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Report to Congressional Requesters

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D.C. COURTS

Planning and Budgeting Difficulties During Fiscal Year 1998

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Accounting and Information
Management Division

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The Honorable Ernest J. Istook
Chairman
The Honorable James P. Moran
Ranking Minority Member
Subcommittee on the District of Columbia
Committee on Appropriations
House of Representatives

The Honorable Thomas M. Davis, III
Chairman
Subcommittee on the District of Columbia
Committee on Government Reform
House of Representatives

On May 18, 1999, we testified before the Subcommittee on the District of Columbia, House Committee on Appropriations, regarding the District of Columbia Courts' (DC Courts) financial operations in fiscal year 1998, its first year of operations with direct federal funding.[1]

In our testimony, we reported that DC Courts had experienced difficulties in planning and budgeting during this transition year. Our review of DC Courts records showed that it had potentially overobligated its resources, which could violate the Anti-Deficiency Act. Following our testimony, we provided to the Subcommittee on the District of Columbia, House Committee on Appropriations, a chronology of pertinent events related to the DC Courts appropriation and obligations for fiscal year 1998.[2] We also reviewed proposed deobligations submitted by DC Courts. This report (1) supplements our testimony, providing additional detail on our findings, and (2) transmits our recommendations to the Congress and DC Courts. Our objectives were to address the following questions, which were also discussed at the testimony:

1. What were DC Courts obligations for fiscal years 1996, 1997, and 1998?

[1] District of Columbia Courts: Financial Related Issues for Fiscal Year 1998 (GAO/T-AIMD/OGC-99-176).

[2] District of Columbia Courts: Chronology of Events Related to DC Courts' Appropriation and Obligations for Fiscal Year 1998 (GAO/AIMD-99-204R, June 7, 1999).

2. Did DC Courts have a spending plan for fiscal year 1998 and obligate funds in accordance with available resources?

3. Why did DC Courts defer payments to court-appointed attorneys from late July 1998 through September 1998, and were those payments made in fiscal year 1998 processed in accordance with policies and procedures?

During the course of our review, we also identified an issue regarding DC Courts' authority to spend money from the Crime Victims Fund for the Crime Victims Compensation Program.

Results in Brief

DC Courts incurred obligations of $115.4 million, $119 million, and $125.6 million in fiscal years 1996, 1997, and 1998, respectively. Fiscal year 1998 obligations reflect a different scope of activities than prior year obligations, primarily because of changes necessitated by the Revitalization Act of 1997. These changes included the transfer of a DC Courts function to another entity and increased costs of employee benefits during fiscal year 1998. DC Courts also gave its nonjudicial employees a 7-percent pay raise and assumed responsibility for judges' pension costs as part of its fiscal year 1998 appropriation for court operations.

DC Courts did not prepare and execute a budget based on amounts appropriated for fiscal year 1998. Records showed that throughout the year, DC Courts was aware that its spending was on pace to exceed available resources. However, rather than managing within its available funds, DC Courts incurred obligations in anticipation of receiving additional resources from the Congress and others to cover the difference.

Faced with an impending shortfall in operating funds, DC Courts officials deferred payments totaling $5.8 million owed to court-appointed attorneys and expert service providers during the last 3 months of fiscal year 1998. The Congress transferred $1.7 million in fiscal year 1998 funds to DC Courts that was used for deferred court-appointed attorney payments and authorized DC Courts to use the fiscal year 1999 appropriation to fund the remaining deferred amount of $4.1 million.

As of May 25, 1999, we found that DC Courts fiscal year 1998 obligations exceeded available resources by $4.6 million, in violation of the Anti-Deficiency Act. This funding shortfall reflected the $4.1 million in deferred payments to court-appointed attorneys that should have been recorded as fiscal year 1998 obligations and our assessment of

deobligations for fiscal year 1998 submitted by DC Courts. In addition, DC Courts treated $773,000 in interest—earned primarily on the bank balances from quarterly apportionments of its fiscal year 1998 appropriation—as an available budgetary resource for court operations without having legislative authority to do so. According to our overall evaluation, obligations and available funding for fiscal year 1998 were $125.6 million and $121 million, respectively.

