



ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
THURGOOD MARSHALL FEDERAL JUDICIARY BUILDING
ONE COLUMBUS CIRCLE, N.E.
WASHINGTON, D.C. 20544

BUDGET DIVISION
FACSIMILIE TRANSMITTAL SHEET

PHONE: (202) 502-2150
FAX: (202) 502-1099

DATE: Tuesday, June 23, 2009

TO: Margaret Winter

COMPANY: American Civil Liberties Union's National Prison Project

WORK: _____

FAX: _____

FROM: Eric Mitchell, Budget Analyst

REMARKS

Attached is the cover sheet of the Congressional Budget Summary and the extract for the fiscal years 2009 and 2010 budget request for panel attorney payments.

The Judiciary

Fiscal Year 2009

Congressional Budget Summary



Courts of Appeals, District Courts and Other Judicial Services *Defender Services*

FY 2009 Request		
Courts of Appeals, District Courts and Other Judicial Services, Defender Services		
	<u>FTE</u>	<u>\$(000)</u>
FY 2008 Enacted Appropriation	2,446	\$835,601
Emergency Appropriation		\$10,500
FY 2008 Appropriation	2,446	\$846,101
Adjustments to Base	58	46,784
Program Increases:		
Increase in panel attorney non-capital rate		17,545
Start-up costs for new federal defender organizations (2)		600
New reimbursable positions	3	378
FY 2009 Appropriation	2,507	\$911,408

Budget Summary

The Judicial Conference requests \$911.4 million for Defender Services in fiscal year 2009, a 7.7 percent increase over the fiscal year 2008 appropriation (which includes \$10.5 million in emergency appropriations). This appropriation is approximately 14.0 percent of the Judiciary's total fiscal year 2009 budget request. This funding supports the provision of constitutionally-

mandated legal representation and other services to persons financially unable to obtain counsel in criminal and related matters in federal court. The Criminal Justice Act (CJA) provides that courts shall appoint counsel from federal public and community defender organizations or from a panel of private attorneys established by the court. Costs associated with this account are driven by the number and type of prosecutions brought by United States Attorneys.

Adjustments to Base

An increase of \$46.8 million is requested for pay and inflationary adjustments that will allow the Judiciary to meet its constitutional obligation to provide defense counsel to all eligible persons in fiscal year 2009. In broad categories, these increases include:

1. Pay and benefit adjustments, Federal Defender Organizations, and Program Administration: \$16.7 million

An increase of \$16.7 million will provide for the annualization of the 2008 federal pay adjustment, an estimated 2.9 percent 2009 pay adjustment, within-grade increases, changes in benefit rates, and one less compensable day in fiscal year 2009.

2. Pay adjustments, Panel Attorneys: \$10.1 million

An increase of \$10.1 million will provide for the annualization of the 2008 cost-of-living adjustments and increases in the hourly rates

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paid to panel attorneys for capital and non-capital representations (\$170 per hour for capital representations and \$100 per hour for non-capital representations), and for cost-of-living adjustment in the hourly rates effective on January 1, 2009. The capital rate would increase to an estimated \$174 per hour, and the non-capital rate would increase to an estimated \$102 per hour.

3. Increase in the number of capital representations/change in the non-capital caseload mix: \$14.2 million 58 FTE

An increase of \$14.2 million (58 FTE) will provide for the net increase in costs and complexity associated with the 171,500 non-capital representations projected in fiscal year 2009. Increased complexity related to drugs, fraud, and other criminal cases is projected to increase non-capital representation costs in fiscal year 2009 by a net \$5.7 million. In addition, the Judiciary expects an increase in capital habeas and capital prosecution costs of approximately \$8.5 million.

4. Funding needed to offset loss of fiscal year 2008 carryforward amounts to maintain fiscal year 2009 level of representations: \$11.3 million

In fiscal year 2008, the Defender Services account will utilize \$11.3 million in unobligated carryforward balances from fiscal year 2007 to offset recurring fiscal year 2008 appropriation requirements. At this point, the Judiciary does not anticipate any savings in fiscal year 2008 to offset fiscal year 2009 requirements. Consequently, \$11.3 million in funding is requested to substitute direct appropriations for expenses previously funded from carryforward balances.

