Committee adjourned to meet again on Monday, December 18, 2006.

### **House Select Committee to Study the Recovery of Civil Costs**

**December 18, 2006 - 1:00 pm - Room 414**

Rep. Glazier, presiding

The Committee met and approved the final report.

## **Committee Findings and Recommendations**

**Findings.** The Committee finds that, based on holdings of the North Carolina Court of Appeals, there are three conflicting lines of cases concerning the award of costs under North Carolina law: (1) a strict statutory limit in which costs are not awarded unless set out in G.S. 7A-305; (2) a reasonable and necessary approach in which the court has discretion under G.S. 6-20 to award costs regardless of whether the costs appears on the list in G.S. 7A-305; and (3) a common law approach in which expenses listed under G.S. 7A-305 and also common law expenses recognized prior to 1983 are allowed.

The Committee finds that the North Carolina Supreme Court has refused to address this conflict.

The Committee finds that a judge's discretion to award costs should be retained, but only if those costs are recoverable by statute.

The Committee also finds that the types of costs authorized by statute should be expanded to include costs such as mediator costs, deposition costs, and expert witness fees. The Committee finds that some costs should not be "open-ended." Rather, outer limits should be provided by statute including a requirement that the cost be reasonable and necessary and other statutory directives.

**Recommendations.** The Committee recommends legislation retaining a judge's discretion to award costs under G.S. 6-20, if the costs are recoverable under G.S. 7A-305. In addition the Committee recommends expanding the list of recoverable costs under G.S. 7A-305 to include mediator fees, deposition costs, and expert witness. Deposition costs and expert witness fees must be reasonable and necessary and subject to other limitations as provided in the recommended legislation. (See Legislative Proposal I)

LEGISLATIVE PROPOSAL I

A BILL TO BE ENTITLED  
AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT  
COSTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 6-19 reads as rewritten:

**"§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section G.S. 6-18~~ unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

**SECTION 2.** G.S. 6-20 reads as rewritten:

**"§ 6-20. Costs allowed or not, in discretion of court.**

~~In other actions, costs~~ Costs may be allowed ~~or not,~~ in the discretion of the ~~court~~ court, unless otherwise provided by law, subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), except as otherwise provided by the General Statutes. "

**SECTION 3.** G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are ~~also~~ assessable or recoverable, as the case may ~~be~~: be. The expenses set forth in this subsection are complete and exclusive, and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

- (1) Witness fees, as provided by law.
- (2) Jail fees, as provided by law.
- (3) Counsel fees, as provided by law.
- (4) Expense of service of process by certified mail and by publication.
- (5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.
- (6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars (\$50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.
- (7) Fees of mediators appointed by the court or agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall

include reasonable reimbursement for stenographic assistance, when necessary.

- (8) Fees of interpreters, when authorized and approved by the court.
- (9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.
- (10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the cost of deposition transcripts.
- (11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings."

**SECTION 4.** This act becomes effective May 1, 2007, and applies to all motions for costs filed on or after that date.

N.C.G.S.A. § 7A-305

West's North Carolina General Statutes Annotated [Currentness](#)  
Chapter 7A. Judicial Department ([Refs & Annos](#))  
    [Subchapter VI](#). Revenues and Expenses of the Judicial Department  
        [Article 28](#). Uniform Costs and Fees in the Trial Divisions ([Refs & Annos](#))

→ § 7A-305. Costs in civil actions

(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen dollars (\$16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.
- (2) For support of the General Court of Justice, the sum of ninety-three dollars (\$93.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under [G.S. 7A-45.3](#), an additional two hundred dollars (\$200.00) shall be paid upon its assignment, and the sum of seventy-three dollars (\$73.00) in the district court except that if the case is assigned to a magistrate the sum shall be sixty-three dollars (\$63.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in [G.S. 7A-474.4](#), and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in [G.S. 7A-474.19](#).

(a1) Costs apply to any and all additional and subsequent actions filed by amendment to the original action brought under Chapter 50B of the General Statutes, unless such additional and subsequent amendment to the action is also brought under Chapter 50B of the General Statutes.

(a2) In every action for absolute divorce filed in the district court, a cost of fifty-five dollars (\$55.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina Fund for Displaced Homemakers established under [G.S. 143B-394.10](#). Costs assessed under this subsection shall be in addition to any other costs assessed under this section.

(a3) An application or a petition for a limited driving privilege under Chapter 20 of the General Statutes is subject to the court costs assessed under subsection (a) of this section plus an additional processing fee of one hundred dollars (\$100.00). The additional fee shall be remitted to the State Treasurer and used for support of the General Court of Justice.

(a4) A petition for a limited driving privilege under [G.S. 20-20.1](#) is subject to the court costs assessed under subsection (a) of this section.

(b) On appeal, costs are cumulative, and when cases heard before a magistrate are appealed to the district court, the

## N.C.G.S.A. § 7A-305

General Court of Justice fee and the facilities fee applicable in the district court shall be added to the fees assessed before the magistrate. When an order of the clerk of the superior court is appealed to either the district court or the superior court, no additional General Court of Justice fee or facilities fee shall be assessed.

(b1) When a defendant files an answer in an action filed as a small claim which requires the entire case to be withdrawn from a magistrate and transferred to the district court, the difference between the General Court of Justice fee and facilities fee applicable to the district court and the General Court of Justice fee and facilities fee applicable to cases heard by a magistrate shall be assessed. The defendant is responsible for paying the fee.

(c) The clerk of superior court, at the time of the filing of the papers initiating the action or the appeal, shall collect as advance court costs, the facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section, except in suits by an indigent. The clerk shall also collect the fee for discovery procedures under Rule 27(a) and (b) [\[FN1\]](#) at the time of the filing of the verified petition.

(d) The following expenses, when incurred, are assessable or recoverable, as the case may be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to [G.S. 6-20](#):

- (1) Witness fees, as provided by law.
- (2) Jail fees, as provided by law.
- (3) Counsel fees, as provided by law.
- (4) Expense of service of process by certified mail and by publication.
- (5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.
- (6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars (\$50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.
- (7) Fees of mediators appointed by the court, mediators agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.
- (8) Fees of interpreters, when authorized and approved by the court.
- (9) Premiums for surety bonds for prosecution, as authorized by [G.S. 1-109](#).
- (10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and for the cost of deposition transcripts.
- (11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings.

N.C.G.S.A. § 7A-305

Nothing in this subsection or in [G.S. 6-20](#) shall be construed to limit the trial court's authority to award fees and expenses in connection with pretrial discovery matters as provided in [Rule 26\(b\)](#) or [Rule 37 of the Rules of Civil Procedure](#), and no award of costs made pursuant to this section or pursuant to [G.S. 6-20](#) shall reverse or modify any such orders entered in connection with pretrial discovery.