In general, DC Courts processed vouchers for court-appointed attorneys and expert-service providers in accordance with established policies and procedures. However, its policies did not (1) include time frames for processing the vouchers and making payments or (2) require that judges document decisions to reduce claimed voucher amounts. Further, DC Courts did not have procedures for retaining data on vouchers reported as lost or missing. These deficiencies are of particular concern given that DC Courts became subject to the federal Prompt Payment Act in fiscal year 1999. Under this act, DC Courts could be required to pay interest on any voucher payment made more than 30 days after submission of a proper invoice.

In addition, DC Courts did not have the requisite authority to spend funds in the Crime Victims Fund account. DC Courts' records indicated that it spent about $1.8 million during fiscal year 1998.

This report includes recommendations to the Congress and DC Courts. In response to a draft of this report, DC Courts disagreed with our conclusions and the need for implementing three of our recommendations. They agreed to seek clarifying legislation to address two of our other recommendations. They did not directly address the other recommendations. Subsequent to DC Courts' response, the Conference Committee on the District of Columbia Appropriations Act, 2000 adopted provisions that, if enacted, would address four of the recommendations.

Background

The District of Columbia Court Reform and Criminal Procedure Act of 1970 (Court Reform Act) transferred jurisdiction over all local judicial matters to a unified court system for the District. This entity, known as DC Courts, includes

- the Superior Court, which is the trial court with general jurisdiction over virtually all local legal matters, including criminal, civil, juvenile, domestic relations, probate, and small claims cases, and

- the Court of Appeals, the highest court of the District of Columbia, which reviews all appeals from the Superior Court, as well as decisions and orders of D.C. government administrative agencies.

The Court Reform Act provided for the creation of a policy-making body for DC Courts, the Joint Committee on Judicial Administration. The Joint Committee, comprised of the two chief judges and three associate judges elected annually by the judges of the Superior Court and Court of Appeals, submits DC Courts' annual budget requests and is responsible for DC Courts' general personnel policies, accounting and auditing, procurement and disbursement, development and coordination of statistical and management information systems and reports, and other related administrative matters. The Joint Committee appoints the executive officer, who manages the day-to-day administrative and financial management of the Court System on the Committee's behalf. The fiscal officer, subject to the supervision of the executive officer, is responsible for maintaining accounting records and processing payments from the general appropriation.

Impact of the 1997 Revitalization Act on DC Courts

The Revitalization Act[3] changed DC Courts' funding process, nonjudicial employee compensation, and functional responsibilities. Under the Revitalization Act, the federal government took over certain financial responsibilities and roles previously held by DC Courts under the Court Reform Act. Some activities became federal government responsibilities, while others remained local government activities funded with federal dollars.

The Revitalization Act provides for direct federal funding of DC Courts. The Joint Committee submits the Courts' budget request to the Congress through the Director of the Office of Management and Budget (OMB). The District's fiscal years 1998 and 1999 appropriation acts contain a federal payment to the Joint Committee for operating DC Courts. The appropriation acts also require OMB to approve the apportionment of the federal payment to the Joint Committee on a quarterly basis for expenditures necessary to efficiently execute the functions vested in the courts.

[3]National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law No. 105-33, Title XI, 111 Stat. 712 (1997).

Judges and nonjudicial employees of DC Courts are treated as federal employees solely for the purposes of eligibility in the federal health and life insurance and workers' compensation plans. For nonjudicial employees, this eligibility extends to federal retirement plans as well. In fiscal year 1998, the federal government also assumed responsibility for administering the judges' retirement funds, and the DC Courts assumed responsibility for the judges' pension costs as part of its fiscal year 1998 appropriation.

