
Research Report

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106 N. Bronough St. • P.O. Box 10209 • Tallahassee, FL 32301 • (850) 222-5052 • FAX (850) 222-7476

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Charging Indigent Floridians Civil Court Filing Fees Raises Questions of Cost Efficiency and Equal Access to the Florida Court System

Executive Summary

Florida TaxWatch was asked by the Florida Bar Foundation to review the status and cost efficiency of civil filing fees for indigents throughout the state. This Florida TaxWatch research report addresses the need to ensure that tax dollars are being spent properly and effectively.

The fundamental purpose for the adoption of Article V of the Florida Constitution, which created the judicial branch of government, was to form a uniformly organized court system throughout the state. The 1998 revision to Article V, known as Revision 7 and implemented in 2004, sought to ensure this uniformity by requiring the state to assume funding responsibility for many court operations. Many of the changes brought about by Revision 7 have been met with success, but the elimination of the indigent waiver for civil filing fees has created a concern over access to the court and the cost efficiency of collecting those filing fees that are owed to the court.

As this research report outlines, Florida TaxWatch has developed several findings on the status of civil court filing fees from indigent clients across the state of Florida. Concerns were expressed that the collection of civil court filing fees from indigent persons was not cost-effective; however this study finds that the cost inefficiency was related to the amount of time spent on collection. Specifically, the more vigilant a clerk is in his or her collection efforts, the less likely it is that the costs will be recouped by collection of the initially assessed fee.

The study also found that the filing fee acts as a deterrent to court access in some instances. Additionally, some residents of Florida are receiving inconsistent treatment based on their county of residence, which is due to a lack of uniformity in enforcing and collecting civil indigent filing fees.

Based on the findings of this study, Florida TaxWatch recommends that the Florida Legislature consider reinstating the civil-filing-fee waiver for persons of indigent status.

In the event the waiver is not reinstated, Florida TaxWatch recommends:

- The legislature should mandate the development of statewide policies, including collection procedures and penalties, for failure of an indigent individual to pay his or her delinquent civil court filing fees in order to ensure equal treatment throughout Florida;
- The continued use of 200 percent of the federal poverty level as the income measure of indigence, at least until a study can be conducted on the potential effect of a change on the court system and indigent persons;

- The legislature should enforce the existing requirement that the Clerks of the Court report the financial data related to civil filing fees assessed to indigent individuals annually in order to ensure accountability and enable future study on this subject.

Overview of Revision 7

The purpose of Article V of the Florida Constitution, as originally approved by the voters in 1972, was to create an organizationally uniform court system across the State of Florida. Prior to Revision 7 in 1998, trial courts were funded by the 67 individual counties with which each court was associated. Only the appellate courts received their funding directly from the state. Concerns began to rise as a result of financial disparities between counties. Some courts were able to operate on larger budgets than other courts, potentially creating problems of judicial inequity.

A little over a quarter century later, voters approved Revision 7 to complete the job of achieving a minimum uniform funding threshold throughout the state court system. In the November 1998 general election, approximately 57 percent of voters approved Revision 7 to the state constitution. By amending Article V, Revision 7 sought to shift the funding responsibility of most state judicial functions from individual counties to the state, as of July 2004. By requiring the funding of both trial and appellate courts to come from state appropriations, courts would receive equal funding across county lines. The purpose of this uniformity was to ensure equitable access by citizens to essential judicial functions, in furtherance of the rule of law.

The goal of the 1998 Constitution Revision Commission's design of Revision 7 is seen in the following excerpt from a transcript of the Commission's February 1998 meeting and in the ballot language of Revision 7. These documents show that the intent of the voter-approved amendment was for the state to assume county-funded state judicial functions and to create statewide equity of justice system services.

"The promise of Article V is a fair and balanced (equitable) approach to statewide funding at every locality. Small counties (pre-Revision 7) have had major problems in, for example, being able to afford conflict counsel in capital cases and that this is very, very serious matter. These counties with fewer resources have been asking us to help get them some relief."

-- *Former Supreme Court Chief Justice and Constitution Revision Commissioner Gerald Kogan, February 12, 1998 Constitution Revision Commission meeting*

"The amendment expressly promotes uniformity of justice irrespective of geography. Its intent is to make justice less dependent on a county's size or wealth and, therefore, more equitably funded and consistent with local needs."

