



**Testimony of Blair Gilbert  
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**Before the Committee on the Judiciary & Public Safety  
Council of the District of Columbia**

**Public Hearing Regarding:**

**Bill 24-0489  
“Expanding Fee Waivers for Low-Income Litigants Act of 2021”**

**January 6, 2022**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony to express our enthusiastic support for Bill 24-0489, the “Expanding Fee Waivers for Low-Income Litigants Act of 2021.” We thank Chairperson Charles Allen for his work to prepare this bill for introduction and the entire D.C. Council for co-introducing this bill in October. The legislation removes unnecessary barriers to low-income litigants receiving waiver of upfront burdensome court costs associated with litigation, thereby ensuring greater access to justice.

Our testimony outlines the challenges that low-income litigants seeking waiver of upfront court costs face under current law and highlights how the bill addresses their challenges. We also recommend two amendments that the Committee should make prior to mark-up, which will help the bill to better achieve its goals.

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

## **Court Filing Fees Limit Access to Justice**

In D.C., litigants generally must pay a fee to file motions and papers to participate in a civil court case. A survivor of domestic violence must pay \$80 to file a complaint for custody to keep the survivor's children safe from the abuser.<sup>2</sup> A homeowner trying to save his home from imminent foreclosure in a pending case must pay a \$60 filing fee for a motion for a temporary restraining order.<sup>3</sup> A tenant who wants to assert her right to a jury trial must pay a \$75 fee.<sup>4</sup> A transgender person wishing to change his, her, or their name must pay a \$60 filing fee and an additional \$60 fee to change his, her, or their birth certificate.<sup>5</sup> All litigants who appeal to the D.C. Court of Appeals must pay a \$100 filing fee.<sup>6</sup> These fees can be prohibitively expensive. They can prevent people from fully realizing their rights and can make the court process unnecessarily difficult.

## **Current Law Regarding Court Fees Is Burdensome and Inefficient**

Under current statute, D.C. courts may authorize an individual to proceed without prepayment of court fees and costs if that person is unable to pay without undue financial hardship. Individuals who receive one of four means-tested public benefits – Temporary Assistance for Needy Families (TANF); Program on Work, Employment, and Responsibility (POWER); General Assistance for Children (GAC); and Supplemental Security Income (SSI) – are presumptively eligible to proceed without prepayment of fees and costs.

In practice, in D.C. Superior Court, individuals receiving one of these four public benefits may submit a declaration of their receipt of these benefits, and, upon review by a court clerk, the application is granted.<sup>7</sup> In contrast, an individual who is not presumptively eligible must complete additional parts of the application. Sometimes, the individual is required to present detailed information about their income, expenses, and assets. Sometimes, the individual must appear before a judge to have the application ruled upon.

This process has several flaws that fail to account for the realities of low-income litigants and mean that low-income litigants trying to access the courts face unnecessary barriers to justice. These flaws also impede efficient court administration.

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<sup>2</sup> D.C. Super. Ct. Fam. R. C(1).

<sup>3</sup> *Filing Fees*, Dist. Of Columbia Courts, <https://www.dccourts.gov/services/civil-matters/filing-fees> (last accessed Dec. 28, 2021).

<sup>4</sup> D.C. Super. Ct. R. 202(a)(1); D.C. Super. Ct. L. & T. R. 15(a).

<sup>5</sup> D.C. Super. Ct. R. 202(a)(1).

<sup>6</sup> *Filing Fees*, Dist. Of Columbia Courts, <https://www.dccourts.gov/services/civil-matters/filing-fees> (last accessed Dec. 28, 2021).

<sup>7</sup> D.C. Super. Ct. R. Civ. P. 54-II(b).

## The Current Categorical Eligibility Criteria Exclude Litigants Who Clearly Have Low Incomes

Due to the fact that the Council has not made substantive amendments to the statute since 1977,<sup>8</sup> current law fails to recognize other readily-available proxies for a low household income, including:

1. Receipt of other types of public benefits, such as assistance in the form of Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Assistance for Women, Infants and Children (WIC), low-income housing assistance, poverty-related veterans' benefits, Medicaid, and the D.C. Healthcare Alliance;
2. Income at or below 200% of the federal poverty line; or
3. Representation by a legal services or other nonprofit organization whose primary purpose is to provide legal services to low-income clients (such organizations typically ask questions about income as part of their intake processes, which means clients may end up answering questions about their incomes multiple times in order to receive relief).

As a result, many low-income people are not categorically eligible for waiver of upfront court costs.

## For Litigants Who Do Not Meet Narrow Categorical Eligibility Criteria, the Fee Waiver Process is Needlessly Burdensome

This failure to recognize other appropriate tests for poverty relates to another problem with the current statute: it is unnecessarily burdensome. An applicant who does not receive TANF, POWER, GAC, or SSI must fill out additional parts of the application; for some applicants, they must provide extensive details about their income, assets, and expenses.

Additionally, any application in which the applicant does not receive TANF, POWER, GAC, or SSI must be reviewed by a judge. The judge may need to hold a hearing with the applicant to assess whether to grant the waiver. This additional judicial review of an application can delay litigants attempting to move forward with their cases. Further, it places unnecessary demands on D.C. Superior Court judges.<sup>9</sup>

## Current Law Contains an Unnecessary Limitation on Relief

The current statute also provides that individuals who are approved for a waiver are only approved for waiver of *prepayment* of court costs. Under the law, after a case concludes, the court could attempt to recover any fees or costs. This undercuts the goal of expanding access to justice for low-income litigants and is unnecessary given the financial struggles of many who apply for waivers.

