



RELIEF FROM MONETARY OBLIGATIONS DISTRICT COURT JUDGES' FALL CONFERENCE - 2023

OCTOBER 19, 2023
ASHEVILLE, NC

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RELIEF FROM MONETARY OBLIGATIONS AGENDA

- Background – the CR-415, Rule 28, and DMV
- CR-415 Procedures – Filing & Hearings
- Scope of Relief
- Pre-Judgment Motions
- Post-Judgment Motions
- “Ability to Pay”
- CMO as Term of Plea Agreement
- Writing the Order



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BACKGROUND – THE CR-415, RULE 28, AND DMV THE AOC-CR-415

- Based on an initial draft by SOG Professor Jamie Markham, derived from his analysis in bench card: “Monetary Obligations in North Carolina Criminal Cases”:
<https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%E2%80%93for-proofing.pdf>

<https://nccriminallaw.sog.unc.edu/a-swiss-army-form-for-fines-and-fees/>
- The original CR-415 (New 9/20) form was four-sided, two sheets front and back, covering the statutes governing monetary obligations in detail.
- For brevity: “CMO” = Criminal Monetary Obligation



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BACKGROUND – THE CR-415, RULE 28, AND DMV GENERAL RULES OF PRACTICE - RULE 28

- Effective January 1, 2022, the NC Supreme Court adopted new General Rule of Practice 28 to address relief from monetary obligations based on “ability to pay.”
 - Some existing statutes already required consideration of ability to pay, *e.g.*, G.S. 15A-1362 (fines) & 15A-1340.36 (restitution).
- To address concerns about length and complexity of the form, and in conjunction with adoption of Rule 28, NCAOC abbreviated the CR-415 to 2 pages, Rev. 3/22.
 - 2022 version initially cited Rule 28, but some actors interpreted this to mean the form was limited to motions made at sentencing.
 - June 2022: NCAOC removed the cite to Rule 28. (Still labeled “Rev. 3/22.”)



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BACKGROUND – THE CR-415, RULE 28, AND DMV DMV SETTLEMENT

- Independent of the adoption of the CR-415 and Rule 28, in March 2022, DMV settled a class action suit over revocation of drivers licenses resulting from court actions: *Johnson et al. v. Goodwin*, 1:18-cv-00467 (MDNC).
- As part of settlement, DMV revised notices to persons revoked under G.S. 20-24.1 for a failure to pay (the FTC revocation notices), advising recipients about petitioning for relief via the CR-415.
- DMV amended the notice for future FTC revocations and notified persons with past FTC revocations, prompting an influx of motions.



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CR-415 PROCEDURES – FILING & HEARINGS CLERK'S PROCESSING OF MOTIONS

- Rule 28(b): Defendant "may" use CR-415 to move for relief; does not appear to require using AOC's form.
- OGC's guidance to clerks: process like any other motion in a criminal case.
 - Pre-judgment: to be heard at sentencing. Rule 28(c) ("prior to imposing").
 - Post-judgment: calendar per local criminal case mgmt. plans.



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CR-415 PROCEDURES – FILING & HEARINGS

CR-415 AS MOTION FOR APPROPRIATE RELIEF

- One theory by some DAs that post-judgment relief must be sought via MAR.
- Neither the N.C.G.S. nor appellate division address this question. Contrast Article 89 with, *e.g.*, G.S. 15A-1363 (fines & costs) & 15A-1340.39 (restitution).
- If CR-415 is an MAR, clerk routes to SRSCJ/CDCJ for frivolity review. G.S. 15A-1420.
 - If “sufficient information to warrant a hearing or the interests of justice so require,” MAR proceeds to hearing.
 - If defendant indigent, court must appoint counsel.
- Absent an express directive from the SRSCJ or CDCJ to process CR-415s as MARs, OGC has advised the clerk not to treat like an MAR.



