

Expert Witness Fees as a Civil Cost – An Amendment to the Statute

I promised to follow up my [last post](#) with a discussion of that little change in [S.L. 2015-153](#) to G.S. 7A-314, the witness fee statute. First some background: General Statute [7A-305](#) sets out the costs assessable in North Carolina civil actions. [Note that *liability* for costs in a given case is generally determined under G.S. [Chapter 6](#).] Subsection (d) of 7A-305 lists the expenses of a party that may be recovered as costs. Prior to 2007, there was confusion about whether the list of expenses in 7A-305(d) was exclusive, or whether additional expenses—such as expert witness fees—could also be awarded in the court's discretion. Then, in July 2007, the statute was [amended](#) to make clear that subsection (d) was indeed an exclusive list. The list was also expanded to include several other types of expenses, including “reasonable and necessary fees of expert witnesses *solely for actual time spent providing testimony at trial, deposition, or other proceedings.*” 7A-305(d)(11)(emphasis added). Soon thereafter, the Court of Appeals held that this very limited category of expert fees could only be awarded if the expert witness was under subpoena. See *Jarrell v. The Charlotte Mecklenburg Hosp. Auth.*, 206 N.C. App. 559 (2010) (reiterated in *Peters v. Pennington*, 210 N.C. App. 1 (2011) and *Lassiter v. North Carolina Baptist Hospitals, Inc.*, 761 S.E.2d 720 (N.C. App. 2014)) [see comments section below for update].

So for a time it seemed that the only recoverable expert witness fees were for time a subpoenaed expert spent *actually testifying*. Then, in *Springs v. City of Charlotte*, 209 N.C. App. 271 (2011), the court held that the new 7A-305(d)(11) must be read in conjunction with G.S. 7A-314(d), which states that, “[a]n expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court..., in its discretion, may authorize.” The court held that the language of 7A-314(d) gives the trial court discretion to also award fees of experts for time spent *attending* the trial, deposition, or proceeding, even when not testifying. *Springs* at 283?84.

Now to the new legislation: With [S.L. 2015-153](#), the General Assembly has limited the trial court’s discretion in G.S. 7A-314(d) by making it “subject to the specific limitations set forth in G.S. 7A-305(d)(11).” In other words—as I read the amendment—the trial court no longer has the discretion (articulated in *Springs*) to award fees incurred for time an expert spends attending but not testifying. The only fees to be awarded are “for actual time spent providing testimony at trial, deposition, or other proceedings.” The amendment goes into effect on October 1, 2015 and applies to motions for costs filed on or after that date.

A closing point: Civil costs may seem esoteric, but the truth is that our courts grapple with costs-related issues all the time. Questions about the extent of the trial court’s discretion to award them—particularly under the wide-reaching G.S. 6-20—have been tossed about in the appellate division for many years, and some particular points of controversy remain. For a recent discussion of the question of discretion, for example, see *Khomyak ex rel. Khomyak v. Meek*, 214 N.C. App.

54 (2011). There's more to say about that broader issue, and I'll likely do that in a future post.