

Clerk Actions When a DISTRICT Court Judge Orders a Civil Judgment for Attorney Fees
(Non-Capital Criminal Cases at the Trial Level Only)

There are two primary methods of recovery in cases in which a Court has ordered recoupment of attorney fees:

1. *Repayment Through Probation.* The Court can make repayment of attorney fees a condition of supervised or unsupervised probation pursuant to G.S. 15A-1343(e). Under this system, the defendant is ordered to repay attorney fees through probation by making payments directly to the Clerk of Court. This order is captured on the Criminal Bill of Costs.
2. *Repayment Through Civil Judgment.* The Court can enter a civil judgment against the person for the amount of fees found to be due, and that amount is then recovered through the interception of state income tax refunds and lottery winnings or by payments directly to the Clerk of Court. See G.S. 7A-450.1 through -450.4, 7A-455; see also G.S. 1-239 and G.S. 105A-1 through 105A-16 (Setoff Debt Collection Act). This order is captured on the back of the attorney’s fee application form.

The chart below outlines the actions that Clerks should take with respect to docketing civil judgments for attorney fees that have been ordered by the *District Court* (Judgment #1 on form AOC-CR-225). (The same principles apply to Judgment #2 for the attorney appointment fee.)

Court Order (Sections III. & IV. of Form AOC-CR-225)	Meaning of Court Order	Clerk Action (Section V. of Form AOC-CR-225)
District Court Judge checks one of the “opt out” boxes under Judgment #1.	Judge has <i>not</i> ordered a civil judgment for attorney fees.	No action necessary.
District Court Judge does <i>not</i> check one of the “opt out” boxes under Judgment #1 and signs Section IV. Defendant was convicted or pled guilty and sentenced to an active or other non-probationary sentence.	Judge <i>has</i> ordered a civil judgment in the amount listed in Section II. line 4 <i>plus</i> any interim fees that are recorded in the “Prior Total Fees and Expenses Allowed” box on Side One.	Clerk should wait until 10 days have passed since disposition and determine whether there has been a notice of appeal to superior court for trial de novo. If there has <i>not</i> been a notice of appeal or any notice of appeal has been withdrawn within that time period, Clerk should docket the judgment. If there <i>has</i> been a notice of appeal, Clerk should not docket the judgment unless and until the case is remanded back to district court.
District Court Judge does <i>not</i> check one of the “opt out” boxes under Judgment #1 and signs Section IV. Defendant is sentenced to supervised or unsupervised probation.	Judge <i>has</i> ordered a civil judgment in the amount listed in Section II. line 4 <i>plus</i> any interim fees that are recorded in the “Prior Total Fees and Expenses Allowed” box on Side One.	Clerk should determine whether the Judge ordered the defendant to repay attorney fees through probation: <ul style="list-style-type: none"> • <i>If</i> attorney fees have <i>not</i> been ordered through probation, Clerk should follow the instructions in the second row immediately above. • <i>If</i> attorney fees <i>have</i> been ordered through probation, Clerk should not docket the judgment until probation has been revoked or terminated by the Court or probation has expired. If any amount is still owed for attorney fees at that time, Clerk should docket that amount as a judgment.

Clerk Actions When a SUPERIOR Court Judge Orders a Civil Judgment for Attorney Fees
(Non-Capital Criminal Cases at the Trial Level Only)

There are two primary methods of recovery in cases in which a Court has ordered recoupment of attorney fees:

1. *Repayment Through Probation.* The Court can make repayment of attorney fees a condition of supervised or unsupervised probation pursuant to G.S. 15A-1343(e). Under this system, the defendant is ordered to repay attorney fees through probation by making payments directly to the Clerk of Court. This order is captured on the Criminal Bill of Costs.
2. *Repayment Through Civil Judgment.* The Court can enter a civil judgment against the person for the amount of fees found to be due, and that amount is then recovered through the interception of state income tax refunds and lottery winnings or by payments directly to the Clerk of Court. See G.S. 7A-450.1 through -450.4, 7A-455; see also G.S. 1-239 and 105A-1 through 105A-16 (Setoff Debt Collection Act). This order is captured on the back of the attorney’s fee application form.

The chart below outlines the actions that Clerks should take with respect to docketing civil judgments for attorney fees that have been ordered by the *Superior Court* (Judgment #1 on form AOC-CR-225). (The same principles apply to Judgment #2 for the attorney appointment fee.)

