

**Report of
State Bar of Texas Poverty Law Section
Affidavits and Statements of Inability to Pay Committee**

In April 2014, the State Bar of Texas Poverty Law Section appointed a committee to gather statewide information on Affidavits and Statements of Inability to Pay. The focus of the Affidavits and Statements of Inability to Pay Committee (Committee) included gathering information concerning:

- a. Systemic issues and abuses related to acceptance of affidavits and statements of inability pursuant to Rules 145, 502.3, 506.1, and 510.9 by courts, district clerks, county clerks and constables;
- b. Electronic filing problems associated with the Rules;
- c. Imposition of mandatory fees and costs on indigent litigants (e.g., social studies, mandatory mediation, service by publication, certified copies) by courts, clerks, and constables when an affidavit or statement of inability is on file;
- d. Other practices by courts, clerks and constables that adversely impact access to the courts in the context of the rules governing statements or affidavits of inability (e.g. requiring oppressive questionnaires and form affidavits created by the clerk, contesting affidavits without any review prior to the filing of a contest); and
- e. Rule 20 Texas Rules of Appellate Procedure issues.

The Committee's formation and survey was driven by the importance of access to the courts by the poor. Texas Rules of Civil Procedure 145, 502.3, 506.1, and 510.9 and Texas Rules of Appellate Procedure Rule 20 serve as the gateway for the poor, who cannot afford court costs, to gain entry to the courts. Each time these Rules are applied incorrectly, it effectively denies the poor a way to resolve critical and potentially urgent legal matters, such as child custody or possession disputes or housing evictions. Various filing and service fees can cost hundreds of dollars, well out of reach of low-income Texans.

The Committee included two representatives from each of the three legal aid providers, Legal Aid of NorthWest Texas, Lone Star Legal Aid, and Texas RioGrande Legal Aid, which between them cover every county in Texas. The Committee sought input from staff of each of the legal aid programs, by email to the statewide legal services list serve, which includes many attorneys that work for other providers of legal assistance for the poor as well as pro bono attorneys, by email to the Poverty Law Section and by publication in the summer 2014 edition of the Legal Front, a publication of the Legal Access Division of the State Bar of Texas. An email address, plsrule145@gmail.com, was set up for ongoing reporting of issues. Reports were

received from the legal aid programs staff attorneys, pro bono coordinators, staff of other low income legal services providers, law school clinics, providers of specialized low income legal services and more. While certainly not every issue or problem was reported, the Committee received reports from around the state and on a wide range of issues. Unfortunately, it appears that the problems with Affidavits and Statements of Inability to Pay are not isolated to a few counties, courts or clerks but are pervasive and extensive.

We have summarized the reported concerns in Exhibit A and provided the more detailed individual reports in Exhibit B. A synopsis of the reported concerns includes counties that:

- Automatically contest every affidavit of indigency filed, even when the party is receiving means-tested public benefits;
- Delay the filing of a case or proceedings in a case when it is accompanied by an affidavit of indigency;
- Contest affidavits of indigency accompanied by an IOLTA Certificate;
- Assess costs after final orders are rendered and the case is concluded when there has been no successful contest to the affidavit of indigency;
- Conduct contest hearings in hall before a staff attorney rather than before a judge;
- Require payment for certified copies of court orders;
- Require pro se filers to pay an additional \$50 in court costs;
- Deny affidavits of indigency based on substantive case reasons rather than making a determination based on whether the litigant is poor;
- Require payment for service of process, a cost clearly covered under TRCP 145;
- Require protective order applicants to pay court costs if their application is denied even when an affidavit of indigency has been filed and despite provisions that fees cannot be charged per the Texas Family Code;
- Require payment for a social study, a cost covered under TRCP 145 per *In re Villanueva*, 292 S.W.3d 236 (Tex. App. Texarkana 2009);
- Require payment of ad litem fees, even when the ad litem has been appointed on the court's own motion and not at the request of either party, a cost covered per *In re Villanueva*, 292 S.W.3d 236 (Tex. App. Texarkana 2009) - some counties strike pleadings if the fee not paid;
- Require payment for an interpreter, a cost covered under Title VI of the Civil Rights Act of 1964 per the United States Department of Justice;
- Refuse to print an e-filed petition to create a citation that can be sent to the sheriff or constable for service of process unless petitioner pays a per page fee;

- Require payment of a \$2 per transaction e-filing fee even though Section 72.031 of the Texas Government Code expressly allows this fee to be waived for indigent filers;
- Require an affidavit of indigency to be filed each time a pleading or document is e-filed;
- Automatically contest affidavits of indigency filed in probate court on an administration of the estate or a Muniment of Title when a house is a part of the estate;
- Require payment for a mediator under local rules that mandate mediation in all contested cases prior to final order or hearing, effectively halting resolution of important issues for the poor, such as child custody and support;
- Require additional documentation of income and assets beyond what is required by Rule;
- Deny affidavits of indigency without holding a hearing;
- Attempt to collect costs when uncontested inability to pay affidavit on file but judgment contains boilerplate language assessing costs;
- Require fee to print out hard copy of e-filed document to put on court file;
- Rejection of Affidavit on Indigency because not notarized, despite being in compliance with unsworn declaration under CPRC section 132, an alternative to notarization;
- Require payment to District Clerk for service by Secretary of State for out of state resident defendant;
- Permit contest to affidavit of indigency seeking dismissal under CPRC 13.001 to be filed and considered years into litigation;
- Require payment of court fees to county clerk in perfected appeal from JP Court eviction filed with statement of inability to pay; and,
- Refuse to accept appeal from JP court without prior review of filings by JP judge.