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<sup>8</sup> District of Columbia Marriage and Divorce Act, D.C. Law 1-107, §202(a), 23 D.C. Reg. 8737 (1977) (codified as amended at D.C. Code § 15-712).

<sup>9</sup> Megan Flynn and Michael Brice-Saddler, *D.C. courts 'sound the alarm' on judicial vacancies as local officials demand movement in Senate*, Washington Post, Jan. 4, 2022, available at <https://www.washingtonpost.com/dc-md-va/2022/01/01/dc-judges-vacancy-senate/>.

## **The Expanding Fee Waivers for Low-Income Litigants Act of 2021 Would Remove Unnecessary Barriers to Low-Income Litigants Seeking to Access the Courts**

The proposed bill addresses each of these concerns. First, the bill enhances access to the courts by adding categories of litigants who are eligible for fee waivers based on additional proxies for poverty. Individuals who receive more types of means-tested public benefits, have incomes at or below 200% of the federal poverty guidelines, or receive free legal representation from a legal services or other nonprofit organization whose primary purpose is to provide legal services to low-income clients would become categorically eligible for fee waivers. This change would not only more accurately and efficiently assess an individual's ability to afford court costs, but also this change would also bring D.C. in line with other jurisdictions that already recognize these alternative proxies for poverty.<sup>10</sup> Individuals who are not eligible under these categories would still be able to seek a full or partial fee waiver, which the court could grant based on a declaration or other proof satisfactory to the court.

Second, the bill would improve the efficient administration of justice by expressly authorizing court clerks to determine whether applicants are categorically eligible for fee waivers without the need for judges to review detailed applications and conduct hearings. These changes would also result in more consistent administration of justice because fewer applicants will fall within the pool of people eligible for fee waivers only at the discretion of the court. Additionally, with clerks processing the applications, litigants would be able to proceed with their cases more quickly, rather than waiting for an application to go to a judge for review.

Finally, the bill would transform presumptive eligibility for waiver of prepayment of court fees and costs to guaranteed eligibility for fee waivers. This change would ensure that, after a case concludes, the court is not able to attempt to recover any fees from a low-income litigant.

### **Legal Aid Encourages the Committee to Make Two Changes to Improve the Current Bill**

Legal Aid supports this bill, as it would increase access to and efficiency within the court. However, we encourage the Committee to make two changes prior to mark-up that would further meet these goals.

First, Legal Aid encourages the Committee to add the Close Relative Caregiver Subsidy (CRCS)

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<sup>10</sup> D.C. lags behind other states in enabling access to the courts through fee waivers. For example, according to a recent 50-state survey, in 7 states, Medicaid recipients are presumptively eligible for fee waivers, and, in 10 states, Supplemental Nutrition Assistance Program (SNAP) recipients are presumptively eligible for fee waivers. Andrew Hammond, *Pleading Poverty in Federal Court*, 128 Yale L.J. 1478, 1561-64 tbl.5 (2019). In 27 states, applicants whose income does not exceed a specified threshold tied to the federal poverty line (e.g., 100%, 125%, 150%, or 200%) are presumptively eligible for fee waivers. *Id.* In 18 states, litigants represented by a legal aid organization are presumptively eligible for fee waivers. *Id.*

to the list of means-tested benefits that qualify individuals for fee waivers. The CRCS<sup>11</sup> is very similar to the Grandparent Caregivers Program,<sup>12</sup> which is already included in the bill. Both programs provide a monthly subsidy to eligible low-income D.C. residents who are raising extended family members.

Second, Legal Aid recommends clarifying what fees and costs are waived. Current law provides for waiver of prepayment of transcript fees for cases on appeal. This means that, when a matter is on appeal, a low-income party has access to necessary documents to fully present their case at the D.C. Court of Appeals. Legal Aid recommends carrying over this language from the current law to the bill to ensure equal access to justice.

Legal Aid also recommends clarifying that the court must grant fee waivers for other documents in cases not on appeal. Currently, even parties that are approved to proceed without paying court fees and costs are not guaranteed to receive important documents like transcripts when the matter proceeds in D.C. Superior Court. Legal Aid recommends clarifying that the court shall grant a fee waiver for any additional documents when necessary to ensure that no party is disadvantaged because of their inability to pay for important documents. This will help ensure litigants are able to fully prosecute or defend their cases, and it will help ensure judges uniformly decide requests for free additional documents.

### **Conclusion**

This legislation is critical to ensuring that D.C. residents have access to the courts, and that D.C. courts are able to efficiently process requests for fee waivers.

Legal Aid thanks this Committee for the opportunity to testify. We look forward to working with the Committee to incorporate the proposed changes to the bill, and we urge the Committee to approve this important legislation.

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<sup>11</sup> Close Relative Caregiver Pilot Program, *available at* [https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/AI\\_Close\\_Relative\\_Caregiver\\_Subsidy\\_%28March\\_2021%292.pdf](https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/AI_Close_Relative_Caregiver_Subsidy_%28March_2021%292.pdf) (last accessed Dec. 28, 2021).

<sup>12</sup> Grandparent Caregivers Program Policy, *available at* [https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program-Grandparent\\_Caregivers\\_Program\\_FINAL\\_March\\_2021%282%29.pdf](https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program-Grandparent_Caregivers_Program_FINAL_March_2021%282%29.pdf) (last accessed Dec. 28, 2021).