

SB 2057

**Senate Judiciary Committee
January 8, 2025
Testimony of Sally Holewa
State Court Administrator**

Chair Larson and members of the committee, for the record, my name is Sally Holewa. I am the state court administrator.

SB 2057 was introduced at the request of the Supreme Court to increase civil filing fees and other fees that are collected by the court. You might think that it is strange for the court to be bringing a bill to raise fees that are not going to directly benefit the court. However, we feel it is unfair to the public to remain silent about an issue that would otherwise fly under the radar.

Every service provided by the government has a cost that is borne by the public in general, by the individual user who is accessing the service or is shared between the two. It is ultimately up to the legislature to determine what the proper allocation of these costs should be. In this situation, the court believes that too much of the burden of providing court services for civil disputes is being borne by the public. Although the price of nearly all conceivable goods or services have increased over the past 30 years, most of the filing fees have remained unchanged and it is the public that has had to cover the entire increase for facilities, personnel and equipment.

The imbalance is obvious when we look at small claims court. In 1985, the jurisdictional limit for a small claims case was raised from \$1,500 to \$2,000 and the filing fee was raised from \$5 to \$10. Forty years later, the filing fee remains at

\$10 but the jurisdictional limit has been raised to \$15,000. At the same time, the public has absorbed a starting wage increase for deputy clerks of court of nearly \$30,000.

I've attached a brief history of the various court fees and calculations on the rate of inflation and cost of living changes between 1995 and today. Both types of calculations suggest that the fees should be doubled. Even at that higher amount, the filing fees would still be the lowest filing fees in the United States.

The specifics of the bill are:

Section 1: Restitution Collection Assistance Fee - This amendment would raise the ceiling of what a court can impose from \$10 to \$20. The fees collected under this statute are distributed to the entity responsible for collecting restitution to offset the costs associated with those programs. In North Dakota, restitution is collected and disbursed in three different ways. In most counties, restitution is collected by the clerks of court and disbursed by them. In Burleigh, Cass and Grand Forks counties the state's attorney employs personnel to run a restitution collection program. Ward County has a hybrid approach where the state's attorney collects and disburses restitution for felony cases but the clerk of court handles restitution for all other case types.

Section 2: Crime Victim and Witness Program Fee – This amendment would raise the victim/witness fee from \$25 to \$50. The fees are retained by the county or city in which they were collected and must be used to fund a non-profit domestic violence or sexual assault program, a victim and witness advocacy program that provides direct services to victims of or witnesses to a crime, or the statewide automated victim information and notification system (VINES). The

choice of where the money goes is made by the governing board of the county or municipality.

Section 3: Supreme Court Filing Fee – This amendment would increase the filing fee for a supreme court case from \$125 to \$250. The supreme court can waive this fee if the filer is found to be indigent. Fees collected under this statute are deposited into the state’s general fund.

Section 4: Fees to be Charged by the Clerk of the District Court – The amendments in this section of the bill would change several different fees as follows:

(a)(1) Civil filing fee would be raised from \$80 to \$160. A civil filing fee is charged for the initial document used to start a case that is not a small claims case, a juvenile court case, a domestic violence or sexual assault restraining order case or a criminal case. A district court judge can waive the filing fee if an individual is found to be indigent. The civil filing fee is divided between the general fund and the **civil legal services fund**. Currently, \$15 of each fee goes to civil legal services and that fund is capped at \$750,000 per biennium. Under this proposal, the civil legal services share would be \$30 of each fee and the cap would be raised to \$900,000. We currently have two legal service providers in the state: Legal Services of North Dakota (LSND) and Dakota Plains Legal Services. LSND provides statewide services to low-income and other eligible individuals. Dakota Plains operates eight branch offices, but only one is located in North Dakota so their presence here is much smaller than LSND.

(a)(2) Family case filing fee is charged for the initial document used to start a dissolution (divorce), annulment or legal separation and would be raised from \$80 to \$160. As is the case with the general civil filing fee, this fee can be waived if an individual is found to be indigent. This fee is divided between the general fund, civil legal services fund and the **displaced homemaker fund**. Currently, the share of the fee going to the displaced homemaker fund is \$50 and this amendment would raise that share to \$100. Displaced homemaker funds are used by the Department of Public Instruction to provide pass-through funding for the Adult Learning Centers. As with other civil case filing fees, currently \$15 of the fee is directed to the civil legal services fund, and we are proposing to raise that share to \$30. The remaining general fund portion would be raised from \$15 to \$30.

(a)(3) The balance of the civil filing fee, unless it is a family case filing fee, is deposited in the state's general fund. Under this section of the amendment, that amount would be raised from \$65 to \$130.

(b) Civil Answer Filing Fee would be raised from \$50 to \$100. An answer fee is charged for the initial document used to respond to a case that is not a small claims case, a juvenile court case, a domestic violence or sexual assault restraining order case or a criminal case. A district court judge can waive the answer fee if an individual is found to be indigent. All of the funds collected are deposited into the general fund.