(e) Nothing in this section shall affect the liability of the respective parties for costs as provided by law.

Added by Laws 1965, c. 310, § 1. Amended by Laws 1967, c. 108, § 10; Laws 1967, c. 691, § 30; Laws 1971, c. 377, §§ 23, 24; Laws 1971, c. 1181, § 1; Laws 1973, c. 503, §§ 12-14; Laws 1973, c. 1267, § 3; Laws 1975, c. 558, § 3; Laws 1975(2nd Sess.), c. 980, §§ 2, 3; Laws 1979(2nd Sess.), c. 1234, § 1; Laws 1981, c. 555, § 6; Laws 1981, c. 691, § 2; Laws 1983, c. 713, §§ 4- 6; Laws 1989, c. 786, § 2; [Laws 1991, c. 742, § 15\(b\)](#); [Laws 1991\(Reg. Sess. 1992\), c. 811, § 2](#); [Laws 1993, c. 435, § 6, eff. Oct. 1, 1993](#); [Laws 1995, c. 275, § 2, eff. Oct. 1, 1995](#); [S.L. 1998-212, § 29A.12\(b\), eff. Feb. 1, 1999](#); [S.L. 1998-219, §§ 2, 3, eff. Dec. 1, 1998](#); [S.L. 2000-109, § 4\(b\), eff. July 15, 2000](#); [S.L. 2001-424, § 22.14\(b\), eff. Jan. 1, 2002](#); [S.L. 2002-126, §§ 29A.4.\(b\), 29A.6.\(e\), eff. Oct. 1, 2002](#); [S.L. 2004-186, § 4.3, eff. Oct. 1, 2004](#); [S.L. 2005-276, § 43.1\(b\), eff. Sept. 1, 2005](#); [S.L. 2005-405, § 5, eff. Oct. 1, 2005](#); [S.L. 2005-425, § 1.2, eff. Jan. 1, 2006](#); [S.L. 2007-212, § 3, eff. Aug. 1, 2007](#); [S.L. 2007- 293, § 2, eff. Dec. 1, 2007](#); [S.L. 2007-323, §§ 30.8\(b\), 30.10\(a\), 30.11\(a\), eff. Aug. 1, 2007](#); [S.L. 2007-345, § 9.1\(a\), eff. Dec. 1, 2007](#).

[\[FN1\]](#) § 1A-1, Rule 27(a) and (b).

#### HISTORICAL AND STATUTORY NOTES

[Laws 1993, c. 435](#), § 7, provides:

"This act becomes effective October 1, 1993, and applies to all suits or appeals prosecuted on or after that date."

[Laws 1993, c. 435](#), was ratified July 22, 1993.

[Laws 1995, c. 275](#), § 3, provides:

"This act becomes effective October 1, 1995, and applies to actions that are filed or have not reached final judgment on or after that date."

[Laws 1995, c. 275](#), was ratified June 19, 1995.

[S.L. 1998-212, effective February 1, 1999](#), and applicable to fees assessed or paid after that date, in subd. (a)(1) increased fees of \$6 and \$10 to \$12 and \$16, respectively.

[S.L. 1998-219, effective December 1, 1998](#), and applicable to final actions for divorce filed on and after that date, added subd. (a2), and in subd. (c) for "facilities fee and General Court of Justice fee," substituted "facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section".

S.L. 2000-109, § 4(b), in subsec. (a), in subd. (2), substituted "fifty-nine dollars (\$59.00)" for "fifty-five dollars (\$55.00)", "forty-four dollars (\$44.00)" for "forty dollars (\$40.00)", and "thirty-three dollars (\$33.00)" for "twenty-eight dollars (\$28.00)".

S.L. 2000-109, § 10(d), provides:

"Section 10.(d) Increase Court Costs.--Section 4 of this act becomes effective July 15, 2000, and applies to all costs

N.C.G.S.A. § 7A-305

assessed or collected on and after that date."

[S.L. 2001-424, § 22.14\(b\), eff. Jan. 1, 2002](#), in subd. (2) of subsec. (a), in the second sentence, substituted "subdivision" for "subsection" and added the third sentence.

[S.L. 2001-424, § 22.14\(j\)](#), provides:

"This section becomes effective January 1, 2002, and applies to fees assessed or paid on or after that date."

[S.L. 2002-126, § 29A.4\(b\), eff. Oct. 1, 2002](#), in subsec. (a), rewrote subd. (2), which prior thereto read:

"(2) For support of the General Court of Justice, the sum of fifty-nine dollars (\$59.00) in the superior court, and the sum of forty-four dollars (\$44.00) in the district court except that if the case is assigned to a magistrate the sum shall be thirty-three dollars (\$33.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents (\$1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in [G.S. 7A-474.4](#)."

[S.L. 2002-126, § 29A.4\(c\)](#), provides:

"Subsection (a) of this section becomes effective October 1, 2002, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to [G.S. 7A-180\(4\)](#) or [G.S. 7A-273\(2\)](#), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in [G.S. 7A-304\(a\)](#), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. Subsection (b) of this section becomes effective October 1, 2002, and applies to all costs assessed or collected on or after that date."

[S.L. 2002-126, § 29A.6\(e\), eff. Oct. 1, 2002](#), in the introductory paragraph of subsec. (a), inserted ", except for actions brought under Chapter 50B of the General Statutes,".

#### 2004 Legislation

[S.L. 2004-186, § 4.3, eff. Oct. 1, 2004](#), in the third sentence of subd. (2) of subsec. (a), inserted ", and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.9".

[S.L. 2004-186, § 4.5](#), provides:

"Section 4.2 of this part becomes effective October 1, 2004, and applies to all motions filed on or after that date. Sections 4.3 and 4.4 of this part become effective October 1, 2004, and apply to fees assessed or paid on or after that date. The remainder of this part is effective when it becomes law."

In subd. (2) of subsec. (a), "7A-474.19" was substituted for "7A-474.9" pursuant to the direction of the Revisor of Statutes.

#### 2005 Legislation

[S.L. 2005-276, § 43.1\(b\), eff. Sept. 1, 2005](#), amended subd. (a)(2) by substituting "seventy-nine dollars (\$79.00)" for

N.C.G.S.A. § 7A-305

"sixty-nine dollars (\$69.00)", "sixty-four dollars (\$64.00)" for "fifty-four dollars (\$54.00)", and "fifty-three dollars (\$53.00)" for "forty-three dollars (\$43.00)".