The Committee has many concerns regarding the impact of these issues and abuses. It is distressing that the law is often routinely disregarded, denying the poor access to the justice system and sending a message that justice is not for all. Even when the cause for failing to follow the law is ignorance of the requirements of the rule, the impact is serious. For those who provide legal services to the low income, the significant amount of time and effort spent addressing the issues and abuses is time that is not spent on addressing the underlying legal issues. In many cases, despite prior efforts by legal aid staff to address issues of concern with local officials, the problems continue to persist. Besides the inefficient use of the time of legal aid attorneys, these barriers and hurdles can have a negative cumulative impact on pro bono attorneys, who may tire of all the time consuming issues. Of even greater concern is the impact

on low income pro se litigants. When the rules regarding Affidavits and Statements of Inability to Pay are not followed, and often flaunted, they do not have the knowledge and skill to address the violations and they suffer the consequences of not being able to access the court system to address their concerns. Providers of legal services for the poor are able to meet only a small portion of the legal need of low income Texans. Considerable resources are spend in developing support systems to help those they cannot represent access the justice system on a pro se basis. When the justice system denies access by the various methods documented in this report, a critical tool for meeting the legal need of low income Texans is unnecessarily severely restricted.

**State Bar of Texas Poverty Law Section
Affidavits and Statements of Inability to Pay Committee
Summary of Problems with Affidavits and Statements of Inability to Pay**

Problem Type	Counties Where Occurring
Automatically contest every affidavit of indigency filed, even when the party is receiving means-tested public benefits	Bexar, Harris, Ft. Bend, El Paso, Hidalgo, Val Verde
Delay the filing of a case or proceedings in a case when it is accompanied by an affidavit of indigency	Harris, Cameron, Jasper, Newton, Maverick, Val Verde, Leon, Brazos
Contest affidavits of indigency accompanied by an IOLTA Certificate	Harris, Cameron
Assess costs after final orders are rendered and the case is concluded when there has been no successful contest to the affidavit of indigency	Hale, Swisher, Castro, Motley, Lamb, Tarrant
Require additional documentation of income and assets beyond what is required by Rule	Hale, Swisher, Castro, Motley, Lamb, Collin, Brazos
Conduct contest hearings in hall before a staff attorney rather than before a judge	Bexar
Require payment for certified copies of court orders	Bexar, Cameron, San Patricio, Kleberg, Victoria, Hale, Swisher, Castro, Motley, Lamb
When PO denied, require the applicant to pay court costs even if affidavit of indigency filed and despite Texas Family Code provisions that fees cannot be charged	Hale, Swisher, Castro, Floyd, Motley, Lamb
Require payment for service of process	Dallas, Guadalupe
Require payment for a social study, a cost covered under TRCP 145 per <i>In re Villanueva</i> , 292 S.W.3d 236 (Tex. App. Texarkana 2009)	Guadalupe
Require payment for an interpreter, a cost covered under Title VI of the Civil Rights Act of 1964 per the United States Department of Justice	Guadalupe, Val Verde
Deny affidavits of indigency without holding a hearing	Cameron, Brazos
Refuse to print an e-filed petition to create a citation that can be sent to the sheriff for service of process unless petitioner pays a per page fee	Bexar, Dallas
Require payment of \$2 per transaction e-filing fee	Harris, Comal
Require an affidavit of indigency to be filed each time a pleading or document is e-filed	Bexar
Automatically contest affidavits of indigency filed in probate court on an administration of the estate or muniments of title when a house is a part of the estate	El Paso
Require payment of ad litem fees, even when not requested by parties but appointed on court's own motion, a cost covered per <i>In re Villanueva</i> , 292 S.W.3d 236 (Tex. App. Texarkana 2009) - some counties strike pleadings if cost not paid	Harris, Ft. Bend, Webb, Hale, Swisher, Castro, Floyd, Motley, Lamb, Gregg, Upshur, Harrison
Attempt to collect costs when uncontested inability to pay affidavit on file but judgment contains boilerplate language assessing costs	Wichita

Require pro se filers to pay an additional \$50 in court costs	Coryell
JP courts denying pauper's oath on appeal because tenant should "just move out" or "just pay the rent" or other substantive case reasons rather than making a determination based on whether the litigant is poor	Hidalgo, Cameron
Require fee to print out hard copy of e-filed document to put on court file	Bandera
District Clerk and Secretary of State requesting payment for service fee for service by Secretary of State for out of state resident defendant	Cameron
Rejection of Affidavit on Indigency because not notarized, despite being in compliance with unsworn declaration under CPRC section 132, an alternative to notarization	Brazos
Refuse to accept appeal from JP court without prior review of filings by JP judge	Burleson
Permit contest to affidavit of indigency seeking dismissal under CPRC 13.001 to be filed and considered years into litigation	El Paso
Require payment of court fees to county clerk in perfected appeal from JP Court eviction filed with statement of inability to pay	Brazos
Require payment for mediator under local rules mandating mediation in all contested cases prior to final order or hearing, effectively halting resolution of important issues such as divorce and child custody for the poor	Gregg, Upshur