The Revitalization Act also transferred the adult probation function from DC Courts to a new entity, the District of Columbia Court Services and Offender Supervision Agency (COSA),[4] with a requirement that COSA be certified as a federal agency by August 5, 2000. In the short term, the COSA Trustee, an independent officer of the D.C. government, manages all funds and personnel associated with the entity.

Court-Appointed Attorneys

DC Courts appoints and compensates attorneys to represent persons who are financially unable to obtain such representation on their own under three programs: (1) the Criminal Justice Act program (CJA),[5] (2) the Counsel for Child Abuse and Neglect (CCAN) program,[6] and (3) the Guardianship program.[7] Indigent persons who are charged with criminal offenses can obtain the assistance of court-appointed attorneys through CJA. In family proceedings where child neglect is alleged or where the termination of the parent and child relationship is under consideration and the parent, guardian, or custodian of the child is indigent, the child and/or parent, guardian, or custodian of the child can obtain the assistance of a court-appointed attorney through CCAN. The Guardianship program pays for the representation and protection of mentally incapacitated individuals and minors whose parents are deceased. In addition to legal representation, these programs offer indigent persons access to experts to provide services such as transcription of court proceedings, expert witness

[4]The Revitalization Act named the new federal agency the Offender Supervision, Defender and Court Services Agency, but it was renamed by the District of Columbia Courts and Justice Technical Corrections Act of 1998, Public Law No. 105-274, Section 7(c), 112 Stat. 2419, 2426, October 21, 1998.

[5]D.C. Criminal Justice Act of 1974, as amended, D.C. Code Ann. Secs. 11-2601 through 11-2608 (1981) (1995 Replacement Volume, 1999 Supp.).

[6]Neglect Representation Equity Act of 1984, as amended, D.C. Code Ann. Secs. 16-2304, 16-2326.1 (1981) (1997 Replacement Volume).

[7]D.C. Guardianship Protective Proceedings, and Durable Power of Attorney Act of 1986, as amended, D.C. Code Ann. Secs. 21-2001 through 21-2085 (1981) (1997 Replacement Volume).

testimony, foreign and sign language interpretation, and investigations and genetic testing.

Attorneys and expert-service providers who work on CJA, CCAN and Guardianship cases submit vouchers to DC Courts detailing time and expenses involved in working on a case. Following an administrative review and approval by the presiding judge or hearing commissioner, the voucher is forwarded to DC Courts, which prepares a list of payments to be made. The list is electronically submitted to the General Services Administration (GSA), which prepares and issues checks[8] paid from DC Courts' annual appropriation. During fiscal year 1998, DC Courts paid court-appointed attorneys at a rate of $50 per hour and reimbursed them for authorized expenses.

Crime Victims Compensation Program

A District law established the Crime Victims Compensation Program under DC Courts' jurisdiction before the Congress passed the Revitalization Act. The District law (1) identifies fines, fees, and other moneys for DC Courts to deposit into a Crime Victims Fund and (2) provides that compensation totaling up to $25,000 can be made from the fund to crime victims for economic loss. Payments can also be made for shelter, burial costs, or medical expenses.

Objectives, Scope, and Methodology

Our objectives were to (1) compare DC Courts' obligations for fiscal years 1996, 1997, and 1998, (2) determine whether DC Courts had a spending plan and obligated funds consistent with available resources in fiscal year 1998, and (3) determine why DC Courts deferred payments to court-appointed attorneys in fiscal year 1998 and whether payments that were made were processed in accordance with policies and procedures. To accomplish our objectives, we

- obtained and reviewed DC Courts' general ledger account balances and other financial information for fiscal years 1996, 1997, and 1998;
- obtained and analyzed DC Courts' budget requests, spending plans, and details supporting budget documentation for fiscal year 1998;
- obtained and reviewed financial information and correspondence between DC Courts, OMB, the Department of Justice, and the Congress;

[8]Prior to March 1998, this processing was done through the District's Financial Management System (FMS).

