

## I'm Just a Civil Judgment

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Many of you probably remember the “[I’m Just a Bill](#)” segment from the *Schoolhouse Rock!* series. It explained—through a musical number that will be stuck in your head all day—how a bill becomes a law. I didn’t compose a song, but in today’s post I’ll attempt to explain what actually happens to the thousands of civil judgments entered for various monetary obligations in criminal court.

**First of all, which criminal monetary obligations may be docketed as a civil judgment?** In my opinion, only those for which the General Assembly has expressly authorized the practice. As discussed [here](#), there are different statutes for each type of obligation.

- **Costs, fines, and penalties** may be docketed civilly upon default under [G.S. 15A-1365](#).
- **Restitution** for offenses covered under the [Crime Victims’ Rights Act](#) (CVRA) in excess of \$250 shall be docketed under [G.S. 15A-1340.38](#). There is no statutory authority to docket restitution as a civil judgment in other cases. *State v. Scott*, 219 N.C. App. 652 (2012) (unpublished) (“Here, Defendant was not convicted of a crime which entitles a ‘victim’ to restitution under the Crime Victims’ Rights Act. See N.C. Gen. Stat. § 15A–830(a)(7) (2011) (defining ‘victim’ for purposes of the Crime Victims’ Rights Act as ‘[a] person against whom there is probable cause to believe’ one of the listed crimes was committed). Thus, we agree the trial court did not have authority pursuant to [N.C. Gen. Stat. § 15A–1340.38\(b\)](#) to docket the restitution against Defendant as a civil judgment.”).
- **Attorney fees**, including the \$60 attorney appointment fee, unlike other monetary obligations, are a civil judgment against the defendant from the outset. [G.S. 7A-455](#). That’s why the [fee application](#) includes language

styling the obligation as a judgment. They need not be expressly “converted” to a civil judgment.

If a court orders a civil judgment in a manner not described in any of those statutes, it is presumably being done under some conception of the court’s inherent authority.

**When does a judgment get docketed?** Again, it depends on the type of obligation.

- Judgments for unpaid **costs, fines, and penalties** may be docketed upon default. G.S. 15A-1365. I understand the word “default” to mean the obligation must have been imposed (i.e., not waived) in the criminal case and then not paid. I know of no authority to have judgments for costs, fines, or penalties docketed at the outset as an *alternative* to being imposed criminally.
- Eligible judgments for CVRA **restitution** shall be docketed when ordered. G.S. 15A-1340.38(b). However, if the defendant receives probation and is ordered to pay the restitution as a condition of probation, the judgment may not be executed upon the defendant’s property until the clerk is notified that the judge presiding at the probation termination or revocation hearing had made a finding that restitution in a sum certain remains due and payable, that probation has been terminated or revoked, and that the remaining balance of restitution owing may be collected by execution on the judgment. That is done via [Form AOC-CR-612](#).
- Judgments for attorney fees are docketed immediately when the conviction becomes final, unless payment of the fees is ordered as a condition of probation, in which case they are docketed when probation is terminated, revoked, or expires. (Note that the attorney fee provision covers probation that ends by expiration, while the restitution provision does not!)

**What process is due before docketing?** At a minimum, we know that the defendant must receive notice and an opportunity to be heard before the court may impose any judgment for attorney fees or the \$60 attorney appointment fee. Many cases have said so over the years, including one decided just last month. [State v. Harris](#), \_\_ N.C. App. \_\_ (2017) (“The total hours and amount of attorney’s fees imposed—52 and \$3,640.00, respectively—were not known at the time of the sentencing hearing, as Defendant’s counsel had not yet calculated the number of hours he had worked. Because there is no indication in the record that Defendant was notified of and given an opportunity to be heard regarding the appointed attorney’s total hours or the total amount of fees imposed, the imposition of attorney’s fees must be vacated.”) (internal quotations omitted). I am generally of the opinion that there must be some inquiry into a defendant’s ability to pay before he or she may be considered to be in default, which is a prerequisite to docketing a judgment for unpaid costs, fines, and penalties.

