



DICTA

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THE NEWSLETTER OF THE FEDERAL BAR ASSOCIATION — EL PASO CHAPTER

SPRING SPECIAL EDITION

While Congress averted the fiscal cliff in January, sequestration is set to go into effect on March 1, 2013. In the December 2012/January 2013 issue of the El Paso Bar Journal, U.S. District Judge Philip R. Martinez wrote an article discussing the problems the court systems will face should sequestration occur. Given the March 1 sequestration deadline, DICTA presents a re-print of that article.



By: The Honorable Philip R. Martinez

Notwithstanding its characterization as the Third Branch of Government, the Judiciary is funded based upon legislative appropriations which are incorporated into the larger federal budget each and every budget year. As a non-defense discretionary appropriation agency, the Judiciary is subject to drastic budget cuts if sequestration goes into effect March 1, 2013.

The Budget Control Act of 2011, which Congress passed in response to that year's standoff

over the debt ceiling, will require approximately \$1.2 trillion in deficit reduction measures. Because Congress has yet to enact legislation to reduce the national debt by a targeted amount prior to a deadline contemplated by the Act, a package of tax increases and spending cuts—the latter referred to as “sequestration” in budget parlance—is scheduled to automatically go into effect on March 1, 2013. For the Third Branch of Govern-

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ment, the required reductions would be equivalent to 8.2 percent of the preceding year's spending level.

While the El Paso Division of the Western District of Texas has not yet determined how the automatic reductions would affect the provision of services, other jurisdictions, most notably, the Northern District of Illinois, has preliminarily determined that sequestration would require periodic closure of the court, most likely each Wednesday from March through September 2013.

The following information is based upon an editorial entitled "Federal Courts Peering Over the Fiscal Cliff—Sequestration threatens drastic budget cuts," posted on October 15, 2012, in the American Judicature Society's bi-annual publication, *Judicature*. The article sets out in stark detail the crisis that federal courts will face if sequestration goes into effect.

"A trip over the fiscal cliff would obviously have dire consequences. The debate over such consequences has focused on the potential havoc wreaked on the economy. Against this backdrop, it is perhaps unsurprising that the consequences of budget sequestration for the federal judiciary have received relatively little attention. Yet those consequences, too, would be high-reaching and catastrophic, and the need to avoid them provides yet another significant reason for Congress to take action to avert sequestration.

To be sure, budget pressures are nothing new for the federal judiciary. In his 2004 Year-End Report on the Federal Judiciary, Chief Justice Rehnquist identified a budget crisis extending back to at least a decade and asked that the Judi-



cial Conference focus on cost control.

In response to these funding realities, and mindful of the belt-tightening required throughout government, the Judicial Conference has worked hard to contain costs, redoubling its efforts as of late. Over the last several years it has worked with the General Services Administration to reduce its ongoing facilities' costs, and [in October 2012,] the Conference agreed to close court space in six facilities that do not have a resident judge. Even more closings are under consideration. The Judicial Conference has also generated cost savings through consolidation and standardization of its computer systems as well as through efforts to limit growth in the cost of law clerks and to more efficiently allocate the resources in probation and pretrial service's offices.

Of course, personnel costs consume the bulk of the judicial branch budget. Costs have been contained there as well: the level of funding pro-

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vided for fiscal year 2012, coupled with concern about fiscal year 2013, has led to a reduction in staffing of nearly 1,100 personnel and more than 3,200 furlough days since July 2011. This has left the courts' staffing level at 80 percent of what the judiciary staffing formula calls for given its workload, even after a re-examination of the formula itself. In fact, if the funding level for fiscal year 2013 were simply to remain frozen at 2012 levels, the Judicial Conference estimates the need for the elimination of an additional 1,000 personnel. In total, this would represent a nearly ten percent reduction in staff over a roughly two-year period.

These costs containments are, it bears repeating, the consequences of a mere freeze in funding levels. As the numbers suggest, the consequences of the Budget Control Act's across-the-board spending cuts would be dire indeed.

The Judicial Conference projects that the mandated 8.2 percent cut would entail a 5,400-person staffing reduction, a mandatory four-week furlough for all personnel, or some combination thereof which would result in equivalent savings.

That would be only the beginning: payments to lawyers representing indigent criminal defendants would be suspended for the final six weeks of the fiscal year and civil jury trials would have to be suspended for the same period due to a lack of funds to pay jurors. Court security programs and personnel would have to be cut and many courthouses would literally have to close secondary entrances to save on security costs.

In contrast to most governmental entities, the Judiciary lacks the ability to control the amount of services that it is required to provide. Courts must adjudicate the matters that come before them. Cut backs, then, will disproportionately affect the quality and timeliness of services that are offered.

