

**Testimony by H. Jean Delaney  
Judiciary Committee, August 25, 2014**

Good Morning. My name is Jean Delaney, and I am the Deputy Director of the Commission on Legal Counsel For Indigents.

The Commission is funded through general fund dollars (about 85%) and through fees paid by defendants. These fees are the \$100 indigent defense/facility improvement fee set forth in NDCC § 29-26-22 (2), and the \$35 application fee set forth in NDCC § 29-07-01.1. Currently, each biennium, we collect approximately \$1.8 million from those fees. These two fees go directly into our special fund. When the courts order attorney fees to be reimbursed, those go into the general fund. The court can waive the fees under certain circumstances, but our history has shown the collection of these fees to be consistent since our inception in 2005.

What concerns me about the consolidation of the various fees into one super fee is what the practice may be by the various courts regarding waiver of the fee. We simply don't know at this time whether there will be any difference; whether the judges will be more inclined to impose it, or whether the judges will waive it at a greater rate than they do now, because a larger fee seems more imposing to an indigent person.

Another unknown is how it will effect collections from the defendant. Will the defendants be more inclined to just give up on paying the larger fee, while they would be more willing to pay off smaller multiple fees, whittling away at them?

I stand before you right now, concerned about the effects of this proposed legislation. I don't want to be standing before you next biennium when we discover collections are down. We rely on this money to help run the agency.

We do understand the motivation behind the proposed legislation and appreciate the court's efforts for efficiency and simplicity. We don't have a crystal ball but are just expressing some concerns. We gave some thought to whether we would prefer to have the \$100 indigent defense/facility improvement fee and the \$35 application fee as separate fees, not part of a super fee. However, if there is a consolidated fee, and our two smaller fees left alone, there are the same questions.... Would those smaller fees be left behind, not imposed by the court, and our revenues decrease? That would not be good for this agency.

If the proposed legislation goes forth, we do respectfully ask the Committee to consider modifying the language on lines 7-9 of page 7 of 15.0162.01000 and on lines 29-31 on page 5 of 15.016001000, to provide that the court may waive "all or part" of the fee upon a showing of indigency, rather than may waive "the fee" to clarify that the only a part of the fee may be waived, rather than the entire fee.

Thank you for your time. I stand available to answer any of your questions.

Dated this 25<sup>th</sup> day of August, 2014

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