

Civil Judgments for Criminal Monetary Obligations

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When can money owed as the result of criminal case be docketed as a civil judgment?

You've probably seen the recent report from the Administrative Office of the Courts on criminal cost waivers. That [report](#), required annually under [G.S. 7A-350](#), aggregates court cost waivers "by the district in which the waiver or waivers were granted and by the name of each judge granting a waiver or waivers." I wrote about tracking court cost waivers [here](#).

The report is interesting. It sorts judicial officials' decisions on monetary obligations into several different "money statuses." The status of primary interest—or at least the one statutorily required to be tracked—is costs that are "Waived/Remitted." But other statuses are also included. For example, there is a column showing the total number of costs "Ordered," to "provide a sense of the volume of the dispositions in each county . . . or by each judge." Report at 2.

One of the statuses is "Civil Judgment." The report defines that status as the one to be used "when the judge orders the monetary obligations due through civil rather than criminal enforcement." *Id.* at 3.

The general concept of treating certain criminal monetary obligations as civil exists in our statutes. I know of three such authorizations.

Costs and fines. Under [G.S. 15A-1365](#), "[w]hen a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed. Upon being docketed, the judgment becomes a lien on the real estate the defendant in the same manner as do judgments in civil actions."

Attorney fees. Under [G.S. 7A-455\(b\)](#), the court shall enter a judgment for attorney fees that "shall constitute a lien as prescribed by the general law of the State applicable to judgments." The judgment kicks in on the later of (a) the date on which the conviction becomes final if the person is not ordered to pay attorney fees as a condition of probation, or (b) the date on which probation is terminated, revoked, or expires. [G.S. 7A-455\(c\)](#).

Restitution. Under [G.S. 15A-1340.38\(a\)](#), restitution in excess of \$250 ordered under [G.S. 15A-1340.34\(b\)](#) "may be enforced in the same manner as a civil judgment." Such restitution orders "shall be docketed and indexed in the county of the original conviction in the same manner as a civil judgment." [G.S. 15A-1340.38\(b\)](#). What is "restitution ordered under [G.S. 15A-1340.34\(b\)](#)"? That is restitution ordered for a defendant sentenced under the Crime Victims' Rights Act ([Article 46 of Chapter 15A](#)). In two unpublished cases the court of appeals has noted that there is no authority to docket non-CVRA restitution as a civil judgment. *State v. Scott*, 219 N.C. App. 652 (2012) (unpublished); *State v. Hudgins*, 215 N.C. App. 599 (2011) (unpublished). In probationary cases, civil judgments for CVRA restitution may not be executed upon the property of the defendant until probation has been terminated or revoked and the judge presiding at a probation violation hearing makes a finding that restitution in a sum certain remains due and payable. [G.S. 15A-1340.38\(c\)](#).

So, for all the major categories of criminal monetary obligations—costs, fines, attorney fees, and restitution (CVRA

restitution, at least)—there is authority to treat the obligation as a civil judgment.

Something I noticed about the “Civil Judgment” column in the AOC report, however, is that it includes only those monetary obligations ordered as civil judgments *exclusively*. If the judicial official ordered the obligation as *both* criminal and civil, it gets categorized as “Ordered.”

I had heard of the practice of ordering an obligation as exclusively civil, but I didn’t realize it was quite so common. With respect to court costs and fines in particular, I read the docketing authority in G.S. 15A-1365 to kick in only in the event of a properly-found *default*—something I discussed in [this prior post](#). If default is a precursor to docketing, then it seems like ordering a civil judgment for costs from the outset may put the civil cart before the criminal horse. In probationary cases, [G.S. 15A-1343\(e\)](#) requires court costs and attorney fees to be made a condition of supervision, absent extenuating circumstances.

I’d love to learn more about the process and thinking behind civil judgments for criminal obligations—particularly those that are civil *only*. Please post a comment or drop me a line if you have thoughts. I know this is a particular challenge for clerks.

A related question, of course, is how much money is actually collected as a result of these civil judgments. I’ll come back to that in a future post.