



## Federal Bar Association

June 11, 2013

The Honorable Harold Rogers  
Chair, Appropriations Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Nita M. Lowey  
Ranking Member, Appropriations Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Ander Crenshaw  
Chair, Subcommittee on Financial  
Services and General Government  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jose E. Serrano  
Ranking Member, Subcommittee on Financial  
Services and General Government  
U.S. House of Representatives  
Washington, D.C. 20515

### **Re: Federal Judiciary Emergency Supplemental Appropriation**

Dear House Appropriations Leaders:

On behalf of the Federal Bar Association, the largest national association devoted to the practice of federal law, we urge the House Appropriations Committee to approve the Federal Judiciary's emergency request for a Fiscal Year 2013 supplemental appropriation of \$72.9 million. This one-time request is made necessary because of the \$350 million shortfall caused by the automatic budget cuts of sequestration pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. The supplemental request includes \$41.4 million for Defender Services and \$31.5 million for Court Salaries and Expenses, the two financial accounts most harmed by sequestration.

Sequestration is imposing intolerable costs upon our federal court system and the administration of justice. It has created an unprecedented crisis that is draining the critical resources necessary for the Federal Judiciary, a coequal branch of our government, to properly perform its Constitutional responsibilities through the adjudication of civil lawsuits and criminal prosecutions and the enforcement of its actions. As a result, the adjudication of criminal prosecutions will take priority in the allocation of court resources due to Constitutional imperatives and the requirements of the Speedy Trial Act. That means that businesses awaiting the hearing of bankruptcy filings and civil disputes will face greater delay and certainty, hindering national economic recovery. The safety of our communities also is further threatened when federal court components are unable to properly monitor the activities and whereabouts of convicted felons and potentially dangerous offenders. And the Constitutional rights of indigent criminal defendants to

receive effective representation are undermined when court-appointed lawyers are not readily available due to insufficient resources to pay them.

We have witnessed the considerable efforts of the Federal Judiciary to reduce the operating costs of the federal court system. The construction and major renovation of federal courthouses has been considerably scaled back. The number of jobs within the federal court system has been trimmed by nearly two-thousand positions in less than two years. Positions in clerk's offices, pretrial and probationer services, court security, defender services, case management and information technology, and other court operations have been eliminated through attrition.

Yet despite these actions, the Federal Judiciary remains burdened by a \$350 million shortfall within its \$7 billion budget in the current fiscal year, and its remedial options for are limited, other than laying off more personnel and reducing court hours and operations. These problems are compounded by the fact that the relatively small size of the Federal Judiciary's budget and the labor-intensiveness of its operations preclude resort to the kinds of mitigating measures used by the Executive Branch in recent months to avoid service shutdowns and employee furloughs. For the federal courts, there are no secondary program accounts that can be successfully tapped to relieve shortfalls. Fund reprogramming is unavailable because surplus funding within the Federal Judiciary is relatively nonexistent. This means that for some federal court units, particularly Federal Defender Offices, further layoffs and furloughs are unavoidable. Federal Defender Offices are now scheduling twenty days of furloughs of their attorneys and staff during the remainder of the fiscal year. Significant layoffs in Fiscal Year 2014, contributing to the further dismantling of Federal Defender operations, are likely without special relief made available by Congress.

The \$72.9 million in emergency funding requested by the Federal Judiciary would save the jobs of approximately 500 court employees and avoid 14,400 planned furlough days for 3,300 court employees. The funding would restore half of the sequestration cuts to drug testing, substance abuse, and mental health treatment services for defendants awaiting trial and offenders released from prison. Timely diagnosis and treatment of drug and mental health conditions is critical to the completion of a defendant's terms of release and the assurance of community safety.

In addition, the Federal Judiciary's request would provide funding to avoid the deferral of payments to court-appointed private attorneys for the representation of indigent defendants during the last three weeks of the current fiscal year. Without emergency funding, sequestration cuts will necessitate the shifting of these expenses to FY 2014, further compounding budget problems in the year ahead. The emergency funding also would avoid further staffing cuts and furloughs in Federal Defender organizations within the remainder of the current fiscal year. This funding will save the jobs of approximately 50 employees and avoid furloughs for 1,700 Federal defender employees. An additional \$5.0 million will be used for the representation of indigent defendants and the retention of expert witnesses in high security threat trials in New York and Boston, expenditures that could have been satisfied without sequestration.

As you consider the critical funding situation of the federal courts, as well as the prospects of even more adverse consequences in Fiscal Year 2014 under sequestration, we urge you to recognize the Federal Judiciary as a budget anomaly warranting exceptional relief. We are grateful for the resources that the Appropriations Committee has devoted in the past to the needs of the Federal Judiciary and ask for your continued leadership to assure that the Judicial Branch is able to perform its important Constitutional responsibilities.

Sincerely,



Karen Silberman  
Executive Director



West Allen  
Chair, Committee on Government Relations

cc: The Honorable John Boehner, House Speaker  
The Honorable Nancy Pelosi, House Minority Leader  
Members of the House Appropriations Committee  
The Honorable Julia S. Gibbons, Chair, Judicial Conference Committee on the  
Budget  
The Honorable Thomas F. Hogan, Secretary, Judicial Conference of the United  
States