Poverty Law Section Affidavits and Statements of Inability to Pay Committee - Reported Problems

<u>Date of Report</u>	<u>Types of Problem</u>	<u>Problem</u>	<u>County</u>	<u>Pro Se/ Represented</u>	<u>Resolved?</u>	<u>Efforts to Resolve</u>	<u>Organization Reporting Issue</u>
03/31/14	Delay of services during contest	District Court Family Law division will routinely set hearings challenging the pauper's oath affidavit before any subsequent actions on the petition is taken (such as issuing a citation for service). This increases the overall timeframe it takes to finalize a divorce case and sometimes creates additional hurdles for clients residing in shelters that lack transportation.	Harris	Pro se and Represented	Unresolved	Active communications w/ the Courts but neither party will undertake any actions to fix the situation or minimize its impact.	TAJF

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06/01/14	E-filing	District Clerk was requiring \$2.00 fee to e-file.	Comal	Represented	Unsure if resolved	I sent a letter where I included my standard language regarding Rule 145 and district clerk's obligation to provide customary services, a cite from In re Villanueva, 292 S.W.3d 236 (Tex. App.-Texarkana, 2009, no pet.) concerning what customary services include, and the Texas Supreme Court order issued on December 11, 2012, mandating electronic filing in civil cases. I included a copy of the order. They accepted my filing. Did not reference the law that was passed in 2013 requiring waiver of the fee as it had just been passed.	Texas RioGrande Legal Aid

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06/23/14	Payment required for copies court orders	Cameron County District Clerk charges for copies and certification of orders and other necessary case documents even though AOI on file. Problem has been going on since 2012, most recent incident that we know about with extensive detail occurred on 6/14/2014. County has a written policy based legal memo drafted by county attorney that states: "I have reviewed the attached materials, researched for Attorney General's Opinions that might shed light on the issue, and consulted with the Assistant General counsel for Court Administration and have concluded that there is no specific, controlling legal authority that the County must provide copies free of charge. In the absence of such authority we may not provide such free of charge. The IOLTA certificate being attached to the affidavit of indigency does not change this conclusion." (This research memo was done in response to letter from TRLA demanding they provide free copies.) Policy varies day to day depending on what clerk you talk to when. Sometimes they give TRLA discount. They have told staff copies are free for veterans.	Cameron	Represented	Unresolved	Letters to clerk in 2012, written response from clerk in 2012 (see details of problem). Continued communication. Last communication in June 2014 with Ed Sandoval, attorney at Cameron County DA's office, who said they'd discussed it internally but can't do anything.	Texas RioGrande Legal Aid

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6/30/2014	Collection Efforts Post Judgment	Defendant in housing case lost at District Court level. Judgment recited boilerplate language regarding costs and fees from Defendant but no contest to inability to pay had been filed. Six months after judgment, District Clerk sent a collection letter to Defendant based off the judgment	Wichita	Represented	Resolved	Contacted District Clerk, explained pauper's status and that no contest was filed - means no fees created. Collection efforts ceased.	

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06/30/14	Payment required for customary services	Went to file a petition, get a TRO, and then have both served on the defendant who was an out of state resident. The defendant had to be served through the Secretary of State. We filed aff inability and IOLTA cert. Clerk indicated we needed to pay a fee for service because the SoS would charge us. I explained to her that this had never happened before and to just send to them and if they needed a fee they could contact me. She very unwillingly did so, I think because I am an attorney and insisted I've done this before. Sure enough, I got a letter from the SoS indicating we needed to pay a service fee. I spoke to a staff person at the SoS and sent a letter attaching the aff of inability and the IOLTA cert. and they indicated it should be enough to waive a fee.	Cameron	Pro se and Represented	Resolved for this case only	Insisted District Clerk should send without fee. Follow up advocacy with Secretary of State	Texas RioGrande Legal Aid
06/30/14	E-filing	Some of our pro bono volunteers have reported that the clerk will not print out the e-filed petition to create a citation that can be sent to the Sheriff. They charge \$1.00 a page printing fee that they say is not covered by the AIP. To get around this our volunteers have to either mail in a paper copy of the file-marked petition or print it themselves and take it to the clerk in person. This makes getting someone served so much slower.	Dallas	Represented	Unresolved		Dallas Volunteer Attorney Program
07/01/14	Fees for Social Study, Interpreter	My indigent client and the pro se Opponent are both ordered to pay 1/2 of a social study.	Guadalupe	Pro se and Represented	Unresolved		Texas RioGrande Legal Aid

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	Fees for Social Study, Interpreter	My indigent client and the pro se Opponent are both ordered to pay 1/2 of a social study.	Guadalupe	Pro se and Represented	Unresolved		Texas RioGrande Legal Aid
07/14/14	E-filing	District clerk is requiring payment of \$2.00 fee per e-filing transaction - stating only government agencies can get it waived, overlooking TEX. GOVT. CODE §72.031 (f) waiver of the \$2.00 counties are authorized to charge for electronic filing transactions under TEX. GOVT. CODE §72.031(c) for indigent filers.	Harris	Represented	Unresolved	Emails and phone calls with multiple staff at district clerk office - difficult to accomplish with recent change of contact Information	Cathedral Justice Project
07/14/14	Requiring order to proceed	In the last two years I handled several cases in district court in Maverick County where the clerks would refuse to process requests for citation until a proposed order approving the 145 affidavit was submitted. Local attorneys would submit the proposed order. I finally wrote a letter to the judge explaining that an approval order was not authorized and that seemed to resolve the issue but I have not filed anything since last year.	Maverick	Pro se and Represented	Unsure if resolved	Wrote letter to judge	Texas RioGrande Legal Aid