[S.L. 2005-276, § 43.1\(h\)](#), provides:

"Subsection (a) of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to [G.S. 7A-180\(4\)](#) or [G.S. 7A-273\(2\)](#), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in [G.S. 7A-304\(a\)](#), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. The remainder of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date."

[S.L. 2005-405, § 5, eff. Oct. 1, 2005](#), amended subsec. (a2) by substituting "fifty-five dollars (\$55.00)" for "twenty-dollars (\$20.00)".

[S.L. 2005-405, § 6, eff. Oct. 1, 2005](#), provides:

"Section 5 of this act becomes effective October 1, 2005, and applies to actions for absolute divorce filed on or after that date. The remainder of this act becomes effective October 1, 2005."

[S.L. 2005-425, § 1.2, eff. Jan. 1, 2006](#), amended subd. (a)(2) by inserting ", except that if a case is assigned to a special superior court judge as a complex business case under [G.S. 7A-45.3](#), an additional two hundred dollars (\$200.00) shall be paid upon its assignment,".

S.L. 2005-425, § 4, provides:

"Sections 1.1 and 1.2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by [Section 10 of Article VI of the North Carolina Constitution](#) and [G.S. 128-7](#), those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified."

#### 2007 Legislation

S.L. 2007-212, § 3, rewrote subsec. (d), which prior thereto read:

"(d) The following expenses, when incurred, are also assessable or recoverable, as the case may be:

"(1) Witness fees, as provided by law.

"(2) Jail fees, as provided by law.

"(3) Counsel fees, as provided by law.

"(4) Expense of service of process by certified mail and by publication.

"(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of

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testimony, if any, insofar as essential to the appeal.

"(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars (\$50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

"(7) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

"(8) Fees of interpreters, when authorized and approved by the court.

"(9) Premiums for surety bonds for prosecution, as authorized by [G.S. 1-109](#)."

S.L. 2007-212, § 4, provides:

"This act becomes effective August 1, 2007, and applies to all motions for costs filed on or after that date."

S.L. 2007-293, § 2, added subsec. (a3).

S.L. 2007-293, § 3, provides:

"This act becomes effective December 1, 2007, and applies to revocations that occur before, on, or after that date."

[S.L. 2007-323, § 30](#)8(b), rewrote subd. (a)(2), which prior thereto read:

"(2) For support of the General Court of Justice, the sum of seventy-nine dollars (\$79.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under [G.S. 7A-45.3](#), an additional two hundred dollars (\$200.00) shall be paid upon its assignment, and the sum of sixty-four dollars (\$64.00) in the district court except that if the case is assigned to a magistrate the sum shall be fifty-three dollars (\$53.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents (\$1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in [G.S. 7A-474.4](#), and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in [G.S. 7A-474.19](#)."

[S.L. 2007-323, § 30](#)8(l), provides:

"Subsection (a) of this section becomes effective August 1, 2007, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to [G.S. 7A-180\(4\)](#) or [G.S. 7A-273\(2\)](#), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in [G.S. 7A-304\(a\)](#), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. Subsections (b), (c), (d), (e), (f), and (k) of this section become effective August 1, 2007, and apply to all costs assessed or collected on or after that date. The remainder of this section becomes effective July 1, 2007."

[S.L. 2007-323, § 30](#)10(a), added subsec. (a1).

[S.L. 2007-323, § 30](#)10(h), provides:

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"Subsection (d) of this act becomes effective July 1, 2008. The remainder of this act becomes effective August 1, 2007, and applies to all costs assessed or collected on or after that date."

[S.L. 2007-323, § 30.11\(a\)](#), added another subsec. (a3), without reference to the subsec. (a3) added by [S.L. 2007-293, § 2](#).

[S.L. 2007-323, § 30.11\(c\)](#) and § 30.11(e) provide:

"Section 30.11.(c) If Senate Bill 758, 2007 General Assembly, becomes law, then Section 2 of Senate Bill 758 is repealed."

"Section 30.11.(e) Subsections (a) and (b) of this section become effective August 1, 2007, and apply to costs assessed or collected on or after that date. Subsections (c) and (d) of this section become effective December 1, 2007. The remainder of this section is effective when it becomes law."

Senate Bill 758, 2007 General Assembly, was enacted as [S.L. 2007-293, eff. Dec. 1, 2007](#).

[S.L. 2007-345, § 9.1\(a\)](#), amended subsec. (a3), as enacted by S.L. 2007-293, § 2, which prior thereto read:

"(a3) A petition for a limited driving privilege under [G.S. 20-20.1](#) is subject to the court costs assessed under subsection (a) of this section plus an additional filing fee of one hundred dollars (\$100.00). The additional filing fee must be remitted to the State Treasurer and used for support of the General Court of Justice."

[S.L. 2007-345, §§ 9.1\(c\)](#) and 9.1(d), provide:

"Section 9.1.(c) Subsections (c) and (d) of Section 30.11 of S.L. 2007-323 are repealed.

"Section 9.1.(d) Subsection (a) of this section becomes effective December 1, 2007. Subsection (b) of this section becomes effective August 1, 2007, and applies to costs assessed on or after that date. The remainder of this section is effective when it becomes law."

Subsection (a3), as added by S.L. 2007-293, § 2, and amended by [S.L. 2007-345, § 9.1\(a\)](#), was renumbered as subsec. (a4) pursuant to the direction of the Revisor of Statutes.

#### CROSS REFERENCES

Enforcement of judgments; fees, see [§ 1C-1706](#).

Processing fee for limited driving privilege, see [§ 20-20.2](#).

#### ADMINISTRATIVE DECISIONS CITED

Substance Abuse Professional Certification Board v. Gladden, 00 SAP 1573.

#### LAW REVIEW COMMENTARIES

"Assessable Costs" in Civil Actions--Has the Court of Appeals Overruled the Supreme Court and the Legislature? Joe

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E. Wall, 7, No. 4 N.C. State Bar Journal 6, (2002).

Judicial Independence Requires More Resources and Greater Management Flexibility. John Medlin and Rhoda B. Billings, 8, No. 2 N.C. State Bar Journal 8, (2003).

NC Med Mal--A Year in Review. Mark B. Canepa, 11, No. 1 N.C. State Bar Journal 22, (2006).

#### LIBRARY REFERENCES

Costs  146 to 194.  
Westlaw Topic No. 102.  
[C.J.S. Costs §§ 6, 94 to 97, 99 to 101, 105 to 124.](#)

#### RESEARCH REFERENCES

ALR Library

[71 ALR, Federal 875](#), Compensation of Expert Witness as Costs Recoverable in Federal Civil Action by Prevailing Party Against Party Other Than United States.