--*Revision 7 Ballot Language Adopted by Florida Voters in November 1998*

Revision 7 and Civil Indigent Fees

American citizens are expressly guaranteed equal access to the court system by the U.S. Constitution; therefore, to ensure the continuation of equal access to the court after the elimination of the waiver, the Florida Legislature created the "indigent payment plan" for civil filing fees in 2005.

According to the guidelines established by Revision 7, upon filing a civil court case (e.g., a divorce decree or a domestic violence protective order) a person may apply for indigent status. Using a methodology developed by the Florida Supreme Court, indigence is determined for those whose income is equal to or less than 200 percent of the current federal poverty guidelines. Although eligible persons are still responsible for paying the full amount of the filing fee associated with their civil cases, typically \$255, the fees are paid based according to payment plans worked out with the Clerks of the Court. As outlined in Revision 7, payment plans are to be repaid at a rate equal to 2 percent of the person's monthly

income. To allow the Clerks of the Court the ability to recoup the costs associated with the payment plans, Revision 7 also mandated a \$25 application fee for participation in the “indigent payment plan.”

Since the 2004 implementation of Revision 7, questions have been raised as to the cost-effectiveness of the new provision for collecting civil court filing fees from indigent persons. One question is whether the constitutional standard of equal access to the courts has been met for those persons of indigent status. A second question is whether the collection of filing fees is cost-efficient, or if clerks spend more money recouping civil court filing fees from indigent persons than they receive in fees.

In 2007, bills were introduced in both houses of the Florida Legislature (SB 914 and HB 1009) that called for the instatement of a waiver of court filing fees for indigent persons. These bills looked to minimize expenses for the State of Florida by limiting waivers to those persons whose income is equal to or less than 150 percent of the current federal poverty guidelines. Persons qualifying as indigent with incomes between 150 and 200 percent of poverty guidelines would continue to be responsible for civil fees through the current payment plan system. Both bills died in committee prior to a full vote by the respective legislative body.

The Study

Focus

In examining the current system for collecting civil court filing fees from indigent persons using the courts of the State of Florida, Florida TaxWatch sought to examine the cost-effectiveness of the “indigent payment plan” and its effect on the access of indigent individual to Florida courts.

Methodology

In conducting the study, Florida TaxWatch created a stratified sample of Clerks of the Court by matching counties with the U.S. Department of Agriculture’s measure of urbanization. This comparison determined the degree of urbanization on a scale of 1 to 12, with 1 being the most urban and 12 being the most rural. This 12-category scale was recoded into a three-category scale by assigning a 0 to those counties previously designated as between a 1 and 3, assigning a 1 for those designated as between a 4 and 6, and assigning a 2 for those designated as 7 or above. A 10 percent sample was then taken from each of the three categories and compiled into a stratified sample of 7 clerks. Florida TaxWatch staff then conducted a series of interviews with these clerks and their staff.

Findings

Several findings are apparent based on the study of the collection of civil court filing fees from indigent clients in the State of Florida.

One of the primary concerns regarding Revision 7 has been its effect on equal access to the state court system. Florida TaxWatch did not find any instances where a person was *denied* access to filing a civil court case based on his or her inability or failure to pay a filing fee; however, the study did find instances where the filing fee served as a *deterrent* to access to the court for those with the greatest financial hardships (i.e., there were instances where individuals deferred filing because of the fee). While some clerks have begun using judicial discretion to waive filing fees for persons who are unable to make the payments under the “indigent payment plan” (2 percent of monthly income), the study found that this option is not being discussed with indigent filers in 75 percent of the counties surveyed – meaning that those eligible for a waiver under this system are not aware of its existence.

Although the law allows for the waiving of court fees through the exercise of judicial discretion on a case-by-case basis, the study found two differing uses of this review. Clerks who have adopted more aggressive collection policies have sought to limit the use of judicial discretion. These clerks have all

stated that they believe that Revision 7 mandates fee collection in all instances. By contrast, approximately 25 percent of the clerks surveyed used judicial discretion to waive civil filing fees as an alternative to the payment plan, due to the problems associated with collection.

