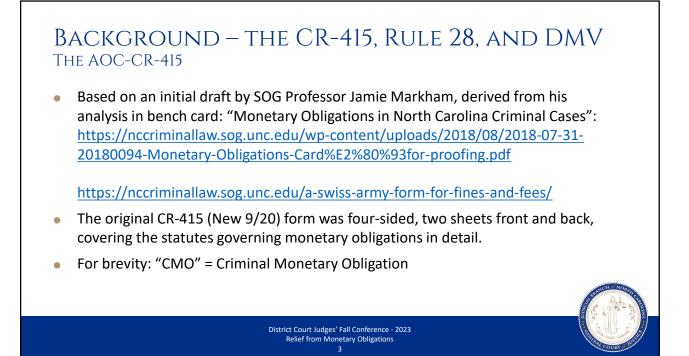
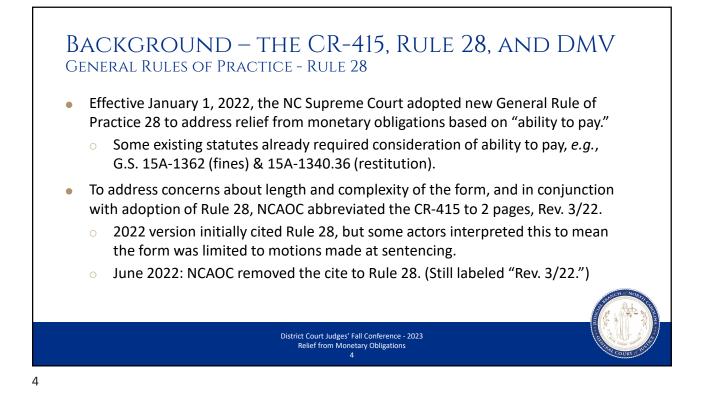


Relief from Monetary Obligations

District Court Judges' Fall Conference - 2023 Relief from Monetary Obligations 2

- 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





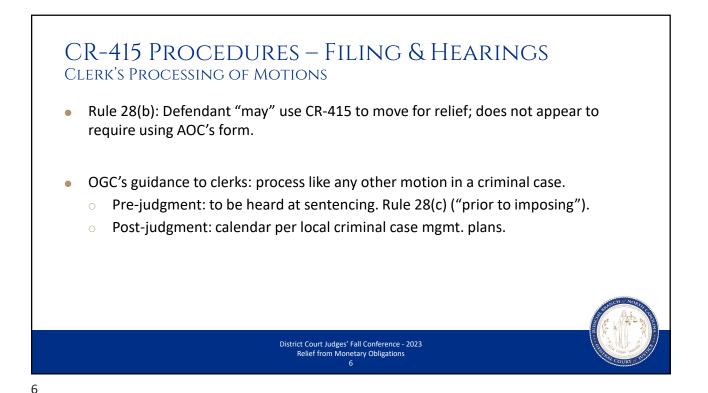
BACKGROUND – THE CR-415, RULE 28, AND DMV DMV Settlement

- 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.

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• DMV amended the notice for future FTC revocations <u>and</u> notified persons with past FTC revocations, prompting an influx of motions.