[97 ALR 2nd 138](#), Allowance as Costs, of Such Items as Maps, Models, Wall Charts, Photographs, and the Like.

[76 ALR 2nd 953](#), Taxation of Costs and Expenses in Proceedings for Discovery or Inspection.

[26 ALR 2nd 1295](#), Attorney's Fees as Within Statute Imposing Upon Condemner Liability for "Expenses," "Costs," and the Like.

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[84 Am. Jur. Trials 367](#), Using Taxation of Costs to Collect Some Litigation Expenses and Maximize Client Recovery.

[Strong's N.C. Index 4th, Appeal and Error § 222](#), Perfecting Appeal.

[Strong's N.C. Index 4th, Appeal and Error § 437](#), Conclusions of Law.

[Strong's N.C. Index 4th, Costs § 7](#), Necessity for Statutory Authorization.

[Strong's N.C. Index 4th, Costs § 13](#), Court's Discretion; Apportionment.

[Strong's N.C. Index 4th, Costs § 16](#), Recovery of Unnecessary Costs.

[Strong's N.C. Index 4th, Costs § 28](#), Necessity for Statutory Authorization; Generally.

[Strong's N.C. Index 4th, Costs § 51](#), Expert Witnesses.

[Strong's N.C. Index 4th, Costs § 55](#), Civil Actions.

[Strong's N.C. Index 4th, Costs § 58](#), Discovery and Deposition Fees and Expenses.

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[Strong's N.C. Index 4th, Costs § 60](#), Other Miscellaneous Fees.

Treatises and Practice Aids

[North Carolina Law of Damages § 9:5](#), Domestic Law.

[North Carolina Law of Damages § 18:3](#), Payment of Costs.

[Shuford N.C. Civil Practice and Procedure § 41:4](#), Effect of Voluntary Dismissal: New Action.

## NOTES OF DECISIONS

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### [1](#). In general

Nothing in statute governing costs in civil actions requires a trial court to exercise its discretion under law, providing that costs may be allowed or not in the discretion of the court, to award the items listed in provision of statute stating that certain expenses, when incurred, are assessable or recoverable, as the case may be. [Smith v. Cregan, 2006, 178 N.C.App. 519, 632 S.E.2d 206](#). Costs  146

Trial court in negligence action erred in awarding costs for medical reports, deposition expenses, filing fees, travel expenses, trial exhibits, color copies, and photocopies, where such expenses were not statutorily authorized as recoverable costs. [Oakes v. Wooten, 2005, 173 N.C.App. 506, 620 S.E.2d 39](#). Costs  154; Costs  169; Costs  190

Trial court was required to assess the cost of mediation fees against patient, after jury entered judgment in favor of medical office, hospital, and healthcare corporation during medical malpractice case; mediation fees were recoverable pursuant of costs statute. [Miller v. Forsyth Memorial Hosp., Inc., 2005, 173 N.C.App. 385, 618 S.E.2d 838](#), rehearing granted, on rehearing [174 N.C.App. 619, 625 S.E.2d 115](#). Costs  149

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Trial court had no statutory authority to tax map expenses as costs in condemnation action; statute granting trial court discretion to award costs did not, on its face, make map expenses taxable, and statute delineating generally recoverable costs did not mention maps. [Department of Transp. v. Charlotte Area Manufactured Housing, Inc., 2003, 160 N.C.App. 461, 586 S.E.2d 780](#). Eminent Domain  265(3)

Trial court had discretion, in medical malpractice action in which patient alleged that pregnancy was terminated based on negligent diagnosis of ectopic pregnancy, to award patient court costs, mediation costs, deposition costs, expert fees and expenses, witness mileage expenses, costs for service of subpoenas, trial exhibits, and travel expenses for hearings and trial. [Coffman v. Roberson, 2002, 153 N.C.App. 618, 571 S.E.2d 255](#), review denied [356 N.C. 668, 577 S.E.2d 111](#). Costs  146

Assessable costs in civil cases are limited to those items listed in the statute. [Crist v. Crist, 2001, 145 N.C.App. 418, 550 S.E.2d 260](#). Costs  147

Court may not assess as costs any expenses which are neither statutorily enumerated or provided by law. [Sara Lee Corp. v. Carter, 1998, 129 N.C.App. 464, 500 S.E.2d 732](#), review allowed [349 N.C. 232, 514 S.E.2d 271](#), reversed [351 N.C. 27, 519 S.E.2d 308](#), rehearing denied [351 N.C. 191, 541 S.E.2d 716](#). Costs  146

Expenses for three expert witnesses' fees, discovery, subpoena charges, transcript costs, cost of reproducing documents for use at trial, and miscellaneous postage charges sought by plaintiffs were not expressly provided for by law, such that trial court had discretion whether to award them. [Estate of Smith By and Through Smith v. Underwood, 1997, 127 N.C.App. 1, 487 S.E.2d 807](#), review denied [347 N.C. 398, 494 S.E.2d 410](#), motion to dismiss denied [347 N.C. 398, 494 S.E.2d 411](#). Costs  176; Costs  187; Costs  189; Costs  190; Costs  193

### 1.5. Construction with other laws

Statute providing that witness fees are recoverable as provided by law is to be read in conjunction with statute governing fees for witnesses. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  184(1)

Trial court's authority to award costs is strictly limited to those items (1) specifically enumerated in the statutes, or (2) recognized by existing common law. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  146

While costs set forth in statute governing costs in civil actions are complete and exclusive, trial court may, in its discretion, award costs pursuant to statute that gives court discretion to award costs in actions not governed by statutes relating to costs to prevailing parties if the costs were established by case law prior to the enactment of statute governing costs in civil actions. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  146

### 2. Cumulative costs on appeal

Appeal from magistrate's court was perfected when plaintiff gave notice of appeal in open court and magistrate noted appeal on judgment, although clerk failed to collect additional costs. [Porter v. Cahill, 1968, 162 S.E.2d 128, 1 N.C.App. 579](#). Justices Of The Peace  158(1)

On plaintiff's appeal from magistrate court to district court, facility fee and General Court of Justice fee should be assessed in addition to amount already assessed before magistrate. [Porter v. Cahill, 1968, 162 S.E.2d 128, 1 N.C.App.](#)

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[579](#). Costs  228

### [3](#). Witness fees

Plaintiff who prevailed on negligence claim was entitled to recover \$4,502.00 in expert witness fees to first doctor for medical testimony with travel time, and \$700.00 in expert witness fees to second doctor for preparation and testimony, where both expert witnesses were subpoenaed to testify and provided testimony on plaintiff's condition, and testimony of both expert witnesses was strong and reasonably necessary to the case. [Oakes v. Wooten, 2005, 173 N.C.App. 506, 620 S.E.2d 39](#). Costs  187