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07/14/14	Improper procedures for contest (including refusing to docket filing)	We filed a R145 affidavit for a client who did not meet the IOLTA 125% of poverty level guideline but did qualify for legal aid under LSC guidelines. When we filed an interlocutory appeal two years into the litigation, the other side filed a contest under Rule 145 to our original affidavit as well as a motion to dismiss under CPRC 13.001 (which does not have a deadline even though it obviously is intended to be brought when a suit is brought). The court held a hearing to consider the other side's motion and contest and ultimately upheld their contest but denied the motion to dismiss. The court made it clear on the record was that her concern was her court reporter not getting paid for transcripts.	El Paso	Represented	Unsure if resolved	Contested Hearing of Contest filed well into litigation	Texas RioGrande Legal Aid
07/14/14	Contest of all affidavits and statements of inability to pay	The clerk files contests to every 145 affidavit unaccompanied by an IOLTA certificate. The contest requires it to be heard at the first hearing. Anecdotaly, I have not heard of a judge granting the contest, but it frightens pro se litigants when they get the contest; they do not know what to do next.	Val Verde	Pro se and Represented	Unresolved		Texas RioGrande Legal Aid
07/14/14	E-filing	Required to attach the 145 affidavit as an attachment every time we filed a document in a case, otherwise the document would not be accepted for e-filing. Not sure if still the case under e-filing.	Bexar	Represented	Unsure if resolved		Texas RioGrande Legal Aid

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07/14/14	Contest of all affidavits and statements of inability to pay	Probate Court judges are opposing affidavits of inability to pay in probate cases including administrations and muniments of title. One of the judges said that even though the applicant is poor, "the estate" is not poor, so we must pay court costs. We have fought this on several occasions and the judge says the law is not clear on this issue. Filings have been both with and without IOLTA certificates but the judge has told me in chambers that "it's not fair for them to get a free house and not pay court costs." He suggested that my client "get a loan on the house" to pay court costs. I told him I'd instruct my client not to pay court costs and appeal his decision if he denied the affidavit (that one was with an IOLTA). Judge eventually held two additional hearings regarding the affidavit where he, on the second hearing, granted the affidavit. We have not been contested on a small estate affidavit yet but I'm expecting those to be contested as well.	El Paso	Represented	Unresolved	Letters to the judges, legal brief on the issue submitted, copies of the TPC rules provided to the judges.	Texas RioGrande Legal Aid
07/14/14	E-filing	District clerk is requiring payment of \$2.00 fee per e-filing transaction despite TEX. GOVT. CODE §72.031 (f), . This issue was addressed in June 2013 (see previous entry) and appeared to have been resolved but has been resurfaced.	Comal	Represented	Unresolved		Texas RioGrande Legal Aid
07/17/14	Improper procedures for contest (including refusing to	Court denied AOI filed by pro se litigant without holding hearing or clerk or defendant filing contest. Court order stated that he DOES claim to receive government benefits but that his attestation is invalid.	Cameron	Pro Se	Unresolved	Filed motion to reconsider -still pending	Texas RioGrande Legal Aid

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08/08/14	Requiring order to proceed	Filings are not processed by District Clerk until an individual gets their Affidavit of Inability to Pay approved by a district court judge. Lone Star Legal Aid talked to the District Clerk about this last year and we were able to get our filings processed. At that time, the District Clerk told me they were following policy set by their judges. Newton County used to have the same procedure (and may still) because they have the same circuit judges. It looks like nothing has changed since our conversations with the District Clerk and the District Court Coordinator. A pro se lady called me from the court coordinator's office today while she waited for a judge to return from lunch so the judge could approve her Affidavit of Inability to Pay so she could file her petition. The District Clerk would not process her Petition to Modify unless the judge signed his approval to the Affidavit of Inability to Pay	Jasper, possibly Newton	Pro se and Represented	Unresolved	Met with District clerk and District Court Coordinator.	Lone Star Legal Aid
08/13/14	E-filing	Bandera County charging \$2.00 fee. At first it appeared to be e-filing convenience fee then was told it was a copy fee - clerk must print out a copy of the document filed and put on court file. Letter sent to District Clerk and was told no fees for Legal Aid, just write in the notes.	Bandera	Represented	Unresolved	Unresolved except for legal aid. Letter sent to District Clerk and was told no fees for Legal Aid, just write in the notes, however no indication that problem is resolved for everyone else.	Texas RioGrande Legal Aid, Inc.