- obtained and compared court-appointed attorney payment information under CJA and CCAN for fiscal year 1998 and prior fiscal years;[9]
- reviewed policies and procedures for voucher payment and analyzed about 30,000 records in DC Courts' tracking and payment databases that represent fiscal year 1998 payments through July; and
- interviewed the Joint Committee on Judicial Administration; DC Courts' Executive Officer, Fiscal Officer, and Legal Counsel; CJA and CCAN program officials; officials in the Financial Operations Division who process voucher payments; officials from the Department of Justice, OMB, GSA and the COSA Trustee; officials from the District of Columbia's Department of Administrative Services; and court-appointed attorneys.

In order to compare budgeted and obligated amounts, we gathered financial information and analyzed obligations and funding resources reported by DC Courts. We used DC Courts' unaudited financial information,[10] which was compiled from various manual records and accounting and financial management systems, and held discussions with DC Courts officials to obtain additional clarification.

We did our work in accordance with generally accepted government auditing standards between October 1998 and May 1999. We requested comments on a draft of this report from the Joint Committee on Judicial Administration in the District of Columbia. The Joint Committee provided us with written comments that are discussed in the "DC Courts Comments and Our Evaluation" section and are reprinted in appendix I.

Reported Obligations for Fiscal Years 1996 Through 1998

DC Courts' records indicated that total obligations in fiscal years 1996, 1997, and 1998 were $115.4 million, $119 million, and $125.6 million, respectively. Fiscal year 1998 obligations reflect our adjustments, as discussed later, and a different scope of activity than the prior years' obligations. This is primarily due to changes resulting from the Revitalization Act of 1997.

[9]Our work on court-appointed attorneys focused on those appointed under the CJA and CCAN programs. The total payments of approximately $300,000 under the Guardianship program were not included since the amount was about 1 percent of the total payments to court-appointed attorneys and not deemed material to our review.

[10]On May 19, 1999, DC Courts awarded a contract to KPMG Peat Marwick, LLP, to perform the first financial statement audit of its operations. The audit was for the year ended September 30, 1998, as required under the Revitalization Act.

For example, the adult probation function was transferred from DC Courts to the District of Columbia Court Services and Offender Supervision Agency (COSA) in fiscal year 1998. While DC Courts no longer had operational responsibility for the adult probation function, it continued for several months to pay salaries and related costs on behalf of the COSA Trustee. In March 1998, the Trustee took over the payments for adult probation and subsequently reimbursed DC Courts $7.8 million for the costs DC Courts paid on the Trustee's behalf. These costs and the related reimbursements were included in DC Courts' fiscal year 1998 obligations and available funds.

Also as a result of the Revitalization Act, nonjudicial employees received federal benefits that increased DC Courts obligations for fiscal year 1998. DC Courts also assumed responsibility for the judges' pension costs as part of its fiscal year 1998 appropriation for court operations and gave its nonjudicial employees a 7-percent pay raise.

DC Courts' Spending Plan and Obligation of Funds

Prior to the decision to transfer the adult probation function to a new entity, DC Courts had requested $123.5 million to fund its fiscal year 1998 operations. When DC Courts received $108 million in its fiscal year 1998 appropriation, it was responsible for developing a spending plan to ensure that its obligations did not exceed available resources. However, DC Courts did not develop such a plan. It obligated funds throughout the year based on its expectation of receiving additional funds. While DC Courts received an additional $1.7 million in appropriated funds for the fiscal year, it did not receive all of the funding it anticipated. It also received $12.1 million in grants, interest, and reimbursements, including the $7.8 million reimbursement from the COSA Trustee, during the fiscal year.