There was no statutory or common-law authority for awarding costs to doctor and his practice regarding expert witness fees arising from consulting with attorney for doctor and practice and from reviewing records, and thus doctor and practice were not entitled to award of costs for those expenses in medical malpractice action. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  187

Doctor and his practice were not entitled to recover as an item of costs the expenses related to expert witness, who was an economist and who was subpoenaed but did not testify, in medical malpractice action; there was no statutory authority for awarding costs for witness's work, which included case review, research, estimation of discounted present values, revision of report, and consultation, and doctor and his practice did not cite any common-law authority for such award. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  187

Doctor and his practice were not entitled to award of costs for witness fees for third expert witness in medical malpractice action, where witness was third expert subpoenaed to prove single material fact. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  187

The trial judge only has the authority to award witness fees where the witness was under subpoena. [Miller v. Forsyth Memorial Hosp., Inc., 2005, 173 N.C.App. 385, 618 S.E.2d 838](#), rehearing granted, on rehearing [174 N.C.App. 619, 625 S.E.2d 115](#). Costs  184(2)

Trial court lacked authority to award medical office, hospital and healthcare corporation expert witness fees, after jury entered judgment in favor of the parties during medical malpractice case; statute provided for witness fees where the witness was under subpoena, and none of the parties' expert witnesses were under subpoena. [Miller v. Forsyth Memorial Hosp., Inc., 2005, 173 N.C.App. 385, 618 S.E.2d 838](#), rehearing granted, on rehearing [174 N.C.App. 619, 625 S.E.2d 115](#). Costs  187

Costs incurred by expert witnesses prior to trial were properly taxed against patient who brought negligence action against physician, where patient voluntarily dismissed action on eve of trial. [Lewis v. Setty, 2000, 140 N.C.App. 536, 537 S.E.2d 505](#). Costs  187

Costs for fees by bank to assemble records and appear and testify pursuant to subpoena were not specifically authorized by statute or otherwise assessable cost as provided by law, and, thus, could not be assessed against employee in employer's breach of fiduciary duty action against such employee. [Sara Lee Corp. v. Carter, 1998, 129 N.C.App. 464, 500 S.E.2d 732](#), review allowed [349 N.C. 232, 514 S.E.2d 271](#), reversed [351 N.C. 27, 519 S.E.2d 308](#), rehearing denied [351 N.C. 191, 541 S.E.2d 716](#). Costs  184(1)

### [4](#). Deposition expenses

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Deposition costs are within the category of "common law costs" permissible under statute giving court discretion to award costs in actions not governed by statutes relating to costs to prevailing parties because they were recognized as an appropriate cost to be taxed in the trial court's discretion prior to the enactment of statute setting forth complete and exclusive list of costs that could be awarded in civil actions. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  154

Trial court acted within its discretion when it awarded deposition expenses as an item of costs to doctor and his practice in medical malpractice action; deposition expenses were recognized as appropriate cost to be taxed in trial court's discretion prior to enactment of statute setting forth complete and exclusive list of costs that could be awarded in civil actions. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  154

The trial court's failure to award deposition costs medical office, hospital, and healthcare corporation was not an abuse of discretion, after jury entered judgment in favor of the parties during medical malpractice case; deposition costs were not listed as recoverable costs under statute. [Miller v. Forsyth Memorial Hosp., Inc., 2005, 173 N.C.App. 385, 618 S.E.2d 838](#), rehearing granted, on rehearing [174 N.C.App. 619, 625 S.E.2d 115](#). Costs  154

Absent evidence establish conclusively that expenses for photocopies, telephone calls, photographs, medical records and reports, or travel and meals were directly related to taking of a deposition, these items were improperly included in costs assessed against truck driver in pedestrian's negligence action. [Overton v. Purvis, 2004, 162 N.C.App. 241, 591 S.E.2d 18](#). Costs  154

To be recoverable as deposition costs, expenses must be directly related to a deposition. [Overton v. Purvis, 2004, 162 N.C.App. 241, 591 S.E.2d 18](#). Costs  154

Where the record on appeal fails to show conclusively that any expenses incurred stemmed directly from a deposition, the trial court's award of costs for such expenses must be reversed. [Overton v. Purvis, 2004, 162 N.C.App. 241, 591 S.E.2d 18](#). Appeal And Error  1171(3)

Deposition expenses are recoverable as costs. [Estate of Smith By and Through Smith v. Underwood, 1997, 127 N.C.App. 1, 487 S.E.2d 807](#), review denied [347 N.C. 398, 494 S.E.2d 410](#), motion to dismiss denied [347 N.C. 398, 494 S.E.2d 411](#). Costs  154

Trial court may tax deposition costs so long as they appear necessary. [Minton v. Lowe's Food Stores, Inc., 1996, 121 N.C.App. 675, 468 S.E.2d 513](#), review denied [344 N.C. 438, 476 S.E.2d 119](#). Costs  154

Defendant who prevailed in ejectment action was entitled to deposition costs, despite claim that defendant did not show that costs were reasonable and/or necessary. [Minton v. Lowe's Food Stores, Inc., 1996, 121 N.C.App. 675, 468 S.E.2d 513](#), review denied [344 N.C. 438, 476 S.E.2d 119](#). Ejectment  123

Expenses for taking depositions, travelling for deposition, videotaping depositions, obtaining copies of depositions from reporting service, and court reporting services for taking depositions were included within scope of "deposition expenses" that were taxable as costs following voluntary dismissal of action. [Sealey v. Grine, 1994, 115 N.C.App. 343, 444 S.E.2d 632](#). Costs  154

Trial court had discretion to tax malpractice defendants' deposition expenses against plaintiffs as costs after plaintiffs voluntarily dismissed action and then filed new complaint based on original claims. [Alsup v. Pitman, 1990, 390 S.E.2d 750, 98 N.C.App. 389](#). Pretrial Procedure  134

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### 5. Exhibit preparation

Trial court lacked discretion to award trial-exhibit fees to doctor and his practice in medical malpractice action; trial-exhibit fees were not among costs enumerating in statute governing costs in civil actions, and there was no common law authority for assessment of trial-exhibit fees prior to enactment of statute governing costs in civil actions. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  190