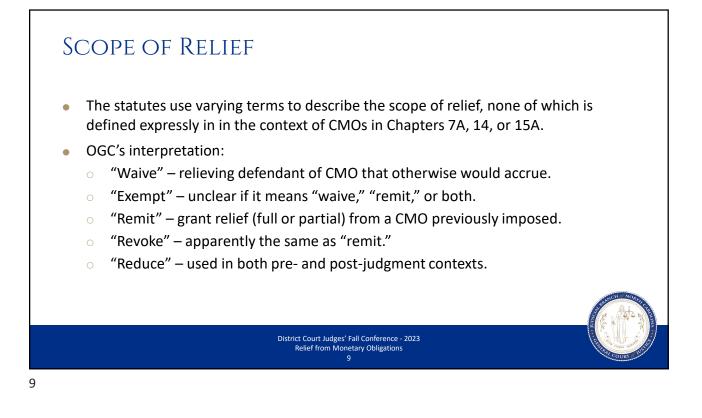
CR-415 PROCEDURES – FILING & HEARINGS CR-415 AS MOTION FOR APPROPRIATE RELIEF

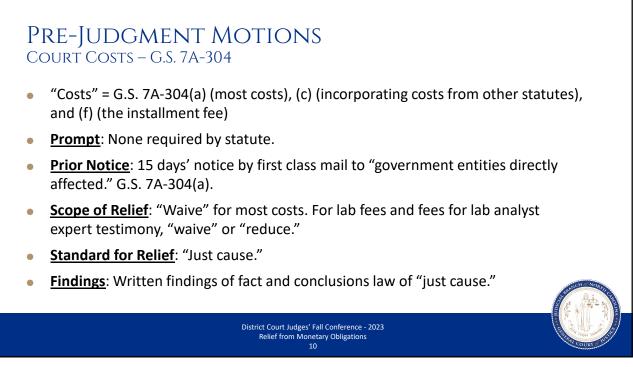
- One theory by some DAs that post-judgment relief must be sought via MAR.
- Neither the N.C.G.S. nor appellate division address this question. Contrast Article 89 with, *e.g.*, G.S. 15A-1363 (fines & costs) & 15A-1340.39 (restitution).
- If CR-415 is an MAR, clerk routes to SRSCJ/CDCJ for frivolity 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 <u>not</u> 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:
 - **<u>Prompt</u>**: 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.
 - **<u>Scope of Relief</u>**: What the court can grant.
 - o **<u>Standard for Relief</u>**: The substantive factors when considering relief.
 - **<u>Findings</u>**: 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).



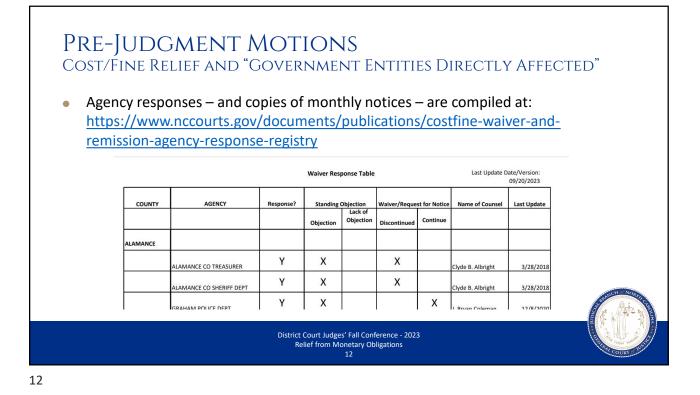


PRE-JUDGMENT MOTIONS Cost/Fine Relief and "Government Entities Directly Affected"

- 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.

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 Notice provides entities with option to submit a 'standing objection' to waiver/remission (form AOC-A-257).



¹¹

PRE-JUDGMENT MOTIONS "Other" Costs - Non-7A-304 Fees

- The probation supervision fee; EHA fee; and SBM fee.
- **<u>Prompt</u>**: Motion by defendant.
- Prior Notice: None.
- Scope of Relief: "Exempt."
- <u>Standard for Relief</u>: "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.
- <u>Prompt</u>: None.
- Prior Notice: None.
- **<u>Scope of Relief</u>**: N/A. 'Relief' = impose not at all or an amount defendant can pay.
- **<u>Standard for Relief</u>**: For <u>method</u> of payment, "consider the burden that payment will impose in view of the financial resources of the defendant." G.S. 15A-1362.
- <u>Findings</u>: None.

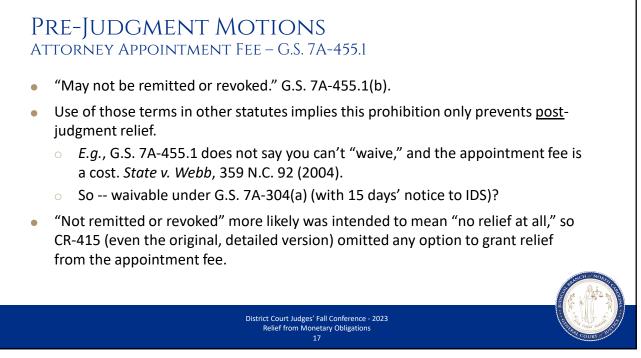
PRE-JUDGMENT MOTIONS RESTITUTION – G.S. 15A-1340.34, -1340.36