(c) Small Claims Filing Fee would be raised from \$10 to \$20 to file a claim. There is no fee to respond to a small claims case. Like other filing fees, a judge can waive the small claims filing fee if an individual is found to be

indigent. Fees collected are deposited in the general fund of the county where the case is filed.

(d) Other filing fee this is a catch-all category for any matter authorized to be filed in the office of the clerk of court that does not require a decision. This is a rarely used process and the only example that comes to mind is the filing of a hospital lien or discharge of a lien. This amendment would raise the fee from \$10 to \$20. This fee can also be waived upon a finding of indigency. All fees collected are deposited in the general fund of the county where the action is filed.

(e) Fee for preparing, certifying, issuing or transmitting any document.

This category includes the certified copy fee and fees for issuing a certified abstract, certified transcript of judgment and issuing a subpoena, writ of execution and similar legal documents. This amendment would raise these fees from \$10 to \$20. If the clerk is a county employee, the fee is deposited in the county's general fund. If the clerk is a state employee, the fee is deposited in the state's general fund.

(f) Motion to modify fee is a fee charged to file a motion asking the court to modify an order for spousal support, property division, child support, parental responsibility, residential responsibility or parenting time. This amendment would modernize the language of the statute and raise the filing fee from \$30 to \$160. It would create a new **motion answer** fee of \$100. Raising the modification fee to equal the amount of a family case filing fee and creating an answer fee at the same cost of any civil answer fee reflects the amount of judicial time that is needed to resolve these issues. Since the

majority of divorces, child support and paternity cases are initially resolved through agreement, oftentimes the motion to modify is the first-time issues are actually being tried before the court. All of the current fees are deposited in the general fund and the proposed new fee would also be deposited in the general fund.

Section 5: Fees added to criminal case – Three fees have been enacted that are charged upon conviction in a criminal case. These fees are as follows:

Criminal Court Administration fee is deposited in the general fund and is different based on the level of conviction. For a Class B misdemeanor, the fee is currently \$125 and would be raised to \$250; for a Class A misdemeanor, it is currently \$200 and would be raised to \$400; for a Class C felony it is \$400 and would be raised to \$800, for a Class B felony it is \$650 and would be raised to \$1300 and for a Class A felony or AA felony it is \$900 and would be raised to \$1,800. This fee can be waived upon a finding of indigency. Fees collected are deposited in the general fund.

In addition, in all other cases except infractions, there is an additional **Court Administration Indigent Defense/Court Facility Fee**. Funds collected under this fee are split between the **Indigent Defense Administration Fund** used to offset the cost of funding indigent defense and the **Court Facilities Improvement and Maintenance Fund** used to provide grants to counties to assist in the upkeep and expansion of county facilities used for court functions. This amendment would raise the fee from \$100 to \$200. It would leave the current fee split as is. This fee can also be waived upon a showing of indigency.

Finally, a **Community Service Supervision Fee** is a fee that is imposed upon each defendant whose sentence includes community service. The fees collected are used by the Department of Corrections to provide grants to private, nonprofit organizations that run a community service work program. This amendment would raise the fee from \$25 per individual to \$50. This fee can be waived if the defendant is found indigent.

Thank you, and I will stand for any questions you may have.

Legislative History District Court Fees

Civil filing fee [NDCC 27-05.2-03(1)(a)]: Raised from \$15 to \$20 effective July 1, 1985; raised from \$20 to \$80 effective July 1, 1995 (change in fee was included in 1995 judicial branch appropriation bill HB 1001).

Answer fee [NDCC 27-05.2-03(1)(b)]: Established July 1, 1995 as a \$50 fee at the direction of the Senate Appropriations Committee (Note: There is an error in the 1995 Session Laws publication in that they forgot to indicate that this was newly added language).

Displaced Homemaker fee [NDCC 27-05.2-03(1)(a)(2)]: \$50 of each filing fee for dissolution of marriage deposited in the displaced homemaker account created by 14-06.1-14 Enacted 1979. Money is deposited with Department of Public Instruction (until 2018 – DPI granted the money to Minot State University for a skills training program for eligible applicants/beginning sometime after 2018, DPI began awarding these funds as a pass-through grant to each Adult Learning Center in the state)

Motion Fee [NDCC 11-17-04]: Enacted 1993 at \$20 for a motion to amend an order for alimony, property division, child custody or child support. Fee raised to \$30 in the 1995 judicial branch appropriation bill HB 1001.

Civil Legal Service Fee [NDCC 27-05-.2-031(a)(1)]: \$15 of each civil filing fee is deposited in Civil Legal Services Fund. Enacted 1989. Portion of fee raised from \$10 to \$15 effective July 1, 2009. Cap raised from \$400,000 to \$650,000 effective July 1, 2009. Cap raised from \$650,000 to \$750,000, effective July 1, 2019.

Criminal Court Administration Fee [NDCC 29-26-22(1)]: Established 1987 as 25% of maximum penalty allowed for the charge; raised to 30% in 1995; Effective July 1, 2003, changed to a variable fee from \$125 to \$900 based on the charge the defendant is convicted on.