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CR-415 PROCEDURES – FILING & HEARINGS

FEATURES OF MOTIONS FOR RELIEF

- Shared considerations for motions on CR-415:
 - **Prompt:** Any trigger required before the court can consider relief, *e.g.*, a motion by defendant or State.
 - **Prior Notice:** Any notice to a non-party required in order to grant relief.
 - **Scope of Relief:** What the court can grant.
 - **Standard for Relief:** The substantive factors when considering relief.
 - **Findings:** Whether specific findings are required.
- Burden of proof, generally: State must provide evidence for some CMOs, *e.g.*, restitution, but defendant has the burden to produce evidence of financial status or (in)ability to pay. *State v. Tate*, 187 N.C. App. 593 (2007) (restitution).



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SCOPE OF RELIEF

- The statutes use varying terms to describe the scope of relief, none of which is defined expressly in in the context of CMOs in Chapters 7A, 14, or 15A.
- OGC’s interpretation:
 - “Waive” – relieving defendant of CMO that otherwise would accrue.
 - “Exempt” – unclear if it means “waive,” “remit,” or both.
 - “Remit” – grant relief (full or partial) from a CMO previously imposed.
 - “Revoke” – apparently the same as “remit.”
 - “Reduce” – used in both pre- and post-judgment contexts.



PRE-JUDGMENT MOTIONS COURT COSTS – G.S. 7A-304

- “Costs” = G.S. 7A-304(a) (most costs), (c) (incorporating costs from other statutes), and (f) (the installment fee)
- **Prompt:** None required by statute.
- **Prior Notice:** 15 days’ notice by first class mail to “government entities directly affected.” G.S. 7A-304(a).
- **Scope of Relief:** “Waive” for most costs. For lab fees and fees for lab analyst expert testimony, “waive” or “reduce.”
- **Standard for Relief:** “Just cause.”
- **Findings:** Written findings of fact and conclusions law of “just cause.”



PRE-JUDGMENT MOTIONS

COST/FINE RELIEF AND “GOVERNMENT ENTITIES DIRECTLY AFFECTED”

- G.S. 7A-304(a) – No waiver or remission of costs or fines without 15 days’ advance notice by first-class mail to all “government entities directly affected,” notifying of their right to be heard and object to any waiver/remission.
 - Effective Dec. 1, 2017. S.L. 2017-57, sec. 18B.6.
- NCAOC provides notice in a monthly mailing to affected entities, advising that at any session of criminal court, waiver/remission might be considered in any case.
 - Notice also provides the link to NCAOC’s web page for criminal calendars.
- Notice provides entities with option to submit a ‘standing objection’ to waiver/remission (form AOC-A-257).



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PRE-JUDGMENT MOTIONS

COST/FINE RELIEF AND “GOVERNMENT ENTITIES DIRECTLY AFFECTED”

- Agency responses – and copies of monthly notices – are compiled at:
<https://www.nccourts.gov/documents/publications/costfine-waiver-and-remission-agency-response-registry>

Waiver Response Table

Last Update Date/Version:
09/20/2023

COUNTY	AGENCY	Response?	Standing Objection		Waiver/Request for Notice		Name of Counsel	Last Update
			Object	Lack of Objection	Discontinued	Continue		
ALAMANCE								
	ALAMANCE CO TREASURER	Y	X		X		Clyde B. Albright	3/28/2018
	ALAMANCE CO SHERIFF DEPT	Y	X		X		Clyde B. Albright	3/28/2018
	GRAHAM POLICE DEPT	Y	X			X	Erin Coleman	12/8/2020



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PRE-JUDGMENT MOTIONS

“OTHER” COSTS - NON-7A-304 FEES

- The probation supervision fee; EHA fee; and SBM fee.
- **Prompt:** Motion by defendant.
- **Prior Notice:** None.
- **Scope of Relief:** “Exempt.”
- **Standard for Relief:** “Good cause.”
- **Findings:** None required.
- Outlier: the community service fee, G.S. 143B-1483. Statute allows certain delays in payment of fee but is silent about relief from the fee. Relief is neither prohibited nor expressly authorized.