Court Order (Sections III. & IV. of Form AOC-CR-225)	Meaning of Court Order	Clerk Action (Section V. of Form AOC-CR-225)
Superior Court Judge checks one of the “opt out” boxes under Judgment #1.	Judge has <i>not</i> ordered a civil judgment for attorney fees.	No action necessary.
Superior Court Judge does <i>not</i> check one of the “opt out” boxes under Judgment #1 and signs Section IV. Defendant was convicted or pled guilty and sentenced to an active or other non-probationary sentence.	Judge <i>has</i> ordered a civil judgment in the amount listed in Section II. line 4 <i>plus</i> any interim fees that are recorded in the “Prior Total Fees and Expenses Allowed” box on Side One.	Clerk should wait until 14 days have passed since disposition and determine whether there has been a notice of appeal to the appellate division. If there has <i>not</i> been a notice of appeal, Clerk should docket the judgment. If there <i>has</i> been a notice of appeal, the safest course is for Clerk to wait to docket the judgment until after the conviction is affirmed by the appellate division.
Superior Court Judge does <i>not</i> check one of the “opt out” boxes under Judgment #1 and signs Section IV. Defendant is sentenced to supervised or unsupervised probation.	Judge <i>has</i> ordered a civil judgment in the amount listed in Section II. line 4 <i>plus</i> any interim fees that are recorded in the “Prior Total Fees and Expenses Allowed” box on Side One.	Clerk should determine whether the Judge ordered the defendant to repay attorney fees through probation: <ul style="list-style-type: none"> • <i>If</i> attorney fees have <i>not</i> been ordered through probation, Clerk should follow the instructions in the second row immediately above. • <i>If</i> attorney fees <i>have</i> been ordered through probation, Clerk should not docket the judgment until probation has been revoked or terminated by the Court or probation has expired. If any amount is still owed for attorney fees at that time, Clerk should docket that amount as a judgment.

Recoupment Eligibility Based on Disposition Options on Form AOC-CR-225
 (Non-Capital Criminal Case Trial Level Fee Application)

“Recoupment” means that the defendant or some responsible person is ordered at the termination of the court proceedings to repay the State for the value of the representation that was provided. In all adult criminal cases in which the defendant is “convicted,” recoupment is authorized by G.S. 7A-455.* It is IDS’ opinion that a finding of responsibility for an infraction does not constitute a conviction for recoupment purposes.

Most Serious Disposition	General Recoupment Rule	Recoupment Exceptions
Guilty Plea Before Trial: Most Serious Original Charge	Eligible	N/A
Guilty Plea Before Trial: Other Offense	Eligible	N/A
Guilty Plea During Trial: Other Offense	Eligible	N/A
Trial: Guilty Most Serious Original Charge	Eligible	N/A
Trial: Guilty Other Offense	Eligible	N/A
Trial: Acquitted	Not eligible	N/A
Probation Violation Found	Eligible	N/A
Dismissed With Leave	Not eligible unless or until case is resolved with a disposition that is recoupment eligible	N/A
Dismissed Without Leave	Not eligible	N/A
FTA/OFA Without Dismissal	Not eligible unless or until case is resolved with a disposition that is recoupment eligible	N/A
Deferred/Diverted	Not eligible [†] unless or until deferral/diversion is unsuccessful and case is resolved with a disposition that is recoupment eligible	Eligible if the repayment of attorney fees was a voluntary condition of the deferral
Held in Criminal Contempt	Eligible	N/A
No Probable Cause	Not eligible	N/A
Attorney Withdrew	Not eligible unless or until case is resolved with a disposition that is recoupment eligible	N/A
None (Interim Fee)	Not eligible unless or until case is resolved with a disposition that is recoupment eligible	N/A
Other (e.g., defendant extradited or case abated)	Depends on disposition	Depends on disposition

It is the Clerk’s job to effectuate judicial recoupment orders by docketing any judgment that a Judge has entered. If you believe that a Judge has ordered recoupment in a case that is not recoupment eligible, you should feel free to bring that issue to the Judge’s attention.

* Even in cases that are recoupment eligible by statute, judges have constitutional authority not to order recoupment under certain circumstances. *See Fuller v. Oregon*, 417 U.S. 40 (1974).

† AOC and IDS legal staff believe that a civil judgment should not be ordered in a case that ends in a prayer for judgment continued (“PJC”) or deferred prosecution, although the defendant in such a case may be ordered to repay attorney fees through probation as a voluntary condition of the deferral. However, this is ultimately a decision for the presiding judge based on his or her understanding of the law.