



United States General Accounting Office  
Washington, DC 20548

Office of the General Counsel

**Subject:** District of Columbia Courts/Criminal Justice Act

**File:** B-283599

**Date:** September 15, 1999



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Mr. Ulysses Hammond  
Executive Officer  
District of Columbia Courts

Dear Mr. Hammond:

This responds to your letter dated September 3, 1999, which we received on September 7, requesting our views on how the District of Columbia Courts may respond for the remainder of fiscal year 1999 to attorney claims under the Criminal Justice Act (CJA). You advise that CJA claims will have exhausted available fiscal year 1999 appropriations on September 10, 1999, and express concern that the Courts may have to suspend approving CJA vouchers to avoid violating the Antideficiency Act.

The District of Columbia Appropriations Act, 1999, provided that of the amounts appropriated as a Federal Payment to the District of Columbia Courts, not to exceed \$25,036,000 shall be for CJA cases. Pub. L. No. 105-277, 112 Stat. 2681-122, 2681-123 (1998). The fiscal year 1999 appropriations act also provided that funds appropriated for CJA cases were available for obligations incurred in prior years. 112 Stat. 2681-127. A committee of conference has reported H.R. 2587, the District of Columbia Appropriations Bill for fiscal year 2000. As reported in H.R. Rep. No. 106-299, H.R. 2587 would, if enacted, authorize the Courts to use up to \$1.2 million in interest for fiscal year 1999 obligations, but would not otherwise continue to authorize the Courts to use current, in this case fiscal year 2000, appropriations for prior year obligations.

As a preliminary matter, your letter presents as an issue whether the Antideficiency Act in the context of the fiscal year 1999 appropriation act and the fiscal year 2000 appropriation bill precludes the Courts from approving CJA vouchers in fiscal year 1999. In this vein, your letter states that if the vouchers are not approved in fiscal year 1999, those vouchers would not be eligible for payment pursuant to the fiscal year 2000 appropriation bill, which if enacted would authorize using \$1.2 million in interest to pay fiscal year 1999 obligations. These statements reflect a view that the Courts' approval of the voucher dictates the timing of the obligation. As you know,

we disagree with that view. In D.C. Courts Planning and Budgeting Difficulties During Fiscal Year 1998, GAO/AIMD/OGC-99-226, September 16, 1999, we discuss our opinion that upon the submission of a CJA claim, DC courts cannot delay the recognition of an obligation by withholding the voucher's approval.

We now turn to the effect of CJA obligations exceeding the limitation contained in the fiscal year 1999 appropriation act. The change in the Courts' appropriation for CJA cases from fiscal year 1998 and fiscal year 1999 significantly affects the analysis of whether an overobligation constitutes a violation of the Antideficiency Act. In fiscal year 1998, CJA funding was not separately appropriated but subsumed in the lump sum appropriation for the "Federal Payment to the District of Columbia-Criminal Justice System."<sup>1</sup> In fiscal year 1999, Congress similarly provided funds for CJA cases as part of a lump sum appropriation for the "Federal Payment to the District of Columbia Courts," but also capped the amount of the Federal Payment available for CJA cases at \$25,036,000.<sup>2</sup>

In fiscal year 1998, the Courts overobligated the amount appropriated as the "Federal Payment to the District of Columbia-Criminal Justice System." For Antideficiency Act purposes, the issue is whether the overobligations were attributable to spending generally or specifically to CJA (and similar) cases. As our report discusses in detail, the cause of the Courts' overobligation is critical to whether the Courts violated the Antideficiency Act. An overobligation entirely attributable to a mandatory spending program, such as CJA, would be an overobligation authorized by law and, therefore, not in violation of the Antideficiency Act. See 31 U.S.C. §1341 (a)(1)(A), (B). For the Courts to attribute its overobligations in fiscal year 1998 to mandatory spending and not spending generally, the Courts had the burden of demonstrating that it took appropriate actions to manage discretionary spending in response to what it believed to be a budgetary shortfall. In the report cited above, we concluded that the Courts did not satisfy that burden for fiscal year 1998.

This does not appear to be an issue for fiscal year 1999. Your inquiry does not indicate that the Courts will exceed the lump sum appropriation for the "Federal Payment to the District of Columbia Courts," only the capped amount for CJA cases. Because attorney representation in CJA cases is a mandatory expense, obligations for this purpose may be incurred and may exceed the capped amount without

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<sup>1</sup> Pub. L. No. 105-100, 111 Stat. 2160, 2161 (1997).

<sup>2</sup> The fiscal year 2000 appropriation bill would further segregate the funding for CJA cases from amounts for court operations generally by establishing two separate accounts, one for "Defender Services in District of Columbia Courts" and another for the "Federal Payment to the District of Columbia Courts."

violating the Antideficiency Act.<sup>3</sup> Accordingly, the Courts should continue to review and approve vouchers representing attorney claims for payment in CJA cases without considering the overobligations to violate the Antideficiency Act.

This does not mean that the vouchers may be paid upon approval. The Courts must have an available funding source to liquidate any authorized overobligations incurred for fiscal year 1999. If enacted in its current form, H.R. 2587 would make available for paying fiscal year 1999 CJA obligations up to \$1.2 million in interest the Courts earned on the fiscal year 1999 Federal Payment.

As you know, H.R. 2587 would provide that the \$1.2 million may be used if “the Comptroller General certifies that the amount of obligations lawfully incurred for [CJA] payments during fiscal year 1999 exceeds the obligational authority otherwise available for making such payments ....” So that we may quickly make the appropriate certification should H.R. 2587 be enacted, we encourage the Courts to begin working with our audit staff to provide the documentation necessary to demonstrate that the Courts’ fiscal year 1999 CJA obligations exceed the \$25,036,000 limitation established in the fiscal year 1999 appropriation act.

Sincerely yours,

Robert P. Murphy  
General Counsel

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<sup>3</sup> Relevant legal principles and supporting authorities are discussed and cited in D.C. Courts Planning and Budgeting Difficulties During Fiscal Year 1998, GAO/AIMD/OGC-99-226, September 16, 1999, p. 11-13.