Letters between DC Courts and OMB during fiscal year 1998 reflect DC Courts officials' expectations of receiving additional resources and OMB's concern that if DC Courts did not lower its rate of spending, its obligations would exceed available funds. For example, in an April 1998 letter, OMB advised DC Courts that it was incurring obligations at a rate that would necessitate a deficiency or supplemental appropriation. For their part, DC Courts officials continued to seek additional funds during their discussions with the COSA Trustee, the Department of Justice, and OMB.

By the end of the fiscal year, DC Courts' records showed that obligations exceeded available resources by about $350,000 for fiscal year 1998. Specifically, its records showed obligations of almost $122.2 million and

funds received of about $121.8 million. However, we found that adjustments needed to be made to those amounts:

- DC Courts deferred more than $4.1 million of court-appointed attorney payments that were eventually made with fiscal year 1999 funds but did not record these amounts as fiscal year 1998 obligations. Accordingly, we added this amount to DC Courts' reported fiscal year 1998 obligations.
- DC Courts treated interest earned primarily from quarterly apportionments of its appropriation as available budgetary resources for court operations. However, DC Courts did not have authority to spend this interest. For this reason, we reduced the amount that DC Courts reported as available resources for fiscal year 1998 by $773,000.

At our May 18 testimony, we reported that DC Courts' recorded obligations and available funding for fiscal year 1998 as adjusted were about $126.3 and $121 million, respectively, resulting in a potential overobligation of more than $5.2 million, in violation of the Anti-Deficiency Act.

Recently, DC Courts officials advised us that some obligations in their fiscal year 1998 records needed to be deobligated. DC Courts officials stated that these included amounts that the District should not have recorded as obligations, as well as amounts for services that were no longer anticipated. In May 1999, we evaluated more than $500,000 of the proposed $1 million in deobligations and determined that almost $200,000 represented obligations for fiscal year 1998 that were still valid. For example, in three cases, these amounts represented contracted services that had been rendered during fiscal year 1998 for which the contractor had not yet billed DC Courts. In addition, we identified almost $200,000 of unrecorded fiscal year 1998 obligations. These changes reduced DC Courts' overobligation for fiscal year 1998 by approximately $600,000, to about $4.6 million.

Adjustments to Fiscal Year 1998 Obligations and Resources

We found that DC Courts needed to increase its reported fiscal year 1998 obligations by more than $4.1 million to account for court-appointed attorney payments that had been deferred during fiscal year 1998 and not recorded as fiscal year 1998 obligations. DC Courts eventually made these payments with fiscal year 1999 funds as authorized by the District of Columbia Appropriations Act of 1999. However, this did not convert the deferred payments from fiscal year 1998 obligations to fiscal year 1999 obligations.

We also found that DC Courts needed to decrease its fiscal year 1998 budgetary resources because it had treated $773,000 of fiscal year 1998 interest income as an available budgetary resource for court operations without having explicit legislative authority to do so. DC Courts earned the interest primarily as a result of depositing quarterly apportionments of its appropriation for court operations in interest bearing accounts.[11] The District of Columbia Home Rule Act provides that no amount may be obligated or expended by a District government officer or employee unless the amount has been approved by an act of Congress and then only according to that act. Also, the Revitalization Act amended the Home Rule Act to expressly provide that moneys[12] received by DC Courts be deposited in the U.S. Treasury or the Crime Victims Fund.[13] These statutory provisions support the general proposition that when the Congress appropriates funds for DC Courts, it establishes an authorized program level beyond which DC Courts may not operate. Accordingly, DC Courts may not augment its appropriation without specific statutory authority to do so.

The Home Rule Act provisions are clear and comprehensive. The provisions apply to all amounts and moneys received by DC Courts, and they are overcome only by the Congress granting the specific authority needed. We are unaware of any statute that authorizes DC Courts to retain and spend interest earned on appropriations for court operations. Further, it undermines the Home Rule Act provisions and the general proposition they support to infer that when Congress required the Treasury to quarterly pay apportioned amounts to DC Courts, the Congress also authorized DC Courts to retain and spend the interest it earns. Accordingly, DC Courts was not authorized to retain or use this interest income and should have remitted it to the U.S. Treasury.

