

Assess Court Costs Once for All Related Charges Adjudicated Together

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When a defendant has multiple charges adjudicated together in the same hearing or trial, and those charges arose from the same underlying event or transaction, the court should assess costs only once. That's the new rule according to [State v. Rieger](#), a case recently decided by the court of appeals.

In *Rieger*, the defendant was convicted by a jury of two crimes arising from the same underlying incident: possession of marijuana and possession of marijuana paraphernalia. The court entered a judgment for each conviction, assessing costs in both. Under G.S. 7A-304(a), costs shall (unless waived) be assessed "in every criminal case . . . wherein the defendant is convicted." On appeal, the defendant argued that both judgments were part of the same "criminal case" within the meaning of that statute, and that costs should therefore be assessed only once.

A unanimous panel of the court of appeals agreed with him. Finding no clear answer in the text of the statute and no dispositive legislative history, the court considered "the spirit of the act and what the act seeks to accomplish." Slip op. at 9. On that front, the court noted that costs are not meant to be punitive, but as a practical matter they sure can be, "particularly for low-income defendants." *Id.* Failure to pay them can, the court said, lead to "a cascade of crises that ultimately return even the most well-intentioned people back to the criminal justice system." *Id.* The court also noted that costs were meant to reflect the defendant's actual burden on the justice system—because if they didn't they would be punitive, and therefore a fine.

With all of that in mind, the court applied its new rule, vacating one of the judgments and remanding it back to the trial division to be entered again without costs.

I think *Rieger* is an important case that will change the standard practice for assessing costs in many districts. I know local practice varies, but I believe the most common approach up to this point was to assess one set of costs per judgment. (I know judges in some parts of the state will find just cause to waive costs in second and subsequent judgments imposed at the same time, but to be clear, *Rieger* is not about any sort of mandatory waiver.) Going forward, trial courts will need to consider whether the crimes underlying any judgments entered together were transactionally related. And if they were, costs will be assessed only once for all of them.

That sounds easy enough, but it's not crystal clear to me what it means to assess costs "only once." It might be straightforward where the bill of costs would be the same for each charge; in those cases you could probably pick one charge and go with it (and that appears to be what happened in *Rieger*). But it won't always be the same. Some charges might have more jail credit than others, which would result in different jail fees at \$10/day. Others might trigger offense specific costs, like the \$100 DWI fee or the \$600 lab fee. Should the trial court identify a "lead offense" and set the costs based on it? Or does the new case-based approach require the trial court to cobble together one aggregate bill of costs made up of the baseline costs applicable in all cases (like the General Court of Justice fee and the facilities fee, for example), plus all the offense-specific costs applicable to each individual charge? Language near the end of the opinion suggests the latter ("the statute permitted the trial court to assess the statutory court costs only once *across those two judgments*," slip op. at 11 (emphasis added)), but what the court of appeals actually did was vacate imposition of costs in one of the two judgments.

Under either formulation, it's not obvious to which single judgment the costs should attach. One approach might be to impose costs in the most serious case. Or, if a defendant receives some active sentences and some suspended sentences, it might make sense to impose the lone set of costs in the probationary case (assuming costs are not waived altogether for a defendant who is going to jail or prison).

The *Rieger* rule appears to be limited to offenses that arise from the same underlying event or transaction, but it's not obvious to me why it should be. It seems like unrelated charges would generate the same kind efficiencies to the court system when they are adjudicated together. Perhaps the rule will be broadened if a case with those facts comes before the appellate division. Of note, the lone fee for which the General Assembly has expressly adopted a once-per-case rule, the \$250 community service fee, is not limited to factually related offenses. Under G.S. 143B-708, the fee is assessed only once for "each sentencing transaction," which is defined as "all offenses considered and adjudicated during the same term of court," regardless of whether they arise from the same underlying event.

The mandate in *Rieger* does not issue until October 21, 2019. Before then, judges, clerks, and others may wish to review the case to see how it impacts local practice. Additionally, defendants who still owe costs that go beyond what is permissible under *Rieger* may have grounds to pursue a modification of probation or other post-conviction relief to bring their monetary obligations into compliance with the new understanding of G.S. 7A-304(a).