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PRE-JUDGMENT MOTIONS

FINES – CHAPTER 15A, ARTICLE 84

- Fines are discretionary, unless the offense statute mandates imposition, *e.g.*, certain littering offenses. Authority to “waive” mandatory fines is doubtful, unless fine rises to the level of constitutionally excessive.
- **Prompt:** None.
- **Prior Notice:** None.
- **Scope of Relief:** N/A. ‘Relief’ = impose not at all or an amount defendant can pay.
- **Standard for Relief:** For method of payment, “consider the burden that payment will impose in view of the financial resources of the defendant.” G.S. 15A-1362.
- **Findings:** None.



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PRE-JUDGMENT MOTIONS

RESTITUTION – G.S. 15A-1340.34, -1340.36

- **Prompt:** None. (State must present evidence to support imposing at all.)
- **Prior Notice:** None. (State required upon request to notify victims of hearing.)
- **Scope of Relief:** Partial restitution. In determining amount, G.S. 15A-1340.36(a) requires assessing defendant’s resources (incl. income derived therefrom), ability to earn, obligation to support dependents, and “any other matters that pertain to the defendant’s ability to make restitution.”
 - ‘Relief’ might be to allow payment over time. G.S. 15A-1340.36(b).
- **Standard for Relief:** Partial restitution allowed if total is “greater than ... defendant is able to pay.”
- **Findings:** If partial restitution, “court shall state on the record the reasons.”



PRE-JUDGMENT MOTIONS

ATTORNEY FEES – G.S. 7A-455

- **Prompt:** If fees will be reduced to civil judgment, defendant must have notice and opportunity to be heard on amount.
 - *State v. Jacobs*, 172 N.C. App. 220 (2005) (generally); *State v. Gibson*, 278 N.C. App. 295 (2021) (limited to civil judgments).
- **Prior Notice:** None.
- **Scope of Relief:** None specified in statute.
- **Standard for Relief:** Fees imposed pursuant to IDS rules. G.S. 7A-455(b).
- **Findings:** None (but ordering reimbursement for less than full amount would require customizing the order on the fee app).



PRE-JUDGMENT MOTIONS

ATTORNEY APPOINTMENT FEE – G.S. 7A-455.1

- “May not be remitted or revoked.” G.S. 7A-455.1(b).
- Use of those terms in other statutes implies this prohibition only prevents post-judgment relief.
 - *E.g.*, G.S. 7A-455.1 does not say you can’t “waive,” and the appointment fee is a cost. *State v. Webb*, 359 N.C. 92 (2004).
 - So -- waivable under G.S. 7A-304(a) (with 15 days’ notice to IDS)?
- “Not remitted or revoked” more likely was intended to mean “no relief at all,” so CR-415 (even the original, detailed version) omitted any option to grant relief from the appointment fee.



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POST-JUDGMENT MOTIONS

COURT COSTS AND FINES – G.S. 15A-1363

- **Prompt:** Motion (“petition”) by State or defense.
- **Prior Notice:** 15 days’ notice to affected government entities. G.S. 7A-304(a).
- **Scope of Relief:** “Remit” or “revoke” unpaid balance in whole or in part, or modify method of payment.
- **Standard for Relief:** If circumstances which warranted imposition no longer exist; it would otherwise be unjust to require payment; or proper administration of justice requires resolution of the case.
- **Findings:** None. Written findings of “just cause” are required only for pre-judgment waivers of costs.



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POST-JUDGMENT MOTIONS

COURT COSTS AND FINES – OTHER CONSIDERATIONS

- Remission of costs and fines also might result from show-cause proceedings for default under G.S. 15A-1364.
 - If default not attributable to defendant’s failure to make a good faith effort to pay, court may:
 - allow additional time for payment;
 - reduce the total amount or of each installment; or
 - revoking the fine or costs or the unpaid portion in whole or in part.
- For drivers licenses, court might grant relief other than modifying the CMO, *e.g.*, order FTC revocation lifted if court finds FTC was “not willful” and defendant “making a good faith effort to pay.” G.S. 20-24.1(b)(4).