Anti-Deficiency Act

By combining the adjustments described above with DC Courts' reported obligation balances, we determined that DC Courts had overobligated its budgetary resources by $4.6 million. The Anti-Deficiency Act prohibits District government officers and federal officials from making

[11]For fiscal years 1998 and 1999, the District of Columbia Appropriations Acts required the Treasury of the United States to pay appropriations quarterly to the DC Courts based on quarterly apportionments approved by OMB.

[12]These generally refer to funds received from nonfederal sources, such as fines and fees.

[13]Section 450 of the Home Rule Act, as amended.

(1) obligations or expenditures in excess of amounts available in an appropriation or fund unless they are otherwise authorized to do so by law and (2) an obligation or expenditure in excess of an apportionment. Apportionments at increments throughout a fiscal year are intended to prevent obligations and expenditures at a rate indicating a necessity for a deficiency or supplemental appropriation. To the extent DC Courts overobligated its budgetary resources for fiscal year 1998, the overobligations violated the Anti-Deficiency Act.

Anti-Deficiency Act provisions constitute some of the fundamental financial management requirements for federal and District government activities subject to the congressional budget process.[14] The act's purpose is to ensure that agencies or activities funded by annual appropriations manage their affairs so as not to exhaust their appropriations before the end of the fiscal year and require additional funding for their annual operations. OMB and we have stated that officers or employees of the federal government subject to the Anti-Deficiency Act may not incur obligations against anticipated receipts, including supplemental appropriations requested but not yet enacted,[15] because such receipts may not be realized. For example, the Congress may not enact a supplemental appropriation in the amount requested by an agency.[16] The official having administrative control of the appropriation is required to establish regulations to ensure compliance with the Anti-Deficiency Act and to identify the reasons for any obligation or expenditure exceeding an apportionment.

The Anti-Deficiency Act requires the head of an agency to report immediately to the President and the Congress any violation of the act including all relevant facts and a statement of actions taken. OMB Circular A-34, Instructions on Budget Execution, provides additional guidance on information that the agency is to include in its report to the President. OMB instructs agencies to include the primary reason or cause for the overobligation, any extenuating circumstances, the adequacy of the system

[14]31 U.S.C. secs. 1341, 1342, 1349-1351, 1511-1519 (1994).

[15]B-230117-O.M., February 8, 1989, and OMB Circular No. A-34, sec. 21.4 (Rev., Nov. 7, 1997).

[16]OMB has made it clear that even in situations where OMB approves an apportionment request that would indicate the necessity for a supplemental or deficiency appropriation, it does not authorize the agency to exceed available resources. While an agency is required to submit a fully justified request for supplemental funding accompanying the deficiency apportionment request, OMB's approval of such an apportionment request does not commit OMB to recommend that amount to the President or transmit that amount to Congress. OMB Cir. No. A-34, sec. 33.2 (Rev., Nov. 7, 1997).

providing administrative control of funds, any changes necessary to ensure compliance with the Anti-Deficiency Act, and steps taken to prevent a recurrence of the same type of violation.

Violations of the Anti-Deficiency Act are generally the result of agencies incurring obligations of a discretionary nature in excess of available funding. An overobligation does not violate the Anti-Deficiency Act if it is, in the language of the act, otherwise authorized by law. However, no law explicitly authorized DC Courts to incur fiscal year 1998 obligations in excess of available resources. The argument that obligations for attorneys' fees in excess of available resources are "otherwise authorized by law" finds support on the grounds that these obligations are mandatory in nature. When a law establishes an appropriation or fund for the sole purpose of paying obligations of a mandatory nature, obligations in excess of available funding are not generally viewed as being in violation of the requirements of the Anti-Deficiency Act.[17]