Trial court denial of medical office, hospital, and healthcare corporation's request for exhibit costs was not an abuse of discretion, after jury entered judgment in favor of the parties during medical malpractice case; costs associated with trial exhibits were not listed as recoverable costs under statute. [Miller v. Forsyth Memorial Hosp., Inc., 2005, 173 N.C.App. 385, 618 S.E.2d 838](#), rehearing granted, on rehearing [174 N.C.App. 619, 625 S.E.2d 115](#). Costs  190

Costs for trial exhibit preparation were reasonable and necessary, even though such costs were not specifically enumerated in statute allowing for taxation of certain costs, and thus costs of exhibit preparation were properly taxed against patient who voluntarily dismissed negligence action against physician on eve of trial. [Lewis v. Setty, 2000, 140 N.C.App. 536, 537 S.E.2d 505](#). Costs  190

### 5.5. Medical records

There was no statutory or common law basis for ordering executor of patient's estate to pay as an item of cost expenses that doctor and his practice incurred while obtaining patient's medical records in medical malpractice action; medical records were not among costs enumerated in statute governing costs in civil actions, and courts had not recognized cost of obtaining medical records as expense taxable to a party under statute giving court discretion to award costs in actions not governed by statutes relating to costs to prevailing parties. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Costs  169

### 6. Attorney fees

Property owners' association was not entitled to recover attorney fees in action for specific performance of consent judgment requiring completion of amenities and common areas of subdivision, even though consent judgment allowed for them, since they did not come within any statute allowing attorney fees. [Harbortgate Property Owners Ass'n, Inc. v. Mountain Lake Shores Development Corp., 2001, 145 N.C.App. 290, 551 S.E.2d 207](#), appeal dismissed [356 N.C. 301, 570 S.E.2d 505](#), review denied [356 N.C. 301, 570 S.E.2d 506](#), review denied [356 N.C. 301, 570 S.E.2d 507](#). Specific Performance  134

Statute authorizing awards of certain specified costs in civil cases does not authorize a trial court to include attorney fees as a part of the costs awarded under that statute, unless specifically permitted by another statute. [Lee Cycle Center, Inc. v. Wilson Cycle Center, Inc., 2001, 143 N.C.App. 1, 545 S.E.2d 745](#), appeal dismissed, certiorari allowed [354 N.C. 218, 553 S.E.2d 402](#), appeal dismissed, certiorari allowed [553 S.E.2d 403](#), appeal dismissed, certiorari allowed [555 S.E.2d 275](#), affirmed [354 N.C. 565, 556 S.E.2d 293](#). Costs  194.22

In event that party seeking award of attorney fees in child custody matter does not have sufficient income to employ "adequate" counsel and expenses of litigation would unreasonably deplete her estate, trial court may examine relative estates of parties. [Van Every v. McGuire, 1997, 125 N.C.App. 578, 481 S.E.2d 377](#), review allowed [346 N.C. 289, 487 S.E.2d 572](#), affirmed as modified [348 N.C. 58, 497 S.E.2d 689](#). Child Custody  943

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Evidence did not support finding that former wife was required to expend her full \$120,000 annual income for food and other household expenses, and thus, trial court erred in considering relative estates of parties in assessing wife's ability to employ "adequate" counsel in child custody dispute. [Van Every v. McGuire, 1997, 125 N.C.App. 578, 481 S.E.2d 377](#), review allowed [346 N.C. 289, 487 S.E.2d 572](#), affirmed as modified [348 N.C. 58, 497 S.E.2d 689](#). Child Custody  952

Though adverse possession defendant was entitled to costs incurred in defending against frivolous appeal, defendant was not entitled to attorney fees absent statutory authorization. [Brown v. Rhyne Floral Supply Mfg. Co., Inc., 1988, 366 S.E.2d 894, 89 N.C.App. 717](#), certiorari denied [371 S.E.2d 275, 322 N.C. 834](#), certiorari denied [109 S.Ct. 874, 488 U.S. 1045, 102 L.Ed.2d 997](#). Costs  260(5)

Attorney fees allowed by court for attorneys appointed in termination of parental rights proceeding, whether as separate counsel or as guardian ad litem, brought before effective date of 1981 amendment to Termination of Parental Rights Act, are to be borne by Administrative Office of the Courts. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592](#). Infants  212

In proceeding under Termination of Parental Rights Act, whatever its nature, attorney fees may be taxed as part of costs. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592](#). Infants  212

Amendment to Termination of Parental Rights Act which provided for payment of counsel by Administrative Office of the Court evidences legislative intent that counsel fees in actions for termination of parental rights should be borne by such Office rather than by departments of social services of various counties. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592](#). Infants  212

## 7. Guardians ad litem

In assessing as court costs the fees for guardian ad litem appointed to represent child in child custody matter, there were no restrictions on trial court's consideration of parents' relative estates. [Van Every v. McGuire, 1997, 125 N.C.App. 578, 481 S.E.2d 377](#), review allowed [346 N.C. 289, 487 S.E.2d 572](#), affirmed as modified [348 N.C. 58, 497 S.E.2d 689](#). Child Custody  940

Whether or not required by Termination of Parental Rights Act, appointment of guardian ad litem for minor mother and minor child in proceeding for termination of parental rights was mandated by State Rules of Civil Procedure. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592](#). Infants  205

Provision for appointment of guardians ad litem for minor parents under 14, for parents alleged to be subject to termination involving dependency due to mental illness, mental retardation or degenerative mental condition, and for minor children when answer is filed controverting material allegation of termination petition does not exclude their appointment in other situations. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592](#). Infants  205

In proceeding for termination of parental rights commenced prior to August 9, 1981, either fact that parent was indigent or fact that parent was both minor and not sui juris, standing alone, would be sufficient ground to require appointment of counsel, and such entitlement would ordinarily be satisfied by appointment of guardian ad litem who was licensed attorney. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592](#). Infants  205

Fees of separate attorney for guardian ad litem in parental rights termination proceeding are chargeable as item of costs of guardian ad litem. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592](#). Infants  212

Minor parties to civil action or special proceeding must be represented by guardian ad litem who may defend pro se or

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employ counsel. [In re Clark, 1981, 281 S.E.2d 47, 303 N.C. 592.](#) Infants  78(1)

#### 8. Arbitrators

Van owners' arbitration fee was specifically enumerated in statute governing award of costs to prevailing parties and, thus, was properly assessed as a cost against automobile owner and driver in negligence action. [Hoffman v. Oakley, 2007, 647 S.E.2d 117,](#) review denied [361 N.C. 692, 652 S.E.2d 264.](#) Automobiles  251