The study also revealed that the policy for the collection of civil court filing fees from indigent clients throughout the state faced barriers to successful implementation. Primarily, these problems were either dispositional in nature – in that clerks did not want to pursue the collection of civil court filing fees from indigent clients – or communicational in nature – in that the clerks did not know what the law allows or requires regarding the collection of civil filing fees.

The dispositional barrier is seen in the lack of consistency among clerks in policy enforcement and collection of civil court filing fees from indigent persons. As a result, individuals are receiving unequal treatment based on the county in which they file suit. While some clerks do not aggressively pursue payment of civil indigent filing fees, other clerks employ more proactive measures, including the use of collection agencies. Other aggressive measures include suspension of the individual's drivers' licenses in one case, although such action is prohibited by Florida law. In another case, the Clerk of the Court was preparing to implement a policy of liens to ensure the collection of civil court filing fees from indigent clients.

The communication barrier is seen in the repayment options offered by the clerks. Each clerk believes his or her policy is in accordance with Article V. Though Revision 7 had mandated monthly repayment plans based on 2 percent of an indigent person's income, the study found that this option was automatically offered by only 42 percent of the clerks. The remaining 58 percent of clerks offered indigent persons a payment plan based on a set duration of time, typically six months. For those indigent persons unable to fulfill the six month payment plan, these clerks required indigent persons to negotiate the terms of civil indigent fee repayment.

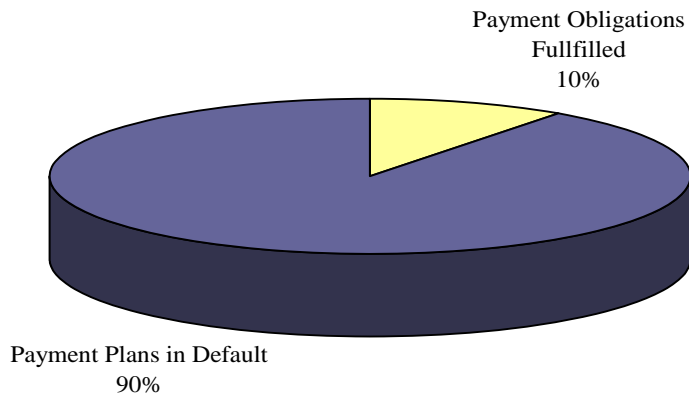
It has been hypothesized that the cost of collecting these civil court fees is greater than the revenue received from the fees; the study conducted by Florida TaxWatch not only found support for this hypothesis, but also found that the cost inefficiency (i.e., amount of net loss per transaction) was positively related to the amount of time spent on collection. Regardless of how vigilant the efforts of the various Clerks of the Court were to collect civil filing fees from indigent individual, the study found that an estimated 90 percent of indigent fees are never paid in their entirety. The study found that an estimated 90 percent of filing fees enrolled in the "indigent payment plan" are never paid in their entirety.¹ This finding suggests that the more vigilant a clerk is in collection of defaulted fees from indigent persons, the more likely he or she is to accumulate expenses that the office will be unable to recoup. This finding is illustrated by the comparison on the next page.

¹ While all of the Clerk of the Court offices contacted by Florida TaxWatch in connection with this study were helpful in many ways, some offices could not provide all data requests. Therefore, the 90 percent completed repayment of civil filing fees is based on the mean repayment as estimated by the individual clerks.

Comparison of aggressive and non-aggressive collection policies

- The clerk with the most proactive policy of those surveyed spent an average of four hours and an estimated \$76.92 of expenses per case on collection of civil indigent filing fees. If we assume that only the \$25 application fee for participation in the “indigent payment plan” is paid, the clerk would be faced with a loss of \$51.92.
- Sixty-two percent of counties included in the study do not have an aggressive collection process. These less aggressive clerks spent an average of only 20 minutes on indigency determination and delinquent fee collection, which cost an estimated \$3.35 per case. If we assume that only the \$25 application fee is paid, the less aggressive method of delinquent fee collection results in average of \$21.65 in revenue.

