


CRIMINAL COSTS AS CIVIL JUDGMENTS
 DISTRICT COURT JUDGES' SUMMER CONFERENCE - 2019
 JUNE 19, 2019
 WRIGHTSVILLE BEACH, NC

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AGENDA

- Costs vs. Other Monetary Obligations
- Costs and Active Sentences
- Costs as Civil Judgments
 - Obligation to Impose?
 - Timing
 - Criteria
- How (Not) to Impose a Civil Judgment for Costs




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CRIMINAL COSTS AS CIVIL JUDGMENTS

“One of the biggest issues is when to reduce costs to a civil judgment. The clerks advise basically that anytime an active sentence is imposed the judge should reduce the costs to a civil judgment immediately. There are many other times that the clerks insist that costs be reduced to judgment and the judges follow that advice.”




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CRIMINAL COSTS AS CIVIL JUDGMENTS

COSTS VS. OTHER MONETARY OBLIGATIONS

- “One of the biggest issues is when to reduce costs to a civil judgment.”
- So what are “costs?”
 - Or: What does AOC tell the clerks that you meant when you said “costs” in your judgment?
- Terminology matters: the rules differ for each monetary obligation, including the authority to docket civil judgments.
 - James M. Markham, *Monetary Obligations in North Carolina Criminal Cases* (2018) (bench card)




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CRIMINAL COSTS AS CIVIL JUDGMENTS
 COSTS VS. OTHER MONETARY OBLIGATIONS

- “Costs” – line items listed or authorized by incorporating reference in G.S. 7A-304:
 - (a) – most costs (GCJ fee, facility fee, service-of-process fee, etc.)
 - (c) – witness fees, jail fees, transcript fees, parentage blood tests
 - (f) – the installment fee




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CRIMINAL COSTS AS CIVIL JUDGMENTS
 COSTS VS. OTHER MONETARY OBLIGATIONS

- What is not included in “costs?”
 - Fines
 - Attorney Fees/Appointment Fee
 - Restitution
 - Fees outside G.S. 7A-304 (probation supervision, community service, EHA, SBM)
- Collectively, “monetary obligations,” “court debt,” etc.




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CRIMINAL COSTS AS CIVIL JUDGMENTS
 COSTS AND ACTIVE SENTENCES

- “The clerks advise basically that anytime an active sentence is imposed the judge should reduce the costs to a civil judgment...”
- Conflates two separate issues:
 - Whether costs apply to active sentences. (Yes.)
 - Whether active sentence requires a civil judgment for costs. (No.)
- Confusion is understandable: 2011 repeal of ‘active time exception’ for costs coincided with increased pressure on collection.




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 COSTS AS CIVIL JUDGMENTS

- “... the judge should reduce the costs to a civil judgment immediately.”
- Again, two separate questions:
 - whether to docket (should); and
 - when to docket (immediately).




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 COSTS AS CIVIL JUDGMENTS - OBLIGATION TO IMPOSE?

- “Should” implies obligation, so rephrasing slightly:
 - Under what circumstances is the court required to enter a civil judgment for costs?
- G.S. 15A-1365: authority to docket costs is discretionary; the court “may order that the judgment be docketed.”




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 COSTS AS CIVIL JUDGMENTS - TIMING

- Assuming court is inclined to enter a civil judgment for costs, when?
- Tenor of Ch. 15A, Art. 84: defendant should have a chance to comply.
 - G.S. 15A-1364(a): “Response to Default. – When a defendant ... defaults in payment...”
 - G.S. 15A-1365: “When a defendant has defaulted in payment ...”
 - Official Commentary (last sentence): “[This section] tries to make clear that the judgment need not be docketed until default.”
- So, “immediately?”




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 COSTS AS CIVIL JUDGMENTS - TIMING

- “There are many other times that the clerks insist that costs be reduced to judgment ...”
- G.S. 15A-1364: show cause procedure for non-payment
- Probation hearings
 - G.S. 15A-1365: no willfulness element for “default.”
 - G.S. 15A-1344(b1)(2)a.: defendant FTA after mailed notice of violation, court can terminate and enter “appropriate orders for the enforcement of any outstanding monetary obligations.”




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 COSTS AS CIVIL JUDGMENTS - CRITERIA

- G.S. 15A-1364 and 15A-1365 do not define “default.”
- G.S. 15A-1364 (show cause proceeding for non-payment):
 - “Default” is the prerequisite for the hearing, not its outcome.
 - Inability to pay and good faith efforts are defenses to sanction (imprisonment); do not appear to negate the underlying default.
- G.S. 15A-1365: civil judgments authorized simply by “default.”
 - No criterion of willfulness, lack of good faith, etc.




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 HOW (NOT) TO IMPOSE A CIVIL JUDGMENT FOR COSTS

- What not to say: “all monies as a civil judgment.”
- Each monetary obligation has different criteria and procedures for docketing.
 - Orders to docket “all monies” mingle incompatible obligations (e.g., interest-bearing and not), risk redundant judgments, and may lack statutory authority.




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CRIMINAL COSTS AS CIVIL JUDGMENTS
 HOW (NOT) TO IMPOSE A CIVIL JUDGMENT FOR COSTS

- Fines.
- Clear authority to docket - G.S. 15A-1365 applies to “a fine or costs.”
- Court’s directive should specify fines separately from costs, e.g., “costs and fine as civil judgments.”




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 HOW (NOT) TO IMPOSE A CIVIL JUDGMENT FOR COSTS

- Attorney fees/appointment fee.
- Civil judgment is entered by signing the order on the fee application.
 - Clerk will docket according to G.S. 7A-455(c); timing depends on whether payment is a condition of probation.
- Ordering attorney fees as a civil judgment in the criminal judgment is redundant and risks conflict with the fee app.




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 HOW (NOT) TO IMPOSE A CIVIL JUDGMENT FOR COSTS

- Restitution.
- Civil judgment for VRA award >\$250 is entered by signing the order on AOC-CR-611.
 - No authority for civil judgments if not for a VRA offense and >\$250. See, e.g., State v. Hudgins, 215 N.C. App. 599 (2011) (unpublished).
- Ordering restitution as a civil judgment in the criminal judgment is redundant to the CR-611 or statutorily impermissible.




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 HOW (NOT) TO IMPOSE A CIVIL JUDGMENT FOR COSTS

- Fees outside G.S. 7A-304, e.g., probation supervision fee.
 - Not “costs,” so docketing authority is unclear.
 - If court interprets “costs” in G.S. 15A-1365 to include these fees, the order needs to be specific.
 - E.g., “costs and supervision fee arrearage as a civil judgment”
- Avoid orders to docket costs “and fees”; implies docketing of the attorney/appointment fees covered by the fee app.




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 CONCLUSION

- Must the court docket civil judgments for costs? No.
- When can the court docket judgments for costs? Upon “default.”
- How to enter judgment for costs?
 - Be granular: identify specific monetary obligations to be docketed, e.g., “costs” vs. “fine and costs” vs. “fine, costs, and balance of supervision fees.”



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THANK YOU

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