**How long is a judgment valid?** People sometimes say that all these civil judgments entered against defendants will tie them up financially for 10 years. At the risk of [mansplaining](#) (especially in an area outside of my field): well, actually, many judgments will hang around longer than that.

There are two statutes that come into play for criminal monetary obligations. The first is the 10-year limit on *executing* on a judgment. [G.S. 1-306](#). The second is the 10-year limitation to *sue* on a judgment of any court, [G.S. 1-47\(1\)](#), sometimes referred to as “renewing” a judgment (although that is not technically correct, as my colleague Dona Lewandowski explains [here](#)). As to the second limitation, the general rule for judgments in favor of the State or its political subdivisions is *nullum tempus occurrit regi*—“time does not run against the king.” That common law doctrine is understood to exempt government entities from the running of a limitations period unless the relevant statute expressly says otherwise. *See, e.g., City of Greensboro v. Morse*, 197 N.C. App. 624 (2009). So, the 10-year limit for filing suit on the judgment will not apply to judgments in favor of government entities. The 10-year limit on execution does apply, but as it turns out no government entity is seeking to execute on any of these judgments in any event.

As to a judgment in favor of a private party (like CVRA restitution), there would be a 10-year limitation on execution, with the possibility of another 10 years for execution on any judgment the creditor might obtain pursuant to a suit on the initial judgment filed within the first 10 years.

**Do judgments accrue interest?** Some do, some don't. It depends on the nature of the underlying monetary obligation. For those that do accrue interest, the rate is **8 percent per annum**. [G.S. 24-1](#). That is simple interest; it does not compound.

- Judgments for **costs** do not accrue interest. [G.S. 24-5](#).
- Judgments for **CVRA restitution** accrue interest except while the defendant is on probation. G.S. 15A-1340.38(c). When probation is over interest will commence if the court completes the Form AOC-CR-612.
- If the court orders a judgment for **other restitution** (which arguably shouldn't happen), it will accrue interest from the date of docketing.
- Judgments for **finances and penalties** accrue interest.
- Judgments for **attorney fees** accrue interest.
- Judgments for the \$60 **attorney appointment fee** do not accrue interest, because the supreme court deemed that fee to be a cost, *State v. Webb*, 358 N.C. 92 (2004), and costs don't accrue interest.

**How do these judgments get satisfied?** A judgment debtor could, of course, walk into the courthouse and satisfy it. That happens sometimes, although it is apparently not possible (or at least not easy) to tease out data on exactly how often.

A judgment creditor could seek to execute on the judgment (assuming that is done within the 10-year limitations period described above). I won't go into the full process, but long story short, upon a judgment creditor's request, the clerk could issue a writ of execution to the sheriff, who could levy on the debtor's property—seizing it and selling it to satisfy the debt. As far as I know, no government entity goes down that path for monetary obligations arising out of a criminal case.

**What about tax refunds and lottery winnings?** An alternative way for government entities to collect on judgments is North Carolina's debt setoff program, codified in [G.S. Chapter 105A](#). Under the program, sums owed to a State or local agency can be garnished from the debtor's state income tax refund. As things stand, however, the court system does not pursue most obligations through setoff debt procedures. Only attorney fees and the attorney appointment fee are routinely collected in that way (to the tune of about \$4 million collected last fiscal year).

Agencies that participate in the Department of Revenue's debt setoff program are also automatically enrolled in a similar program that intercepts certain lottery prizes. [G.S. 18C-134](#). Again, Indigent Defense Services is the only arm of the Administrative Office of the Courts that participates, intercepting about \$300,000 in lottery prize money last fiscal year to satisfy debts for attorney fees. Other obligations are not collected that way.

*Artwork by Jason Whitley*