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08/14/14	Payment required for customary services	Filed some service by pub divorces and pauper's oaths, and the County still requires clients to pay ad litem fees. Haven't really fought tooth and nail on this issue, but included provisions that any ad litem be paid by Harris County in my proposed orders but the Judges just write their own order. Assume this is the same for pro se litigants seeking a divorce with service by publication	Harris	Pro se and Represented	Unresolved	Proposed orders for ad litem fees to be paid by county treasury but judges revise the order	South Texas College of Law
08/14/14	Payment required for customary services	A pro se litigant who files a divorce case with a waiver is charged \$50 more than a non-pro se litigant who files a divorce case with a waiver.	Coryell	Pro se and Represented	Unresolved	None	Legal Assistance Attorney III Corps Consolidated Legal Services, Fort Hood, Texas
08/18/14	Payment required for customary services	In Webb County, in divorce cases where both parties are indigent and one requests an ad litem, the court requires each of the parties to pay half of the ad litem fees even though both are indigent. Judge has asked me to take this issue up on appeal because he doesn't think he has authority to have the court pay for it or not pay the ad litem. I have argued that we don't care where the money comes from but the law is clear that it does NOT come from our indigent clients (not in those words exactly). The judge seemed to think his hands were tied because some provisions of the family code said that an ad litem cannot work for free and another said the court or county can't pay for the ad litem and TCRP 145 says indigent litigants can't pay.	Webb	Pro se and Represented	Unresolved	Raised issue with judge, who said to take it up on appeal	Texas RioGrande Legal Aid

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08/18/14	Payment required for customary services	Had to pay Interpreter	Val Verde	Represented	Unresolved	Case was not a good one to fight the issue on and interpreter ended up being a good contact for future cases	Texas RioGrande Legal Aid
08/18/14	Requiring order to proceed	TRLA has had repeated problems with orders etc. being required to proceed when Paupers is filed.	Val Verde	Represented	Unresolved	Have talked to clerk and presented issue to judges	Texas RioGrande Legal Aid
08/18/14	Payment required for copies court orders	San Patricio county clerk charges for certified copies, as do district clerks in Cameron, Kleberg, Bexar and Victoria	San Patricio, Cameron, Kleberg, Bexar, and Victoria Counties	Pro se and Represented	Unresolved		Texas RioGrande Legal Aid
08/18/14	Payment required for customary services	Both parties being ordered to pay half ad litem fees - extremely high fees even when AOI on file. If you raise an objection, you end up having a pauper's oath hearing, regardless of whether we filed an IOLTA or not. In one hearing for reallocation court reduced to 25% even though AOI was not contested. Amicus was appointed before party was even served. Pleadings are struck if don't pay. Ends up being paid out of litigation funds. Amicus are influenced by whether they are paid or not and impacts their reports to the court on the case.	Harris, Fort Bend	Pro se and Represented	Unresolved	Contested in Court (not taken on appeal), The judges here will often appoint the amicus without a motion being put in front of them. In my cases, when the judge attempts to do that a hearing, we do object and attempt to stop the appointment. If the other party files the motion, then we ask that they pay all the fees. If we file the motion, which does happen on occasion, we ensure that we have litigation funds set aside for the appointment prior to the motion being filed.	Lone Star Legal Aid

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08/19/14	Payment required for customary services	Indigent Litigants required to pay ad litem Fees	Hale, Swisher, Castro, Floyd, Motley, Lamb	Represented	Unresolved	Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in.	Legal Aid of Northwest Texas
08/19/14	Collection Efforts Post Judgment	Indigent Litigants being ordered to pay costs. Judge hand writes in the provisions on order	Hale, Swisher, Castro, Floyd, Motley, Lamb	Represented	Unresolved	Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in.	Legal Aid of Northwest Texas
08/19/14	Payment required for copies court orders	We are being charged for certified copies of orders	Hale, Swisher, Castro, Floyd, Motley, Lamb	Represented	Unresolved	Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in. Will address with new judge in 2015.	Legal Aid of Northwest Texas
08/19/14	Questionnaires/ screening beyond scope of rules	District clerk requires additional documentation of income and assets beyond what is required by Rule 145 and will not send out notices as required under the rule until all the documents are submitted	Hale, Swisher, Castro, Floyd, Motley, Lamb	Represented	Unresolved	Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in. Will address with new judge in 2015.	Legal Aid of Northwest Texas
08/19/14	Improper procedures for contest (including refusing to docket filing)	If judge decides not to grant protective order, judge orders petitioner to pay court costs despite Family Code provision otherwise	Hale, Swisher, Castro, Floyd, Motley, Lamb	Represented	Unresolved	Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in.	Legal Aid of Northwest Texas

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08/19/14	Improper procedures for contest (including refusing to docket filing)	Problems with all the JP courts in Hidalgo and Cameron County denying pauper's oath on appeal because they should "just move out" or "just pay the rent" or other substantive case reasons rather than making a determination based on whether the litigant is poor. We have had to file challenges to county court at various times.	Hidalgo, Cameron	Pro se and Represented	Unresolved	Have appealed decisions. Plan to try to meet with him.	Texas RioGrande Legal Aid
08/19/14	Contest of all affidavits and statements of inability to pay	JP Judge challenges every Affidavit on Indigency, even when folks have zero income and are on public housing. In recent case, client's only income at the time of paupers was \$175/month with 5 kids, public housing with utility allowance, and \$900 in food stamps. Would help if JP rules said cannot challenge with IOLTA certificate.	Hidalgo	Pro se and Represented	Unresolved	Attempted judicial education during hearing on contest; plan to meet with JP	Texas RioGrande Legal Aid
8/20/2014	Improper procedures for contest (including refusing to docket filing)	At the time of prove up for divorce several judges have begun the process of asking litigants (even if on an IOLTA) how their situation has changed and can they now afford to pay the fees even when there is no monetary award.	Tarrant	Pro Se and Represented	Unresolved	Have spoken to judges regarding concerns with the policy.	Texas A&M Law Clinic
08/19/14	Contest of all affidavits and statements of inability to pay	County attorney contests all Affidavits on Indigency, but will pass hearing if Lone Star involved and have filed an IOLTA certificate. I've seen examples where the judges will deny a pauper's oath despite the fact that food stamps and SSI is clearly on the affidavit.	Harris, Fort Bend	Pro se and Represented	Unresolved	Have not taken on appeal.	Lone Star Legal Aid