Court-appointed mediator was of same kind, character, and nature as arbitrator, and, thus, costs of such mediator could be imposed on nonprevailing party pursuant to statute allowing recovery of costs for arbitrators, appraisers and other similar court appointees. [Sara Lee Corp. v. Carter, 1998, 129 N.C.App. 464, 500 S.E.2d 732,](#) review allowed [349 N.C. 232, 514 S.E.2d 271,](#) reversed [351 N.C. 27, 519 S.E.2d 308,](#) rehearing denied [351 N.C. 191, 541 S.E.2d 716.](#) Costs  169

#### 8.5. Mediation fees

Doctor and his practice were not entitled to recover as costs the expenses incurred by providing lunch at mediated settlement conference in medical malpractice action; expense was not authorized by statute governing costs in civil action. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516,](#) review dismissed [360 N.C. 648, 636 S.E.2d 808,](#) review denied [360 N.C. 648, 636 S.E.2d 808.](#) Costs  149

#### 9. Appraisers

Trial court lacked the authority to award appraisal fees as costs in condemnation action; neither statute delineating generally recoverable costs nor statute dealing with highway condemnation costs authorizing taxing of appraisal fees. [Department of Transp. v. Charlotte Area Manufactured Housing, Inc., 2003, 160 N.C.App. 461, 586 S.E.2d 780.](#) Eminent Domain  265(3)

Closely-held corporation and majority shareholders were properly taxed for the entire cost of independent appraiser's valuation report, in action for judicial dissolution of corporation brought by trustees of testamentary trust consisting of minority shareholder's shares, though pretrial case management order stated that appraisal costs would be shared by parties, where case management order also stated that court could amend any of its provisions when appropriate. [Royals v. Piedmont Elec. Repair Co., 2000, 137 N.C.App. 700, 529 S.E.2d 515,](#) review denied [352 N.C. 357, 544 S.E.2d 548.](#) Corporations  614(7)

#### 10. Bond premiums

Defendant who prevailed in ejectment action was entitled to bond premiums as a cost, given that defendant had to post bond to proceed with action. [Minton v. Lowe's Food Stores, Inc., 1996, 121 N.C.App. 675, 468 S.E.2d 513,](#) review denied [344 N.C. 438, 476 S.E.2d 119.](#) Ejectment  123

#### 11. Travel expenses

Costs of traveling to mediation were not recoverable, upon voluntary dismissal of personal injury case, given that such expenses were not specifically enumerated in the applicable version of the statute listing recoverable costs in civil actions, nor were they provided for in the common law. [Vaden v. Dombrowski, 2007, 653 S.E.2d 543.](#) Costs  169

Allowance of attorney's meals and expenses as costs awarded to property owner as prevailing party in judicial review of state's denial of permit to fill coastal area for construction of building was abuse of discretion; statute governing

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costs did not permit allowance for meals and expenses. [Williams v. North Carolina Dept. of Environment and Natural Resources, 2004, 166N.C.App. 86, 601 S.E.2d 231](#), review denied [359 N.C. 643, 614 S.E.2d 925](#). Environmental Law  710

Divorced wife's travel expenses were not an assessable cost against husband, even though the expenses were incurred due to husband's failure to pay promissory note to wife; travel expenses were not a cost listed as permissible by statute. [Crist v. Crist, 2001, 145 N.C.App. 418, 550 S.E.2d 260](#). Divorce  288

### 12. In forma pauperis

All relevant circumstances of defendant must be considered in determining whether party may appear in forma pauperis. [Atlantic Ins. & Realty Co. v. Davidson, 1987, 357 S.E.2d 668, 320 N.C. 159](#). Costs  128

Requiring one to mortgage or sell his home to obtain court costs is generally unreasonable and counterproductive. [Atlantic Ins. & Realty Co. v. Davidson, 1987, 357 S.E.2d 668, 320 N.C. 159](#). Costs  128

It is not required that litigant deprive himself of daily necessities of life to qualify to appear in forma pauperis. [Atlantic Ins. & Realty Co. v. Davidson, 1987, 357 S.E.2d 668, 320 N.C. 159](#). Costs  128

Finding that 65-year-old defendant appealing to district court judge from judgment of magistrate in small claims action, owned home valued at \$27,150, and other unencumbered personal property was not sufficient to sustain order when considered with abundance of evidence as to defendant's age, poor health, income of \$340 per month, living expenses of \$362 per month, inability to work or borrow, indebtedness of \$300, and unreasonableness of selling her house. [Atlantic Ins. & Realty Co. v. Davidson, 1987, 357 S.E.2d 668, 320 N.C. 159](#). Courts  176.5

Party, plaintiff or defendant, may petition to appear in forma pauperis in trial de novo of cases appealed to district court judge from judges of magistrate in small claims actions. [Atlantic Ins. & Realty Co. v. Davidson, 1987, 357 S.E.2d 668, 320 N.C. 159](#). Courts  176.5

### 13. Dismissals

"Costs" to be taxed under rule governing dismissal of action against plaintiff who dismisses actions means costs recoverable in civil actions as delineated in cost statute. [Sealey v. Grine, 1994, 115 N.C.App. 343, 444 S.E.2d 632](#). Costs  146

Expenses for copies of x-ray films and copies made of record were not taxable as costs following voluntary dismissal of medical negligence case, absent showing that items related to depositions. [Sealey v. Grine, 1994, 115 N.C.App. 343, 444 S.E.2d 632](#). Costs  146

### 14. Review

Trial court did not abuse its discretion when it awarded defendants expert witness fees upon defendant's voluntary dismissal of personal injury action, even though expert witness fees were not specifically enumerated in prior version of the statute listing recoverable costs in civil actions; the list of recoverable expenses was not exclusive, in the version of the statute applicable to the case, and expert witness fees were recognized by common law as recoverable when expert had been subpoenaed. [Vaden v. Dombrowski, 2007, 653 S.E.2d 543](#). Costs  187

Trial court did not abuse its discretion when it awarded defendants deposition-related expenses upon defendant's

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voluntary dismissal of personal injury action, even though deposition-related expenses were not specifically enumerated in prior version of the statute listing recoverable costs in civil actions; the list of recoverable expenses was not exclusive, in the version of the statute applicable to the case, deposition costs were recognized as recoverable by the common law, and the award was supported by attorney's affidavit, invoices, and receipts. [Vaden v. Dombrowski, 2007, 653 S.E.2d 543](#). Costs  154

In analyzing whether a trial court properly assessed costs, the reviewing court must undertake a three-step analysis: (1) the court must determine whether the cost sought is one enumerated in the statute governing costs in civil actions, and if so, the trial court is required to assess the item as costs; (2) where the cost is not an item listed in the statute, the court must determine if it is a "common law cost" under the rationale of *Department of Transportation v. Charlotte Area Mfd. Housing Inc.*; and (3) if the cost sought to be recovered is a "common law cost," the court must determine whether the trial court abused its discretion in awarding or denying the cost. [Vaden v. Dombrowski, 2007, 653 S.E.2d 543](#). Appeal And Error  1024.1

