



Testimony Before the District of Columbia Council

Committee on the Judiciary and Public Safety

January 6, 2022

**Testimony on B24-0489, the “Expanding Fee Waivers for Low-  
Income Litigants Act of 2021”**

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Good morning Chairperson Allen and members of the Committee on the Judiciary and Public Safety. My name is Kathy Zeisel. I am a resident of the District and I am a Senior Supervising Attorney at Children's Law Center and also a Commissioner on DC's Access to Justice Commission.<sup>i</sup> I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With almost 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year.

I am an attorney in Healthy Together, our medical legal partnership, where we place attorneys throughout the city at primary care pediatric health centers with Children's National, Unity Health Care, and Mary's Center. Through these partnerships, we are referred many families where the medical staff see health harming legal needs and ask us to work alongside those caregivers to ensure that children can access what they need.

I am happy to be here testifying in support of this bill. Accessing the courts should be as easy as possible for DC residents who need to do so. This bill helps eliminate an unnecessary barrier for DC residents to access justice, while at the same time streamlining the fee waiver process so that judges have fewer of these petitions on their dockets. To put it more clearly, the DC residents who will largely be helped by this

are Black and Brown DC residents who disproportionately have lower incomes than white residents<sup>ii</sup> and are more likely to come into the courts unrepresented.<sup>iii</sup> They are the litigants who need the playing field to be leveled the most in order to access justice, and this bill is one small way of doing that.

Previously, judges had to approve all fee waivers. The Court itself took the first steps in modifying the old fee waiver process by permitting clerks to approve all fee waivers where a litigant was statutorily eligible for the waiver.<sup>iv</sup> However, the statute very narrowly defines who is presumptively eligible, picking and choosing among certain government benefits seemingly arbitrarily and leaving out other benefits that have the same or similar income guidelines. Litigants who get Medicaid, DC Alliance, or Interim Disability Assistance can fill out another section of the form, and the form will go before a judge who will decide if they need additional information from the litigant. In practice, some judges will grant the petition based on the knowledge that residents can only get these benefits if they have a limited income already screened by the government,<sup>v</sup> while others will require litigants to fill out the more invasive questions. A third category of litigants will be required to fill out the full list of questions describing every expense and source of income, *even if they already receive a government benefit which requires them to be low income*. A final category of litigants will fill out the form because to show they have substantial need.

Under our current statutory scheme, for instance, a litigant whose only public benefit is SNAP would be required to fill out the entire form and wait for a judge to grant the petition because they are not presumptively eligible. Yet, we know that to qualify for SNAP, that same person already had to show they made no more than 130% above the poverty line. Why would we require another examination of their income? This is a waste of resources for the Court, and is unnecessarily invasive and burdensome for litigants. With the current vacancy crisis at the courts, we are seeing some of the fee waiver petitions sit for weeks, delaying cases unnecessarily and clogging up dockets.

If we look at the true purpose of fee waivers, to ensure that all who need to access the courts and the mechanism within it are able to do so without costs being a barrier, then the proposed legislation is the right step forward in ensuring this. We would not be alone in expanding our fee waivers, many other states have done so.<sup>vi</sup> In fact, DC is behind many other states in our current fee waiver statute. Requiring low income residents, the vast majority of whom are Black and Brown, to repeatedly reveal every personal financial detail when they have already been determined to qualify for another benefit is not only unnecessary and time consuming, but it is demeaning. We have the power to change that, and we should do so.

In reviewing this legislation with the broader community, two additional changes to the legislation were proposed. My colleagues at Legal Aid and the Access to

Justice Commission also raise these tweaks today, and we support them as well. First, we propose that we include the Close Caregiver Subsidy in the category of presumptively eligible benefits. This was likely an oversight in drafting as it is similar to the Grandparent Subsidy, which was included, and would serve the same goal as all the other benefits of finding eligible litigants whose income has already been screened.

Second, we propose to expand the types of transcripts that litigants with fee waivers may get. Currently, they are only able to obtain transcripts for appeals upon making a motion to the court pursuant to court rules. We would ask that the law be expanded to be explicit that litigants with fee waivers are able to obtain transcripts at any time necessary to their case.

In conclusion, we would like to thank Councilmember Allen for his leadership on this issue and all the members of the Council who co-sponsored this important legislation that will expand access to justice for so many DC residents.

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<sup>i</sup> Children’s Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With almost 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

<sup>ii</sup> The median household income for white residents, at \$149,734, is over three times higher than the median income of Black residents, which is \$49,652. Council Office of Racial Equity, available at: <https://www.dcraciaequity.org/dc-racial-equity-profile>.

<sup>iii</sup> Depending on the area of law 75-97% of litigants are unrepresented. See DC Represents, available at: <https://dcaccesstojustice.org/dcrepresents/>.

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<sup>iv</sup> DC Code § 15-712 and DC Superior Court Rule 54 provide the current structure for fee waivers; See DC Superior Court Fee Waiver Petition *available at*: <https://www.dccourts.gov/services/judge-in-chambers/in-forma-pauperis-fee-waiver>.

<sup>v</sup> For DC Medicaid that is between 200-300% of the poverty level, see <https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/DCMedicaidAllianceFactSheet.pdf>. For IDA, the applicant must have the income level to qualify for Social Security Disability and be disabled, see: <https://dhs.dc.gov/service/interim-disability-assistance#:~:text=Who%20is%20Eligible%20for%20IDA,ages%20of%2018%20and%2064&text=Permanently%20and%20totally%20disabled>.

<sup>vi</sup> Other states' fee waiver applications have much more expansive eligibility requirements. Many states waive prepayment of fees for applicants that receive food stamps. For example, several states, including Wisconsin,<sup>7</sup> Michigan,<sup>8</sup> California,<sup>9</sup> Arizona,<sup>10</sup> Illinois,<sup>11</sup> Texas,<sup>12</sup> Connecticut,<sup>13</sup> and Washington,<sup>14</sup> include food stamps in the list of programs that give an applicant presumptive eligibility for a fee waiver. Other states, including Virginia<sup>15</sup> and some jurisdictions in Nevada,<sup>16</sup> include food stamps in a list of programs that can be considered to determine eligibility. In general, it is rare that a state has a list of social programs that create presumptive eligibility that does not include food stamps. Another program that many states include in their list of criteria to consider for eligibility is veterans benefits. For example, Wisconsin presumes indigency for applicants who receive veterans benefits.<sup>17</sup> Massachusetts also includes veterans benefits in its list of programs to consider for fee waiver eligibility.<sup>18</sup>

Finally, many states consider whether an applicant is represented by a legal services organization when determining whether they qualify for a fee waiver. Maryland,<sup>19</sup> Michigan,<sup>20</sup> Wisconsin,<sup>21</sup> Colorado,<sup>22</sup> Washington,<sup>23</sup> Arizona,<sup>24</sup> and Texas<sup>25</sup> presume indigency for applicants represented by a legal services organization that determines eligibility for representation based on income. Texas also presumes indigency for applicants who have applied for representation from a legal services organization and have been approved based on their income, but the legal services organization was unable to take their case for other reasons.<sup>26</sup>