Court Administration Fee [NDCC 29-26-22(2)]: Established July 1, 2003 as an additional \$100 court administration fee in addition to the variable court administration fee (as referenced above). The \$100 is split between the **Indigent Defense Fund** and the **Court Facility Maintenance and Improvement Fund**. The formula for the split is that the first \$750,000 goes to the ID Fund, the next \$460,000 goes to the Court Facility Fund, and after that fund is full the fees are split evenly between the two funds. The formula starts over at the beginning of each biennium.

Restitution Collection Assistance Fee [NDCC 12.1-32-08-(6)]: Established July 1, 2003. This fee is charged on all non-sufficient fund checks or checks issued without an account that have been criminally prosecuted. The fee is the greater of the sum of \$10 or an amount equal to the 25% of the restitution ordered, not to exceed \$1,000. The money collected goes to the county if restitution is collected by the state's attorney or clerk of court in a contract court, or to the state if collected through the district court in a state-employed clerk of court office. The money

must be used to defray the cost of defraying expenses incident to the collection of restitution, inking operating expenses and compensation of additional necessary personnel.

Community Service Work Fee [NDCC 29-26-22(3)]: enacted 2007; fee \$50 effective July 1 2007; fee reduced to \$25 effective July 1, 2009; other funding for CSW providers is through one-time legislative grants and direct charges to participants

Victim Witness Fee [NDCC 27-01-10(1)]: Established 1989 and earmarked to go to (1) a private, nonprofit domestic violence or sexual assault program; (2) a victim-witness advocacy program, or (3) the statewide automated victim information and notification system (SAVIN – run by CJIS); By statute, the amount of the fee cannot exceed \$25 but the exact amount is set by resolution of the county governing board (for district court cases) or by the governing board of the city (municipal court cases).

Indigent Defense Application Fee [NDCC 29-07-01.1(1)]: Established July 1, 2001 and set at \$25. Raised to \$35 effective July 1, 2013. Money originally passed through general fund and was to be used by Indigent Defense Commission to pay for contract services. This restriction on how IDC used the money was later repealed.

Indigent Defense Recoupment Fees [NDCC 29-07-01.1(2)(b)]: Established July 1, 1997 as reimbursement for actual costs. Modified subsequently and as of July 1, 2009 to reimburse the presumed amount of indigent defense costs and expenses as determined by the Indigent Defense Commission (rates are adopted by IDC and published as policy titled “Presumed Rate for Attorney Fee Reimbursement”).

Supreme Court Fees

Filing Fee [NDCC 27-03-05]: Raised from \$50 to \$125 effective July 1, 1995

E-Filing Fee: Statutory authority granted effective July 1, 1995, fee set at \$25 by Supreme Court effective 1997 fee; statutory authority still exists but fee was repealed by Supreme Court in 2019

History of Small Claims Court Jurisdiction and Fees

1971 – Small Claims Court established; Jurisdictional limit set at \$200; fee to file a claim or counterclaim set at \$2 plus an additional \$1 fee per defendant served

Either party has the right to demand a 6-person jury trial in lieu of a court trial

1975 – Jurisdictional limit raised to \$500 if claim is filed in a county court of increased jurisdiction. No change to jurisdictional limit if claim is filed in county court; No change to fees.

Right to jury trial repealed; Informal hearing allowed

1981 – Consolidation of county courts so split jurisdictional limit eliminated; Jurisdictional limit raised to \$1,000; No change to fees

Requirement for any type of hearing eliminated

1983 – Jurisdictional limit raised to \$1,500; Fees raised to \$5 to file a claim or counterclaim plus an additional \$1 per defendant served

1985 – Jurisdictional limit raised to \$2,000; Filing fee raised to \$10 (which was half the cost of the district court filing fee of \$20)

1991 – Consolidation of county and district court; Jurisdictional limit raised to \$3,000; No change in fees

Judge allowed to dismiss without prejudice if determines the case cannot be fairly disposed of in small claims case; if a dismissal is entered, the plaintiff is entitled to a refund of the filing fee

1995 - Jurisdictional limit raised to \$5,000; no change to filing fees

1999 – Responsibility to fund clerk of court offices transferred from counties to the state; no changes to jurisdictional limit or filing fees

2009 - Jurisdictional limit raised to \$10,000; No change to filing fees

2013 - Jurisdictional limit raised to \$15,000; No change to filing fees

Cost of Living changes from July 1995 to July 2024

Based on calculator provided by the American Institute for Economic Research

Fee - 1995	2024
\$10	\$19.99
\$50	\$99.97
\$80	\$159.95
\$100	\$199.94
\$125	\$249.92

Consumer Price Index Change from July 1995 to July 2024 (CPI Inflation)

Based on calculator provided by the Bureau of Labor Statistics

Fee - 1995	2024
\$10	\$20.64
\$50	\$103.21
\$80	\$165.14
\$100	\$206.42
\$125	\$258.03