

# HOW THE JUDICIARY GETS ITS FUNDING

BY HON. JULIA S. GIBBONS  
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

Even though the judiciary's total budget is only two-tenths of 1 percent of the overall federal budget, an adequately funded federal judiciary is vital not only to ensuring our nation's economic and homeland security but also to maintaining the rule of law. The judiciary's budget supports the work of some 34,000 employees, including more than 2,200 judges who work in over 800 court facilities nationwide. The current budget, which totals about \$7 billion, funds the requirements of the U.S. Supreme Court, courts of appeals, district and bankruptcy courts, probation and pretrial services offices, federal public defenders and private court-appointed attorneys, court security operations, fees paid to jurors, the United States Sentencing Commission, the Administrative Office of the United States Courts, and the Federal Judicial Center.

In the current era of fiscal constraint, the judiciary continues to take its role as a steward of public funds seriously. As chair of the Budget Committee of the Judicial Conference of the United States, I have the honor and responsibility to present and defend the judiciary's funding needs to Congress.

Since 2004, cost containment has become an integral part of the judiciary's two-pronged budget strategy. That year, a congressional appropriation that included two across-the-board cuts, forced the courts to lose 1,350 on-board staff members—approximately 6 percent of the workforce. As a result, the Judicial Conference, through its Executive Committee and other committees, developed and approved a comprehensive cost-containment strategy that seeks to limit the growth in all areas of the judiciary's budget wherever possible. This strategy has been extremely successful in helping the judiciary stretch its limited resources further; it has also been a key ingredient in our ability to secure additional resources from Congress in recent years.

The second element of the judiciary's budget strategy has been congressional outreach. The judiciary has no natural constituency. We therefore must rely on our ability to educate members of Congress and their staffs about the judiciary's needs and the impact the courts have on the nation as whole as well as on the constituents of individual legislators. This outreach effort, led by the chief judges of each district court and involving all court components, is coordinated by the Congressional Outreach Subcommittee of the Budget Committee and its staff at the Administrative Office (AO). The congressional outreach initiative has proven to be successful, resulting in sufficient funding for the judiciary in recent years—even as the budget climate has tightened.

In spite of being an independent, co-equal branch of government, the judiciary must compete for funding from Congress along with the rest of government. The judiciary's budget process formally begins 18 months prior to the start of the fiscal year, with a budget guidance letter sent from

the chair of the Budget Committee to the chairs of nine committees of the Judicial Conference (program committees) with financial responsibilities. We currently are preparing the fiscal year 2011 budget request, for the fiscal year beginning Oct. 1, 2010.

From April to June each year, each committee develops a budget request for its area of responsibility. The Economy Subcommittee of the Budget Committee discusses these individual requests with the various committee chairs. The Economy Subcommittee also works with these committee chairs on short- and long-term cost-containment initiatives. These requests are then presented by the program committee chairs to the Budget Committee at its July meeting. After consideration of the requests, the Budget Committee prepares a budget recommendation to the Judicial Conference of the United States, which approves the judiciary's budget request level at its session in September—more than 12 months prior to the beginning of subsequent the fiscal year. The budget approved by the Judicial Conference is typically done by consent; the transparent, cooperative process and give-and-take between the program committees and the Budget Committee result in resolving any contentious issues prior to Judicial Conference approval.

In October, the request is provided to the Office of Management and Budget to be transmitted, without change, to the Congress. This is a statutory requirement—we must submit our budget request to the Office of Management and Budget by October 15 each year, and it is to be included by the President in the budget of the U.S. government without change.

Throughout the fall and winter, AO staff prepares the judiciary's more detailed budget justifications, which are submitted to Congress in early February—at about the time the President transmits the full budget of the U.S. government.

Soon after submission of the budget, AO staff members brief the Financial Services and General Government (FSGG) Appropriations Subcommittee staff to explain budget request highlights. From this point on, AO staff maintain regular contact with the subcommittee, and at times full committee, staff to explain, clarify, and provide any information requested by the committees.

In early spring, the House, and sometimes the Senate, FSGG Appropriations Subcommittees hold hearings to discuss the judiciary's budget request at which the chair of the Budget Committee and the director of the Administrative Office testify. The staff of the AO helps the witnesses prepare for their hearing testimony and coordinate their answers to all congressional questions before and after the hearings.

After the hearings and throughout the year, our congressional outreach efforts kick into gear. Individual courts reach out to their local congressional delegations to ed-

ucate them about the judiciary and to improve understanding between the judicial and legislative branches. These efforts help members of Congress and their staffs, who may not have firsthand knowledge of the judicial process, understand the role of the federal judiciary. Invitations to members of Congress to visit the courts allow federal legislators to participate in special events involving the judiciary, such as naturalization ceremonies. Contact with the members also provides the opportunity to discuss the overall funding needs, along with the needs of the particular district.

