

Some Additional Thoughts on the New Cost and Fine Waiver Procedures

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With the work of the court system picking up steam after its holiday pause—perhaps with an additional interruption for winter weather in some parts of the state (stay safe, everyone)—questions are rolling in about the new notice and hearing procedures for waivers and remissions of costs, fines, and restitution.

I wrote about the new provisions [here](#). To recap, the law requires a court to give at least 15 days notice and an opportunity for certain parties to be heard before remitting any restitution or waiving or remitting any cost or fine. The amended statutes require the court to send the notices by first-class mail.

These provisions have received considerable attention in North Carolina and some national coverage, like [this Christmas-day piece](#) in *The Atlantic*.

When I last wrote about these laws it was unclear what sort of system-wide approach, if any, the Judicial Branch might take in seeking to comply with them. Since then, the Administrative Office of the Courts has issued a memo (linked in [this WRAL article](#), among other places) describing a suggested approach for complying with the revised cost and fine waiver procedure in G.S. 7A-304. (Nobody seems to have much of an issue with the restitution remission provision.)

In a nutshell, the suggested approach is for the AOC to send a monthly general notice to all state and local government entities that might be directly affected by waivers or remissions. It informs them that costs and fines might be waived or remitted, and that, under the new law, they have a right to be heard before that happens. The monthly notice provides a link to the [online criminal calendar](#) to give affected parties an opportunity to review the particular cases in which a monetary obligation might be waived or remitted.

The memo encouraged local jurisdictions to reach out to potentially affected parties in their district (identified in a spreadsheet accompanying the memo) to ask if the statewide batch-notice approach will suffice, or if any party would like additional notice. I have seen a few of the letters from senior resident superior court judges and chief district court judges to potentially affected parties, but I haven't heard whether any entity has requested additional notice beyond the monthly letter from AOC. (If you know of any that has, please post a comment or let me know.)

I have been asked whether I think the suggested approach—monthly blanket notice plus local supplementation as requested by affected parties—complies with the law. It's not a perfect fit. The approach is overinclusive in that it mostly puts affected parties on notice (by reference to the online calendar) of cases where no obligation will actually be waived or remitted (according to [last year's cost waiver report](#), costs are assessed in far more cases than they are not). I suppose it's better to err on the side of giving notice for every case where a waiver or remission *might* happen, but it does spread the affected entities pretty thin by inviting their presence at literally a million hearings per year where no obligations will be waived or remitted.

The approach is also potentially underinclusive in that some cases, such as those on an add-on calendar or probation modifications handled outside of open court, might not appear on the online calendar more than 15 days before a waiver or remission is actually ordered. In those cases especially, the court might want to consider providing

individualized notice to affected parties before waiving or remitting (and counsel arguing for a waiver or remission might want to be prepared to help make that happen).

Ultimately, the approach does seem to satisfy the letter of the law in most cases, and also its ostensible intention of informing would-be recipients of costs and fines that they might not receive the money that would typically be directed to them as part of a criminal case.

In my prior blog post on the waiver notice provision I indicated that I thought the effective date clause for the new law—"cases arising" on or after December 1, 2017—meant the notice requirement would apply to *offenses committed* on or after that date. The AOC memo takes the position that the law applies to any case coming before the court on or after that date, regardless of when the offense was committed or the charge was filed. I haven't seen a lot of "cases arising" criminal effective dates, so I don't think there's a clear answer. And I certainly don't have any strong disagreement with the AOC interpretation. I would, however, note that an offense-date-based reading would avoid any argument that the law introduces a new hurdle to be cleared before a fine can be remitted, and thus ought not to be applied retroactively under the Ex Post Facto Clause. But mostly I just wanted to acknowledge that the official interpretation differs from what I had written previously and speculated about at the superior court judges' fall conference and elsewhere.