POST-JUDGMENT MOTIONS

"OTHER" COSTS - NON-7A-304 FEES

- The probation supervision fee; EHA fee; and SBM fee.
- If “exempt” is synonymous with “waive,” statutes imply relief is allowed only at front end.
- If “exempt” includes remission, rules are the same as for pre-judgment relief:
 - **Prompt:** Motion by defendant.
 - **Prior Notice:** None.
 - **Scope of Relief:** “Exempt.”
 - **Standard for Relief:** “Good cause.”
 - **Findings:** None required.



POST-JUDGMENT MOTIONS

RESTITUTION – G.S. 15A-1340.39

- **Prompt:** Not specified in G.S. 15A-1340.39.
- **Prior Notice:** 15 days' first-class mail to DA and to recipient(s) of restitution.
 - G.S. 15A-1340.39(a): "The court shall provide notice to [the DA and recipients]."
 - Some overlap with DA's and DAC's duty to notify VRA victims of proceedings when requested. G.S. 15A-832(c) and -837.
- **Scope of Relief:** "Remit," in whole or in part.
- **Standard for Relief:** If remission "is warranted and serves the interests of justice."
- **Findings:** None.



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POST-JUDGMENT MOTIONS

ATTORNEY FEES

- No express statutory mechanism for post-judgment relief from attorney fees.
 - But recall *Jacobs* and *Gibson*: if fees will be reduced to civil judgment, defendant must have notice and opportunity to be heard on amount.
- As with the appointment fee, even the original CR-415 did not include pre-printed options for relief from attorney fee obligations.



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PRE-JUDGMENT MOTIONS

ATTORNEY APPOINTMENT FEE

- G.S. 7A-455.1(b): “may not be remitted or revoked.”
- Notwithstanding any theory that the appointment fee might be waived at the front end under G.S. 7A-304(a) (as a “cost,” per *Webb*), post-judgment relief clearly is prohibited.



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“ABILITY TO PAY”

- No single standard for what constitutes “ability to pay.”
 - *E.g.*, fines, G.S. 15A-1362, account for defendant’s resources only in determining method of payment, but restitution, G.S. 15A-1340.36, considers defendant’s resources in deciding amount to impose.
- <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%E2%80%93for-proofing.pdf>

Monetary Obligations Carolina Cr	223 N.C. App. 180 (2012).
	<p style="text-align: center;">Ability to Pay</p> <p>An important consideration for any monetary obligation—both at the point of imposition and when responding to nonpayment—is the defendant’s ability to pay. North Carolina law requires the court to consider a defendant’s</p> <ul style="list-style-type: none"> • Ability to earn or work, including any limitations due to disability, health, lack of transportation, or driving privileges • Obligations to support dependents (including children,



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CMO AS TERM OF PLEA AGREEMENT

- Any constraint on post-judgment relief may depend on the exact terms of the plea agreement. *E.g.*, did the plea agreement...
 - Contain no agreement about the dollar amount of CMOs at all?
 - Include an agreement only about the CMOs to be imposed, *e.g.*, “defendant shall pay a fine of \$1,000?”
 - Include an express term that defendant never would petition for relief from CMOs based on changed circumstances?
- Plea agreements are construed strictly with any ambiguity generally resolved against the State. *State v. Wentz*, 284 N.C. App. 736 (2022).



WRITING THE ORDER

- Because procedures/standards differ from one CMO to the next, selective relief requires being specific about relief granted at the level of individual CMOs.
- To grant relief from a civil judgment, order should refer to that judgment explicitly.
 - G.S. 1A-1, Rule 58: Judgment is not entered until reduced to writing, signed by the judge, and filed with the clerk.
 - OGC advises clerks that subsequent modification of a civil judgment requires the same.
- See template phrasing for line-item relief and for relief from civil judgments in the original CR-415 (New 9/20) and in SOG's pre-CR-415 form, linked at:
<https://nccriminallaw.sog.unc.edu/a-swiss-army-form-for-fines-and-fees/>



RELIEF FROM MONETARY OBLIGATIONS

Questions?



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THANK YOU

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