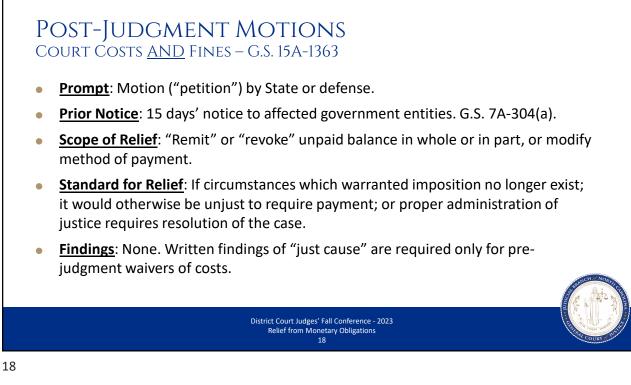
- <u>Prompt</u>: None. (State must present evidence to support imposing at all.)
- Prior Notice: None. (State required upon request to notify victims of hearing.)
- <u>Scope of Relief</u>: Partial restitution. In determining amount, G.S. 15A-1340.36(a) requires assessing defendant's resources (incl. 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).
- <u>Standard for Relief</u>: 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."

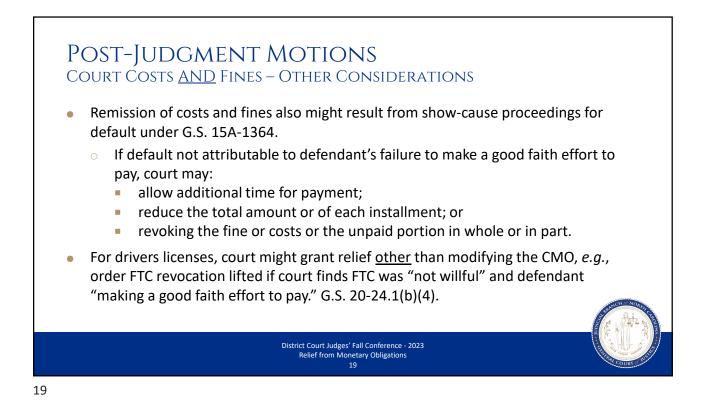
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PRE-JUDGMENT MOTIONS Attorney Fees – G.S. 7A-455

- <u>Prompt</u>: 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.
- **<u>Scope of Relief</u>**: None specified in statute.
- <u>Standard for Relief</u>: 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).



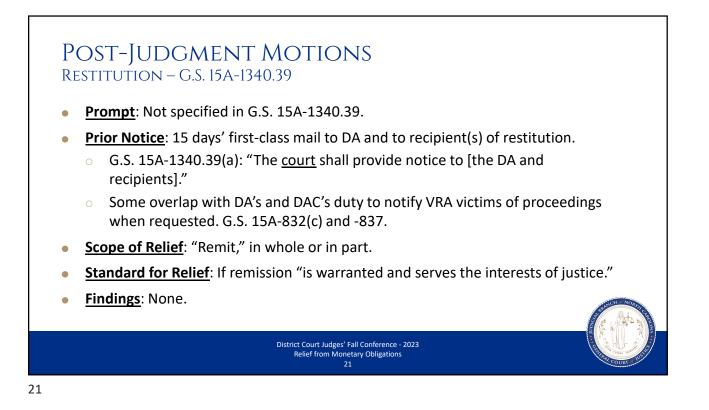


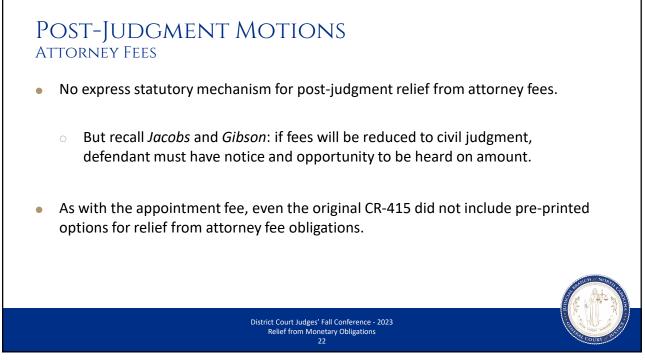


POST-JUDGMENT MOTIONS "Other" Costs - Non-7A-304 Fees

- 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:
 - **<u>Prompt</u>**: Motion by defendant.
 - o **<u>Prior Notice</u>**: None.
 - Scope of Relief: "Exempt."
 - <u>Standard for Relief</u>: "Good cause."
 - <u>Findings</u>: None required.







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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