5. Other inflationary increases: \$3.6 million

An increase of \$3.6 million is required for inflationary adjustments for all non-pay categories, as well as for space rental costs.

6. Non-recurring costs: (\$0.6 million)

The requested decrease of \$0.6 million is for non-recurring costs associated with start-up costs of two new defender organizations expected to open in fiscal year 2008.

7. Non-recurring fiscal year 2008 emergency appropriation funding for immigration enforcement: (\$10.5 million)

This line item non-recurs the fiscal year 2008 emergency appropriation of \$10.5 million associated with immigration enforcement.

8. Restoration of base requirements associated with immigration enforcement: \$2.0 million

This line item restores \$2.0 million to maintain fiscal year 2008 workload associated with immigration enforcement. The Judiciary anticipates using \$2.0 million of the \$10.5 million of emergency funding provided in fiscal year 2008 for workload associated with increased immigration enforcement.

Program Increases

**9. Increase the panel attorney non-capital rate to \$118 per hour:
\$17.5 million**

The request of \$17.5 million would fund the costs associated with increasing the panel attorney non-capital rate to \$118 per hour, effective January 1, 2009.

10. New Federal Defender Organizations: \$0.6 million

An increase of \$600,000 will provide for the start-up costs of two new defender organizations expected to be opened in fiscal year 2009.

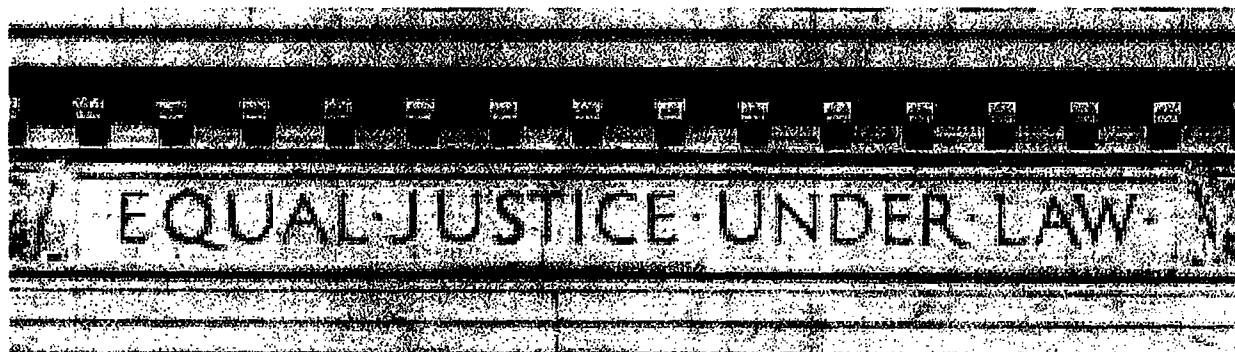
11. New reimbursable positions: \$0.4 million 3 FTE

An increase of \$378,000 will fund 6 new reimbursable positions (3 FTE) for six months. These positions will address critical needs in the areas of security, training, and CJA Panel and FDO administration.

The Judiciary

Fiscal Year 2010

Congressional Budget Summary



Courts of Appeals, District Courts and Other Judicial Services
Defender Services

FY 2010 Request		
Courts of Appeals, District Courts and Other Judicial Services, Defender Services		
	<u>FTE</u>	<u>\$(000)</u>
FY 2009 Assumed Appropriation	2,623	\$848,971
Adjustments to Base	110	122,805
Program Increases:		
Increase in panel attorney non-capital rate (to \$142 per hour)		10,176
Start-up costs for one new federal defender organization		300
New reimbursable positions	3	394
FY 2010 Appropriation	2,736	\$982,646

Budget Summary

The Judicial Conference requests \$982.6 million for Defender Services in fiscal year 2010, a 15.7 percent increase over the fiscal year 2009 assumed appropriation. This appropriation is approximately 14.0 percent of the judiciary's total fiscal year 2010 budget request. This funding supports the provision of constitutionally-mandated legal representation and other services to persons financially unable to obtain counsel in criminal and related matters in federal court. The Criminal Justice Act (CJA) provides that courts shall appoint counsel from federal public and community defender organizations or from a panel of private

attorneys established by the court. Costs associated with this account are driven by the number and type of prosecutions brought by United States Attorneys.