Graph 1 – Estimated Rate of Repayment-in-Full on “Indigent Payment Plan”



These conclusions are based on the finding that, despite the differences in collection policies among clerks, the rate of repayment-in-full stayed at a 10 percent average, as shown in Graph 1.

The study also found that no clear requirement exists for the reporting of revenues received from civil filing fees by indigent persons. Without clear reporting requirements, determining the total revenue received by Clerks of the Court is difficult. Recent estimates of revenue have ranged from \$1.2 million to \$7 million annually.

Finally, of all of the states that require civil filing fees from individuals deemed indigent, Florida (after the implementation of Revision 7) is the only state without a fee waiver. In the other states, the mean determination of indigence was at an income equal to or less than 200 percent of federal poverty guidelines.

Conclusion and Recommendations

The purpose of Revision 7 to Article V of the Florida Constitution was to complete the creation of an organizationally uniform state court system by shifting the funding of most operations from the various

counties to the state. Although many of the changes made by Revision 7 are reported to have been successful, the elimination of the civil-filing-fee waiver for indigent individuals has fueled a debate over access to the court and the cost efficiency of collecting delinquent fees. Such a denial of access potentially leaves indigent persons trapped in hazardous situations.

Based on the findings of this study, Florida TaxWatch has developed several recommendations that the Florida Legislature should take into consideration during the 2008 legislative session. The primary recommendation of this study is the reinstatement of the civil court filing fee waiver for persons deemed indigent under the current standard (an income of less than or equal to 200 percent of the federal poverty level).

In the event the waiver is not reinstated, based on the findings of this study Florida TaxWatch recommends:

- The legislature should mandate the development of statewide policies, including collection procedures and penalties, for failure of an indigent individual to pay his or her delinquent civil court filing fees in order to ensure equal treatment throughout Florida;
- The continued use of 200 percent of the federal poverty level as the income measure of indigence, at least until a study can be conducted on the potential effect of a change on the court system and indigent persons;
- The legislature should enforce the existing requirement that the Clerks of the Court report the financial data related to civil filing fees assessed to indigent individuals annually in order to ensure accountability and enable future study on this subject.

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This Florida TaxWatch *Research Report* was authored by Bruce McDonald, III, Florida TaxWatch Doctoral Graduate Researcher, under the direction of Kaye Kendrick, CPA, Senior Vice President of Research & Development.

Steve Evans, Chief Operating Officer;
David A. Smith, Chairman; Dominic M. Calabro, President, Publisher, and Editor

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About Florida TaxWatch

Florida TaxWatch is a statewide, non-profit, non-partisan taxpayer research institute and government watchdog that over its 29 year history has become widely recognized as the watchdog of citizens' hard-earned tax dollars. Its mission is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies, and programs, and to increase the productivity and accountability of Florida Government.

Florida TaxWatch's research recommends productivity enhancements and explains the statewide impact of economic and tax and spend policies and practices on citizens and businesses. Florida TaxWatch has worked diligently and effectively to help state government shape responsible fiscal and public policy that adds value and benefit to taxpayers.

This diligence has yielded impressive results: in its first two decades alone, policymakers and government employees implemented three-fourths of Florida TaxWatch's cost-saving recommendations, saving the taxpayers of Florida more than \$6.2 billion -- approximately \$1,067 in added value for every Florida family, according to an independent assessment by Florida State University.

Florida TaxWatch has a historical understanding of state government, public policy issues, and the battles fought in the past necessary to structure effective solutions for today and the future. It is the only statewide organization devoted entirely to Florida taxing and spending issues. Its research and recommendations are reported on regularly by the statewide news media.

Supported by voluntary, tax-deductible memberships and grants, Florida TaxWatch is open to any organization or individual interested in helping to make Florida competitive, healthy and economically prosperous by supporting a credible research effort that promotes constructive taxpayer improvements. Members, through their loyal support, help Florida TaxWatch bring about a more effective, responsive government that is accountable to the citizens it serves.

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With your help, Florida TaxWatch will continue its diligence to make certain your tax investments are fair and beneficial to you, the taxpaying customer, who supports Florida's government. Florida TaxWatch is ever present to ensure that taxes are equitable, not excessive, that their public benefits and costs are weighed, and government agencies are more responsive and productive in the use of your hard-earned tax dollars.

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