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08/20/14	Improper procedures for contest (including refusing to docket filing)	Attorney for Civil District Court contests most affidavits on indigency. While they say they check for public benefit statements or IOLTA statements, often they don't catch them. Litigants are given very short notice of hearing and it is not uncommon for them to get notice after hearing. There is no easy way for litigants to provide documentation of public benefits or other requested information as the office does not answer phone nor return messages. Contest hearings are held in hallway - no judge presiding. The Attorney for Civil District Court reviews what documentation is provided by litigant and if over 125% denies, even if litigant explains was unemployed for long period of time. They are not told have a right to go before judge.	Bexar	Pro se and Represented	Unresolved	TRLA has repeatedly negotiated with General Administrative Counsel for the Civil District Courts - district Clerk refuses to engage. TRLA has prepared handout clerks could give AOI filers explaining what documentation should be submitted to avoid having to attend hearing. Expressed concern that case is not heard by judge who orders denial.	Texas RioGrande Legal Aid

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08/20/14	Improper procedures for contest (including refusing to docket filing)	Judge Ordering Indigent Litigant On Means Tested Public Benefit To Pay Fees Even Though No Allegation Of Fraud Or That Did Not Receive Benefit. (See 201403723 - Chatham, Vera Annette Vs. Chatham, Robert Earl)	Harris	Pro se and Represented	Unresolved	Have not yet appealed/mandamus	Lone Star Legal Aid
08/20/14	Payment required for copies court orders	District Clerk charging for certified copies of protective orders despite provisions in Family Code regarding how a person could not be charged fees in connection with a protective order and Affidavit of Indigency on file. Addressed matter with Tom Wilder, District Clerk. Said it was their policy to charge and would not accept copies brought by attorney because they wanted exact copies of the mark through changes.	Tarrant	Pro se and Represented	Unresolved	Spoke with District Clerk and showed law that can't be charged copies Also had the Assistant DA speak with them.	Texas A&M Law Clinic

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8/21/2014	Requiring Order to Proceed	Constable refused to serve protective order without charge because no order of indigency. (Dallas County Precinct 1)	Dallas	Pro Se and Represented	Unsure if resolved,	It took me several hours on two different occasions for attorney to convince them to serve to Tarrant County protective orders without having to pay fee or go back and get an order of indigency. Have not yet had another case requiring service in Dallas.	Texas A&M Law Clinic
08/22/14	Payment required for customary services	Client ordered in July 2014 to pay 1/3 of the deposit for an amicus attorney in a custody suit after a hearing limited to the parties' ability to pay for the amicus attorney's services. In this case I attempted to have the judge tax the cost against the other party, but the court "split the difference" between no payment and the usual half payment by each party for the amicus, resulting in the order that the client pay 1/3. Gregg County's family district judge has shown some discretion in the appointment of an amicus, depending on parties' ability to pay and other factors, and some attorneys in the region do accept appointments on a pro bono basis, but we anticipate having to challenge these fees again in the future. Currently mediations are mandatory in contested matters which require more than 2 hours of court time, so payment of a mediation fee is also something we expect to challenge when this becomes an issue in one of our cases going forward.	Gregg	Pro se and Represented	Unresolved	Parties reached an agreement on custody so need for Amicus to proceed	Lone Star Legal Aid

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08/22/14	Payment required for customary services	Pro bono client of Lone Star Legal Aid (LSLA) who was represented by a volunteer attorney was ordered to pay a mediation fee of \$750, and LSLA also was "found" in an order appointing amicus attorney to be "responsible" for paying the amicus attorney a fee of \$750. LSLA management ultimately decided to approve \$500 for the mediator, who agreed to accept the reduced fee. LSLA declined to pay any fee to the amicus attorney, because LSLA was not a party to the matter. This case settled prior to the mediation, and ultimately no costs were paid by LSLA or the client. This district judge currently orders the appointment of an amicus in any contested custody matter, and orders both pro se IFP parties and LSLA clients to pay these fees. If a case does not settle after the amicus makes a recommendation, the court then orders the parties to mediation, ordering each party to pay an equal share of the mediation expense. We anticipate challenging this issue when we next have an appropriate staff attorney case in that county.	Upshur	Pro se and Represented	Unresolved	Case settled prior to mediation and no fees were paid by client or Lone Star Legal Aid.	Lone Star Legal Aid
08/22/14	Payment required for customary services	Family district judge recently appointed an amicus attorney in a divorce for Lone Star Legal Aid client with contested custody, and although he did not order the client to pay any deposit to the amicus, he did reserve the right to tax costs at the conclusion of the suit.	Harrison	Represented	Unresolved	Payment to be addressed at conclusion of the suit.	Lone Star Legal Aid