Adjustments to Base

An increase of \$122.8 million is requested for pay and inflationary adjustments that will allow the judiciary to meet its constitutional obligation to provide defense counsel to all eligible persons in fiscal year 2010. In broad categories, these increases include:

1. Pay and benefit adjustments, Federal Defender Organizations, and Program Administration: \$22.9 million

An increase of \$22.9 million will provide for the annualization of the 2009 federal pay adjustment, an estimated 4.2 percent 2010 pay adjustment, promotions and within-grade increases, and changes in benefit rates.

2. Pay adjustments, panel attorneys: \$27.9 million

An increase of \$27.9 million will provide for the annualization of assumed fiscal year 2009 cost-of-living adjustments and increases in the hourly rates paid to panel attorneys for capital (\$175 per hour) and non-capital (\$110 per hour) representations, and for cost-of-living adjustment in the hourly rates effective on January 1, 2010. The capital rate would increase to an estimated \$181 per hour, and the non-capital rate would increase to an estimated \$114 per hour.

**3. Annualization of new fiscal year 2009 staff:
\$9.3 million FTE 55**

An increase of \$9.3 million (55 FTE) provides the remaining six months funding in fiscal year 2010 to annualize 111 positions (55 FTE) of fiscal year 2009 staff.

4. Increases in caseload, case complexity and change in caseload mix: \$21.3 million FTE 55

An increase of \$21.3 million (55 FTE) for additional and more costly panel attorney representations, and additional Federal Defender Office staff will provide for the net increase in representations and increased complexity associated with the 201,100 non-capital representations projected in fiscal year 2010 and estimated costs for capital representations. Increased caseload and complexity related to drugs, fraud, and other criminal cases is projected to increase non-capital representation costs by \$11.9 million (32 FTE). In addition, the judiciary expects an increase in capital habeas and capital prosecution-costs of approximately \$9.4 million (23 FTE).

5. Funding necessary to maintain fiscal year 2009 service levels due to an anticipated decline in non-appropriated sources of funds: \$38.8 million

In fiscal year 2009, the Defender Services account will utilize \$48.8 million in unobligated carryforward balances from fiscal year 2008 to offset recurring fiscal year 2009 appropriation requirements. In fiscal year 2010, the judiciary expects \$10.0 million in non-appropriated funds to be available, a decrease of \$38.8 million from fiscal year 2009. Consequently, \$38.8 million is requested to replace direct appropriations in order to maintain fiscal year 2009 service levels in fiscal year 2010.

6. Other inflationary increases: \$3.2 million

An increase of \$3.2 million is required for inflationary adjustments for all non-pay categories, as well as for space rental costs.

7. Non-recurring costs: (\$0.6 million)

A decrease of \$0.6 million is for non-recurring costs associated with start-up costs of two new defender organizations expected to open in fiscal year 2009.

Program Increases

8. Increase the panel attorney non-capital rate to \$142 per hour: \$10.2 million

The request of \$10.2 million would fund the costs associated with increasing the panel attorney non-capital rate to \$142 per hour, effective January 1, 2010.

9. New Federal Defender Organization: \$0.3 million

An increase of \$300,000 will provide for the start-up cost of one new defender organization expected to be opened in fiscal year 2010.

10. New reimbursable positions: \$0.4 million FTE 3

An increase of \$394,000 will fund 6 new reimbursable positions (3 FTE) for six months. These positions will address critical needs in the areas of security, training, and CJA Panel Attorney and FDO administration. This is a re-request from fiscal year 2009.