When reviewing award of costs, the Court of Appeals will not disturb a trial court's award of expenses related to depositions absent an abuse of discretion. [Morgan v. Steiner, 2005, 173 N.C.App. 577, 619 S.E.2d 516](#), review dismissed [360 N.C. 648, 636 S.E.2d 808](#), review denied [360 N.C. 648, 636 S.E.2d 808](#). Appeal And Error  984(1)

#### 15. Unnecessary costs

Enumerated costs and expenses unnecessarily incurred by the prevailing party will not be taxed against the losing party. [Oakes v. Wooten, 2005, 173 N.C.App. 506, 620 S.E.2d 39](#). Costs  146

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CHAPTER 6. LIABILITY FOR COURT COSTS  
ARTICLE 3. CIVIL ACTIONS AND PROCEEDINGS

**→§ 6-18. When costs allowed as of course to plaintiff**

Costs shall be allowed of course to the plaintiff, upon a recovery, in the following cases:

- (1) In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial.
- (2) In an action to recover the possession of personal property.
- (3) In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than fifty dollars (\$50.00) damages, he shall recover no more costs than damages.
- (4) When several actions are brought on one bond, recognizance, promissory note, bill of exchange or instrument in writing, or in any other case, for the same cause of action against several parties who might have been joined as defendants in the same action, no costs other than disbursements shall be allowed to the plaintiff in more than one of such actions, which shall be at his election, provided the party or parties proceeded against in such other action or actions were within the State and not secreted at the commencement of the previous action or actions.
- (5) In an action brought under Article 1 of Chapter 19A.

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→ § 6-19. When costs allowed as of course to defendant

Costs shall be allowed as of course to the defendant, in the actions mentioned in [G.S. 6-18](#) unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them.

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→ § 6-20. Costs allowed or not, in discretion of court

In actions where allowance of costs is not otherwise provided by the General Statutes, costs may be allowed in the discretion of the court. Costs awarded by the court are subject to the limitations on assessable or recoverable costs set forth in [G.S. 7A-305\(d\)](#), unless specifically provided for otherwise in the General Statutes.

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→ § 6-21. Costs allowed either party or apportioned in discretion of court

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

- (1) Application for years' support, for surviving spouse or children.
- (2) Caveats to wills and any action or proceeding which may require the construction of any will or trust agreement, or fix the rights and duties of parties thereunder; provided, that in any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit.
- (3) Habeas corpus; and the court shall direct what officer shall tax the costs thereof.
- (4) In actions for divorce or alimony; and the court may both before and after judgment make such order respecting the payment of such costs as may be incurred by either spouse from the sole and separate estate of either spouse, as may be just.
- (5) Application for the establishment, alteration or discontinuance of a public road, cartway or ferry. The board of county commissioners may order the costs incurred before them paid in their discretion.
- (6) The compensation of referees and commissioners to take depositions.
- (7) All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the Chapter entitled Partition.
- (8) In all proceedings under the Chapter entitled Drainage, except as therein otherwise provided.
- (9) In proceedings for reallocation of homestead for increase in value, as provided in the Chapter, Civil Procedure.
- (10) In proceedings regarding illegitimate children under Article 3, Chapter 49 of the General Statutes.
- (11) In custody proceedings under Chapter 50A of the General Statutes.
- (12) In actions brought for misappropriation of a trade secret under Article 22 of Chapter 66 of the General Statutes.

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow: provided that attorneys' fees in actions for alimony shall not be included in the costs as provided herein, but shall be determined and provided for in accordance

with [G.S. 50-16.4](#).

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**→ § 6-21.1. Allowance of counsel fees as part of costs in certain cases**

In any personal injury or property damage suit, or suit against an insurance company under a policy issued by the defendant insurance company and in which the insured or beneficiary is the plaintiff, upon a finding by the court that there was an unwarranted refusal by the defendant insurance company to pay the claim which constitutes the basis of such suit, instituted in a court of record, where the judgment for recovery of damages is ten thousand dollars (\$10,000) or less, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the litigant obtaining a judgment for damages in said suit, said attorney's fee to be taxed as a part of the court costs.

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**→ § 6-21.2. Attorneys' fees in notes, etc., in addition to interest**

Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law after maturity, subject to the following provisions:

- (1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (3) As to notes and other writing(s) evidencing an indebtedness arising out of a loan of money to the debtor, the "outstanding balance" shall mean the principal and interest owing at the time suit is instituted to enforce any security agreement securing payment of the debt and/or to collect said debt.
- (4) As to conditional sale contracts and other such security agreements which evidence both a monetary obligation and a security interest in or a lease of specific goods, the "outstanding balance" shall mean the "time price balance" owing as of the time suit is instituted by the secured party to enforce the said security agreement and/or to collect said debt.
- (5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on demand, to surrender possession of the collateral to the secured party as authorized by [G.S. 25-9-609](#), with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the

provisions relative to payment of attorneys' fees in addition to the "outstanding balance."

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**→ § 6-21.5. Attorney's fees in nonjusticiable cases**

In any civil action, special proceeding, or estate or trust proceeding, the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. The filing of a general denial or the granting of any preliminary motion, such as a motion for judgment on the pleadings pursuant to [G.S. 1A-1, Rule 12](#), a motion to dismiss pursuant to [G.S. 1A-1, Rule 12\(b\)\(6\)](#), a motion for a directed verdict pursuant to [G.S. 1A-1, Rule 50](#), or a motion for summary judgment pursuant to [G.S. 1A-1, Rule 56](#), is not in itself a sufficient reason for the court to award attorney's fees, but may be evidence to support the court's decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney's fees. The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section.

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CHAPTER 1D. PUNITIVE DAMAGES

**→ § 1D-45. Frivolous or malicious actions; attorneys' fees**

The court shall award reasonable attorneys' fees, resulting from the defense against the punitive damages claim, against a claimant who files a claim for punitive damages that the claimant knows or should have known to be frivolous or malicious. The court shall award reasonable attorney fees against a defendant who asserts a defense in a punitive damages claim that the defendant knows or should have known to be frivolous or malicious.

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CHAPTER 75. MONOPOLIES, TRUSTS AND CONSUMER PROTECTION  
ARTICLE 1. GENERAL PROVISIONS

**→ § 75-16.1. Attorney fee**

In any suit instituted by a person who alleges that the defendant violated [G.S. 75-1.1](#), the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

- (1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
- (2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

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