While the obligations for court-appointed attorneys might reasonably be viewed to be of a mandatory nature, the critical issue for applying the Anti-Deficiency Act in this case is whether the overobligations were entirely attributable to the mandatory obligations for court-appointed attorneys and consequently authorized by law. This task is complicated by the fact that court-appointed attorney programs are financed as part of the general appropriation for court operations. Under these circumstances, DC Courts should have considered the impact that the mandatory aspect of the program would have on the appropriation and managed the residual amounts prudently so that total obligations did not exceed the total amount appropriated. In other words, having funds for mandatory activities included in a lump sum appropriation available for discretionary activities did not relieve DC Courts of its responsibility to manage discretionary spending to avoid exceeding available resources and violating the Anti-Deficiency Act.[18]

While DC Courts' overobligation of an appropriation that funds both mandatory and discretionary programs may not necessarily constitute an

[17]See 65 Comp. Gen. 4 (1985).

[18]"District officials must supervise and manage the District's financial transactions to insure that appropriations are not exceeded and the requirements of the Anti-Deficiency Act are met." B-262069, August 1, 1995 (the District would violate the Anti-Deficiency Act if its discretionary decisions on the Medicaid and Aid to Families with Dependent Children programs led to overobligating its lump sum appropriation for Human Support Services).

Anti-Deficiency Act violation, it at least creates a presumption of such a violation. To avoid violating the Anti-Deficiency Act, DC Courts would have to show that it took all reasonable steps to manage the account within the amounts appropriated and that any obligations in excess of available resources resulted from constitutional or statutory requirements.[19] To support this argument, the burden is on DC Courts to provide evidence of unanticipated mandatory spending and efforts undertaken to cut discretionary spending.

The actions of DC Courts during fiscal year 1998 do not demonstrate that the overobligation of the fiscal year 1998 account resulted from obligations that were beyond its control. For example, the $4.1 million in payments for court-appointed attorneys clearly was not deferred because it was unexpected—the fiscal year 1998 obligations for court-appointed attorneys were similar to those in fiscal year 1997 and the estimates for fiscal year 1998. Also, DC Courts granted a discretionary pay raise[20] that took effect after the fiscal year 1998 appropriation was enacted into law even though the appropriation was more than $15 million less than the amount DC Courts initially requested. Finally, DC Courts did not base its spending during most of fiscal year 1998 on the appropriation it received.

DC Courts officials have stated that they did not violate the Anti-Deficiency Act because a provision in the fiscal year 1999 appropriation act authorized DC Courts to make court-appointed attorney payments that had been deferred from fiscal year 1998. The DC Courts' view is that this provision authorized the deferral of these payments in fiscal year 1998 and allowed DC Courts to use fiscal year 1999 funds to liquidate these obligations, all without violating the Anti-Deficiency Act as long as DC Courts paid all fiscal year 1998 overobligations in accordance with the fiscal year 1999 appropriation act. We disagree with this view. The provision in the fiscal year 1999 appropriation act merely authorizes DC Courts to use fiscal year 1999 funds to pay obligations incurred in fiscal year 1998 and prior years for court-appointed attorneys. The fiscal year 1999 appropriation act had not been enacted when DC Courts deferred payments to court-appointed

[19]B-262069, August 1, 1995.

[20]On November 13, 1997, the Joint Committee on Judicial Administration approved comparability of the DC Courts compensation schedule with the federal court's schedule for nonjudicial employees, to be achieved over a 2 fiscal-year period, provided adequate funding was appropriated. The first salary adjustment of 7 percent became effective December 7, 1997, at a reported cost of almost $2.8 million for fiscal year 1998.

attorneys and, according to its records, overobligated fiscal year 1998 appropriations.

The Congress has long recognized that the timing of payments for court-appointed attorneys is not predictable and that claims attributable to a fiscal year may be submitted or approved after the end of the fiscal year when funds are no longer available. The provision in the fiscal year 1999 appropriation act addresses this problem by making fiscal year 1999 funds available for such payments without regard to when the obligations were incurred. It does not, as DC Courts suggested to us, authorize DC Courts to defer paying obligations already identified and ready for payment.