As Judge Julia Gibbons, Chair of the Judicial Conference Committee on the Budget, testified before the House of Representatives' Subcommittee on Financial Services and General Government, '*[I]n the end, with fewer staff some work will simply not be done. Staffing at public counters to assist individuals with case filings and court services will be reduced. With fewer employees to docket cases and perform quality assurance on electronic case filings, some case processing will be delayed. Computer software upgrades will be deferred. And our probation officers will have to reduce supervision of lower risk offenders in order to focus limited resources on high-risk offenders.*'

These effects are likely to be magnified by an increase in the demands made of courts. State judiciaries have likewise been faced with severe funding cuts, and many states have had to drasti-

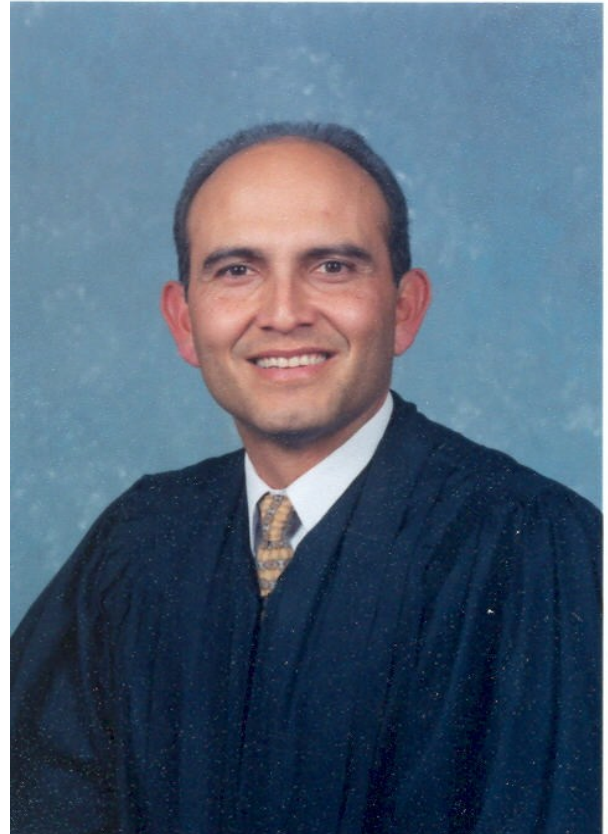
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cally reduce their services as a result. To the extent that state court budget cuts and closures may lead some litigants to choose federal court venues in diversity and concurrent jurisdiction cases where that is an option, the federal courts will see growing caseloads coupled with a reduced ability to process them ...

Furthermore, while the impact of budget sequestration on the Federal Judiciary would be catastrophic, its contribution to the deficit-reduction goals of the . . . Act would be minimal. This is simply because the entirety of the Judiciary's budget amounts to less than two-tenths of one percent of the federal budget. And while the logic of this sort of 'drop in the bucket' argument might normally be unpersuasive—very few programs constitute a substantial enough portion of the federal budget that they could not make such an argument—there are reasons to take it seriously when it is offered by the courts. The Judiciary, after all, is a coequal branch of the federal government.

Of course, to merely highlight the Judiciary's status within the federal government is to grossly understate its importance. It is not simply the Judiciary's standing as a coequal branch of government that merits concern in the face of such cuts, but rather the courts' crucial role in maintaining the rule of law, which in turn is central to the functioning of our economy and ultimately our democracy. Budget sequestration threatens to bring us to a point at which a failure to fund the courts becomes a constitutional issue. Denying resources for a branch of government to do its job runs afoul of fundamental separation of



U.S. District Judge Philip R. Martinez

powers principles ...”

Congress has many good reasons to avoid taking the nation over the impending fiscal cliff. Maintaining the federal courts' capacity to implement the rule of law may not be among the most publicly prominent reasons, but it is certainly among the most important and most deserving of the attention of elected representatives.

DICTA obtained permission to re-print from both the El Paso Bar Journal and Judge Martinez.



Call To Action!

Letter from National

The National office of the Federal Bar Association needs your help. We are requesting that each chapter and its members contact Congress immediately to urge action so as to avoid the automatic budget cuts that will cripple the federal court system. Your chapter's communication with Congress is critical.

These deep budget cuts, called "sequestration," will significantly reduce funding for the operations of the federal courts. If sequestration occurs, federal lawyers will witness dramatically reduced federal court operations, likely including the unavailability of civil jury trials and other consequences. Nearly 10 percent of the funding for the federal courts will be erased under sequestration. This will negatively impact litigants, community safety, and the American economy. Sequestration will reach all areas of federal discretionary spending, not just the federal courts. The overall results to

the nation will be devastating.

Ironically, Congress never intended sequestration to happen. The automatic cuts, scheduled to begin on March 1, 2013, were included in the debt ceiling agreement of 2011 as a deterrent to motivate Congressional adoption of a comprehensive deficit reduction plan by then. But that hasn't happened. It now remains for Congress to reach a deficit reduction plan or sequestration will proceed.

Economists have warned that sequestration exposes America vulnerability of falling back into another recession.

The FBA is mounting a grassroots campaign to expose the danger of sequestration upon the federal courts. We wrote to congressional leaders in September to urge avoidance of sequestration and pointed to the numerous impacts it would cause. Now it's vital that all FBA members communicate with their lawmakers as we approach March 1, 2013. We must raise our



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Mission Statement

The mission of the FBA is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve.

Masthead

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Senior Editor: Cara Rodriguez.

Editors: Kristin Connor and Marta McLaughlin

Editorial Board: Valerie Auger, Ron Banerji,

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Contributing Writers: Hon. Philip R. Martinez.

voices now.

What Your Chapter Did?

On Monday, El Paso Chapter President Kristin Connor sent a letter to our Senators and representatives urging action.

What You Can Do?

Please contact your Senators and Representatives. The Federal Bar Association is the foremost constituency of the federal courts. We need Congress to hear our voices.