Priced Out of Justice: An Examination of Civil Fee Waivers in Oklahoma District Courts

EXECUTIVE SUMMARY

Combining quantitative court data with findings from interviews across the state, the Oklahoma Access to Justice Foundation (ATJ Foundation) produced this report to highlight barriers to obtaining a waiver of fees in Oklahoma's civil courts and to provide actionable recommendations aimed at improving the fee waiver process.

For many Oklahomans, the financial burden of accessing the courts is a primary deterrent to navigating a legal system that is already overwhelming. Despite the sixth-highest poverty rates in the country and with nearly 16% of Oklahomans living below the federal poverty line, requests for fee waivers are only filed in approximately 1.8% of the civil cases we studied—the majority of which were divorce and other family law cases. These low rates are rooted in multi-faceted barriers including a complicated process, outdated name, and inconsistent application of the law. This report offers a forward-looking set of recommendations aimed at updating this area of the law, including standardizing forms, increasing public awareness of fee waiver options, and reaffirming the state's constitutional commitment to ensuring meaningful access to justice.

Although Oklahoma's current fee waiver system is insufficient to meet the needs of its most vulnerable residents, this report identifies practical and achievable ways the system can improve. In effect, these recommendations would not only provide a more accessible legal process for low-income litigants but also promote greater efficiency and consistency within the court system itself.

Barriers

A Form by Any Other Name

The name "pauper's affidavit" is outdated and weighted with negative connotation, potentially deterring individuals from seeking necessary relief. Requiring a litigant to identify as a "pauper" may compound feelings of shame or embarrassment during an already overwhelming and vulnerable time. Additionally, using archaic legal terms such as this can be an obstacle to understanding and accessing the courts.

Inconsistency of Civil Fee Waiver Standards

The process for applying for a fee waiver is highly inconsistent across the state's 77 counties. Variations in forms, review and assessment procedures, and judicial discretion can create confusion and unpredictability for litigants, often leading to disparate outcomes based on geography rather than merit. Filing rates for fee waivers across Oklahoma counties range from less than 1% to 7.7% of cases filed.

Accessing the Courthouse

Most counties in Oklahoma still require in-person filing of fee waiver requests, which can create an unnecessary burden for applicants who may lack transportation, the ability to take time off work, or childcare. The lack of electronic filing options disproportionately impacts those whom the fee waiver process is intended to help.

Courts, Costs, and Community Need

Some worry that expanding access to fee waivers could hurt court revenue—but the data tells a different story. According to data from the Administrative Office of the Courts (AOC), Oklahoma courts rely only minimally on these potentially waived fees for funding, making those concerns largely unfounded. The nearly 1,600 fee waiver requests filed over a two-year period likely only reflect approximately $400,000 in potentially lost revenue to the courts, **a fiscal impact of less than one quarter of 1% of the $80 million annual budget** for Oklahoma district courts.

You Don't Know What You Don't Know

Locating, completing, and filing the correct version of the civil fee waiver can be difficult even for legal professionals. Multiple forms exist for different courts and different jurisdictions, and many courthouses do not offer a form at all. The lack of centralized, clear, and accessible resources increases barriers for self-represented litigants, and many court staff are reluctant to assist for fear of unauthorized practice of law (UPL) restrictions.

Put It Plainly

Current forms are only written and provided in English, and technically complicated English at that, creating an additional barrier for those with reduced reading comprehension or those who do not speak or are not proficient in English. Approximately one in ten Oklahomans speaks a language other than English as their primary language, and more than half of adult Oklahomans have a reading level at or below a 7th grade level.

Recommendations

This report makes several recommendations for improving access to civil fee waivers in Oklahoma, as briefly described below and expounded upon further in the report.

Creating Equitable Language Access: These recommendations focus on implementing best practices for plain and understandable language in court forms, instructions, and materials.

- Oklahoma should **revise the current title of "pauper's affidavit" to use clear and plain language**. The current language is outdated, alienating, and leads many people to opt out of a waiver they would otherwise be eligible for.
- Oklahoma should offer **standardized plain-language statewide forms** for civil fee waivers. Ensuring consistency in forms would lead to better judicial efficiency, allow nonprofits to more effectively assist clients, and empower unrepresented litigants to access the legal system without financial barriers.
- Courts or partner nonprofits should offer **plain-language instructional guides for litigants** seeking information about civil fee waivers. Building on a standardized, statewide form, a simple instructional guide would ensure the forms are completed correctly on the first attempt. These guides should be made available in multiple languages, so language access is not a barrier to the courts.

Ensuring Consistency and Fairness: These recommendations would increase access to the legal system, allow for consistent treatment across Oklahoma courts, and increase judicial efficiency by empowering court staff.

- Rather than relying on an inefficient model of judicial discretion, Oklahoma should create **standardized procedures and criteria for civil fee waivers.** This would allow courts to quickly process most requests, while preserving judges' time for complex or unique situations. This would also ensure similarly situated Oklahomans would not be treated differently by the courts simply because of where they live.
- Oklahoma courts should **allow for payment plans for filing fees**, when appropriate. A policy modeled after the state's process to waive or modify criminal fines and fees could easily be adapted for a civil process, allowing for a balance between a need for reasonable fees and Oklahomans' ability to pay.

- It is challenging for Oklahomans to find appropriate and reliable legal information. Oklahoma courts should **offer centralized online access to legal information and plain-language self-representation guides.** This would improve the ability of unrepresented litigants to effectively navigate court processes and lighten the burden on court staff.
- Recognizing that court staff are regularly asked process questions by the public, Oklahoma courts should **create a "safe harbor" policy for court clerks to provide procedural assistance** to unrepresented litigants. States including Illinois, Kansas, and Washington have implemented similar policies to make expectations for court staff assistance clear.
- As Oklahoma continues to roll out its electronic filing system, it should **ensure access to e-filing for self-represented litigants** to allow for the submission of civil fee waiver applications and other common court processes for unrepresented litigants. Continuing to shift to e-filing will reduce burdens on court staff and remove distance as a barrier to justice.

Protecting Data Privacy: This recommendation suggests best practices for the protection of personally identifying information, particularly in a state where court records are free and openly available.

- Oklahoma should **stop requesting litigants provide unnecessary personal identifying information** on court forms, including full or partial social security numbers, banking details, and full names of household members. Many court records provide information that could easily be exploited for purposes of identity theft.

Read the full report at bit.ly/OKFeeWaiversReport