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09/18/14	Payment required for customary services	Court/County charging for paying notice to creditors (which is actually sent out by attorney), fees for letters of testamentary in probate/letters of administration. Stated that she had problems last year with Bell County waiving fees for our clients for these documents. Pro bono attorney was representing indigent client. Pro bono coordinator notes that Pro Bono attorneys can be reluctant to take a case because they don't want to upset local court personnel by pressing their client's indigency rights.	Bell	Represented	Unsure if resolved	Unknown	Lone Star Legal Aid
09/22/14	Payment required for customary services	Received bill for service by Guadalupe County Sheriff Department when Affidavit on Indigency filed	Guadalupe	Represented	Unsure if resolved	Phone call to Sheriff Department with discussion of Rule 145 resolved the issue for this client. Unclear if others with Affidavit will receive service without charge.	Texas RioGrande Legal Aid
10/6/14	Improper Procedures for contests (including refusing to docket)	District Clerk staff had not ever seen affidavit on indigency and did not know what to do with it. After contacting attorney representing affiant who explained what it was and process, notified her hearing would be held.	Scurry	Represented	Resolved	Discussed with Clerk what Affidavit of Inability to Pay is and process	Legal Aid of Northwest Texas

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9/25/14	Questionnaires/ screening beyond scope of rules	JP court requiring use of their affidavit form for eviction appeal which includes very intrusive questions including provision of social security numbers, bank account numbers, and employer contact information. Required spouse's information even though did not live with pro se litigant. Eviction was for rules violation and docket noted affidavit was not needed for appeal but court staff required it.	Collin	Pro Se	Unresolved		Legal Aid of Northwest Texas
10/22/14	Improper procedures for contest (including refusing to docket filing)	Pro se litigant who sought to appeal De Novo the judgment against her in an eviction suit was told by clerk at JP's office that the clerk could not accept appeal filing until the clerk spoke with the judge, who was out of the office. Litigant called legal aid attorney from the JP's office. After receiving guidance on how to address issue, the litigant was able to convince the clerk to accept the filing.	Burleson	Pro Se	Unsure if Resolved	This litigant armed with law and legal guidance was able to convince clerk to accept filing – not clear other pro se litigants will be able to file appeals.	Lone Star Legal Aid
10/22/14	Improper procedures for contest (including refusing to docket filing)	Multiple pro se litigants report that Leon County District Clerk delays action (including docketing case or issuing citation or setting a TRO hearing) upon filing of pleadings with an Affidavit of Inability to Pay costs as is directed by TRCP Rule 145. Clerks reportedly state to the filer that the Judge will have to approve an IFP before the clerk will accept it for filing.	Leon	Pro Se	Unsure if Resolved	Directed staff not to use <i>Motion to Proceed Informa Pauperis</i> and assisted pro se litigant client in addressing issue with clerk and court. Instructed litigant to go back and refile, using my instructions and authority to argue with Clerk/Court. Litigant did not report result.	Lone Star Legal Aid

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10/22/14	Improper procedures for contests (including refusing to docket filing)	Pro se litigant who sought to appeal De Novo the judgment against her in an eviction suit was questioned by JP who appeared at clerk's window as to why she was filing an affidavit of inability to pay since she did not have food stamps. Litigant explained that she had an appointment with food stamp office day, Tuesday. JP stated to litigant that she had until Friday to submit proof of food stamps. Client went to JP office w/proof of Food stamps on Friday and learned at that time that JP had prematurely issued writ of possession on Thursday, the day before, which was just three days from the date she'd filed her appeal with Affidavit of Inability to pay & four days before her deadline to appeal had run. No contest of the Affidavit of Inability to Pay was filed. No hearing was conducted on the Affidavit and notice of an adverse ruling was issued by the JP on the implied ruling upholding an unfiled contest. The JP simply decided because the litigant did not receive food stamps, she was not entitled to proceed and issued the writ of possession. In a letter/order to Resend (sic) Writ of Possession, dated 9/29/14 JP wrote, "Defendant filed a timely appeal, and submitted and Affidavit of Inability to Pay Court Cost. However, Defendant did not provide the necessary documentation to validate the appeal affidavit. (There was no notary signature, letter head or any documentation which rendered the Court unable to determine WHO actually established and prepared Defendant's eligibility for Inability to Pay Court Cost.) NOTE – Litigant's Affidavit was filed as an unsworn declaration under CPRC section 132, which means notarization is not needed.	Brazos	Pro Se	Unresolved	Filed Writ of mandamus for JP's refusal to forward perfected appeal to CCL or allow client to appeal JP's implicit denial of Affidavit of Inability to pay costs. Also filed TRO to prevent execution of writ of possession.	Lone Star Legal Aid

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10/22/14	Improper procedures for contests (including refusing to docket filing)	This is an incident is related to the Brazos County JP problem reported on 10/22/14. In filing separate action for Mandamus for wrongful refusal to forward appeal, attorney presented county clerk with new Affidavit of Inability to Pay costs (AIPC). AIPC was presented with mandamus on eve of day on which writ of possession was to be executed. Deputy Clerk initially stated that she'd not file the case because all cases with pauper's affidavits must be approved by the County Clerk herself. After a long conversation including requests for the County Clerk's personal phone number and several references to the law by me, the deputy clerk agreed to file the case so I'd know which court it was in and could approach the judge in the morning about issuing the TRO to stop execution of the writ. The next morning I checked in with the clerk at shortly after 8am and learned that the file had not been approved or sent up to the court for review. I approached the judge who contacted the clerk and instructed her to send of the file. A pro se litigant would not have known to be so persistent and/or would have possibly been intimidated by the clerk's office or court and would likely have suffered an erroneous eviction because the delays arbitrarily imposed by the county clerk's office. During my conversation with the deputy clerk I inquired into their procedures surrounding the use of AIPC. DESCRIPTION OF THE CONVERSATION IS ON THE FOLLOWING PAGE.	Brazos	Represented	Not Resolved	See information in problem. Sample of letter sent to collect fees can be obtained by contacting plsrule145@gmail.com	Lone Star Legal Aid.