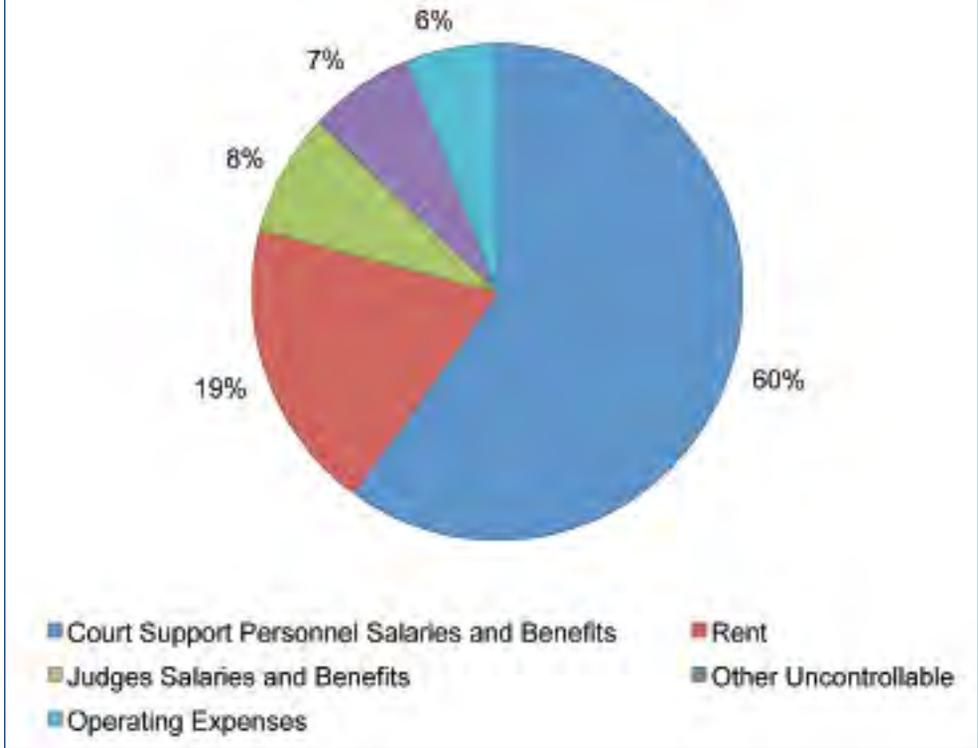
During the summer, before the fiscal year starts, the House and Senate appropriations subcommittees mark up their appropriations bills, and the House and Senate approve appropriations levels for the judiciary. During this time, to allow Congress to consider the most accurate estimates of the judiciary's needs, the AO provides budget re-estimates to the appropriations staff, to reflect any technical updates to requirements or financing that have occurred since the budget was first submitted. These re-estimates often lower the judiciary's request for funding and help preserve our credibility with Congress.

House and Senate conferees work together to resolve any differences between approved funding levels prior to making their final appropriations. The AO director writes to House and Senate appropriators to advise them about the impact of the funding levels being considered and to advocate for maximum funding for the judiciary in the final appropriations bill.

In the event that appropriations are not completed before Oct. 1, passage of a continuing resolution by Congress is required in order to keep the judiciary operating. During the continuing resolution period, the AO keeps appropriations subcommittee staff abreast of the judiciary's status and concerns. After the judiciary's full-year appropriation is enacted, the Executive Committee of the Judicial Conference approves a spending plan for the judiciary, and the Administrative Office issues funding to the courts based on this plan.

Since the mid-1990s, funding for appellate courts and circuit units, district courts, bankruptcy courts, and probation and pretrial services offices is distributed and managed by the courts in a decentralized environment—a method that is unique to the judiciary. Funding for most agencies of the executive branch is controlled and managed centrally in Washington, D.C. However, under the judiciary's budget decentralization program, local courts, led by the chief judge and court unit executives, can use their funding as they deem fit. This budget decentralization ensures, for example, the appropriate mix of staff and technology

FY 2008 SALARIES AND EXPENSES ACCOUNT BY CATEGORY



to meet each court's unique needs within the confines of appropriations law and a limited number of policies set by the Judicial Conference of the United States.

Individual court units within a judicial district also can move and/or share resources among the units. The flexibility offered by budget decentralization leads to continuous innovation and resource conservation on the part of local court managers. Decentralization also allows courts to address local and individual needs themselves rather than relying solely on the AO. Finally, decentralization fits well with the independent nature of the judiciary's culture and decision-making process.

A hallmark of the judiciary's budget process and its relationships with our Appropriations Subcommittees, is transparency. This openness has resulted in acquiring and maintaining a high level of credibility with Congress on budgetary matters. Funding levels in recent years have been sufficient to meet the growing caseload and workload of the courts.

Even though the current fiscal crisis facing the nation will challenge our ability to maintain adequate funding levels, the judiciary is committed to seeking only the funding levels required to carry out the constitutional duties of the judicial branch of the federal government. **TFL**

*Judge Julia S. Gibbons of the U.S. Court of Appeals for the Sixth Circuit chairs the Budget Committee of the Judicial Conference of the United States.*