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		<p>CONTINUATION FROM PREVIOUS PAGE</p> <p>The following is a description of my conversation with the clerk drafted immediately upon my return to my office: Dpty Count Clerk reluctant to accept Mandamus b/c filed w/IFP; C. Clerk not there so they will wait for her to come in. I explained rush b/c mandamus & constable coming out tomorrow to execute writ of possession; Dpty Clerk said she'd try to call clerk; unable to reach her; Dpty Clerk agreed to "womp" cases, meaning she'd file stamp them; Dpty Clerk said not able to file case until approved by C.Clerk; Dpty Clerk's plan was to file case in morning; I asked what case court #; she said I cannot give to you b/c if another case comes in at 8am or before C.Clerk gets here it will be out of order; I asked if anything was going to happen before C. Clerk approved it; she said she'd take my copies and mail them to me once approved and filed; I asked what is the process; she said if it (AIPC) not list food stamps, ordinarily they have to pay. She then stated, "I send out a letter stating you have to pay" She stated, "If it's an eviction they have to pay right away" I asked, what is the process or what happens if someone disagrees with you about whether they should pay? The Dpty Clerks' response was, "I've never had that happen." I explained to her this is my concern, the writ has already issued, what if constable shows up before Clerk gets here and approves form?</p> <p>CONTINUED IN NEXT LARGE COLUMN</p>				<p>CONTINUATION FROM PREVIOUS COLUMN</p> <p>Dpty Clerk asked what time is contestable to show up; I stated noon; I explained the rule 145 address this b/c it states, upon filing clerk should do all they normally would do, all processes....she said, I know what you're talking about and you're right...; she then agreed to file the cases and assign them a case number (this was critical to me b/c if ran into a road block I was going to approach the judge independently and ask for assistance; but I need to know first what court it would be in); Dpty. Clerk said b/c it has food stamps and my IOLTA certificate it should be fine; she said ultimately that she'd enter it and take it up in the a.m. and make a copy for CClerk to look at & if she had an issue, she could take it up at that time. Dpty Clerk was very polite and pleasant and helpful; she listened to my concerns and ultimately was responsive; It appears the Clerk's office needs training on their obligations to file and to stop sending out the letters .</p>	

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10/22/14	Payment Required for Customary Services. Improper procedures for contest (including refusing to docket filing)	Client perfected appeal from JP in eviction case. A Statement of Inability to Pay was filed and no contest was filed, nor did a hearing hold on the statement. Upon docketing of appeal in county court at law, County clerk posted letter to client demanding that the \$212.00 costs of the appeal be paid immediately. Letter states fees must be paid before the hearing and that if client fails to pay the cost of this appeal, all papers in said cause shall be returned to the JP having original jurisdiction. The JP shall proceed as though no appeal had been attempted. Presumably the clerk's office has collected fees in other cases like this from those who were not required to pay under the law.	Brazos	Pro Se	Unresolved	Have attempted to discuss with clerk's office that they are following improper procedure.	Lone Star
10/22/14	Questionnaires/ screening beyond scope of rules	Numerous pro se litigants were reporting that the District Clerk's office was making demands that Affidavit of Inability to Pay Costs (AIPC) contain additional documents or proof of inability to pay. Clients were being told that the AIPC could not be accepted or filed in its present form. One client whose boyfriend accompanied her to file pleadings was reportedly asked or instructed by Deputy Clerk to have him (boyfriend) pay. As a result, pro se litigants were not getting their pleadings filed and/or were paying for fees to which they were entitled to have waived	Brazos	Pro Se and Represented	Resolved	Spoke with the District Clerk of Brazos County who was very responsive and cooperative. He is believed to have conducted additional training with his staff and when a few additional minor incidents occurred subsequent to our discussion, he and/or his chief of staff corrected them immediately. He demonstrates a genuine desire to be informed about and to follow the law. He demonstrates a genuine desire to provide pro se /indigent litigants the rights to which they are entitled under the law.	Lone Star

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10/22/14	Improper procedure for contest (including refusing to docket filing)	There was another JP in Brazos County who refused to accept De Novo appeal of eviction with an Affidavit of Inability to Pay Costs and issued writ of possession before client's time to appeal.	Brazos	Pro Se and Represented	Unresolved	Spoke with Clerk, filed mandamus.	Lone Star
10/29/14	Improper procedure for contest (including refusing to docket filing)	Order denying Affidavit on indigency was issued by court - No contest was filed, no hearing was held, no findings were made and affidavit included IOLTA certificate	Cameron	Pro Se and Represented	Unresolved	Texas RioGrande Legal Aid has made numerous efforts to address proper procedures for contests with the Cameron County District Clerk and Courts and this court in particular. Mandamus was not pursued in this case due to client obtaining employment after notification of the denial.	Texas RioGrande Legal Aid