Further, if such a position were to prevail, it would undermine congressional control of DC Courts' appropriation. DC Courts has identified no limitations as a matter of law to its position that the provision is available whenever DC Courts' costs exceed resources, as long as only costs for court-appointed attorneys are deferred. This position, if accepted, would allow DC Courts to respond to dissatisfaction with its appropriation by deferring court-appointed attorney payments at any time or in any amount throughout a fiscal year. This could lead to spending for court operations in excess of what the Congress intended and shift significant costs for court-appointed attorneys to the next fiscal year, all without violating the Anti-Deficiency Act. The language and purpose of the provision in the fiscal year 1999 appropriation act and the Anti-Deficiency Act support no such interpretation.

To ensure that in the future appropriated funds intended for court-appointed attorneys are not used for other purposes, the Congress could make a separate appropriation to DC Courts for payments to court-appointed attorneys. This appropriation could be similar to that provided to federal courts each year to fund payments to court-appointed attorneys, in which funds remain available until expended.

Payments to Court-Appointed Attorneys

Throughout fiscal year 1998, it was clear that unless DC Courts modified its spending or received additional funds, it was facing a shortfall. By the third quarter, when DC Courts had not received the additional funds it anticipated, there were limited options available for addressing the projected shortfall. DC Courts officials considered furloughing employees and closing the courts for a period of time during the summer, as well as deferring court-appointed attorney and expert service provider payments. In May 1998, OMB officials advised DC Courts to reduce nonpersonnel

costs instead of furloughing employees or closing the courts to avoid an Anti-Deficiency Act violation. On July 24, 1998, DC Courts began deferring payments for court-appointed attorneys for the remainder of the fiscal year, and it eventually used fiscal year 1999 appropriations to pay most of those amounts. As part of its budget request, DC Courts had estimated $31.6 million for payments to court-appointed attorneys in fiscal year 1998, an amount that was similar to that in the previous year. As of July 1998, DC Courts had expended $25.8 million on court-appointed attorney payments.

Voucher Processing Procedures

We found that DC Courts processed voucher payments for court-appointed attorneys in accordance with its policies and procedures. However, these procedures did not address certain matters that were important to proper disposition of voucher claims, including

- time frames for making such payments,
- procedures for maintaining data on vouchers reported as missing, and
- procedures for notifying attorneys and expert-service providers when voucher amounts claimed were reduced.

Time Frames for Voucher Payments

For fiscal year 1998, DC Courts was not subject to the federal Prompt Payment Act or the District Quick Payment Act. However, the District's fiscal year 1999 appropriation[21] subjected DC Courts to the requirements of the federal Prompt Payment Act. Under the act, an entity that fails to pay promptly for goods and services accepted as satisfactory may be required to pay interest on amounts owed.

For fiscal year 1998, we analyzed payment timing from two different perspectives. First, we looked at the number of days from the vouchers first being submitted by the attorney or expert provider to the payment being made. Second, we looked at the number of days from the presiding judge or hearing commissioner approving the voucher for payment to the payment being made. Our analysis of DC Superior Courts' fiscal year 1998

[21]Public Law No. 105-277, sec. 162, 112 Stat. 2681-148 (Oct. 21, 1998).

paid voucher data[22] through July 1998 showed that 48 percent of these vouchers were paid within 30 days of being submitted. Ninety-four percent of the vouchers for court-appointed attorneys and expert service providers were paid within 30 days of the presiding judge's or hearing commissioner's approval.

We also reviewed DC Courts' implementation of the Prompt Payment Act in fiscal year 1999 as it applies to paying court-appointed attorneys. The purpose of the act is to encourage agencies to pay bills in a timely manner. If an agency fails to pay a bill by the "required payment date," interest begins to accrue. Except for situations not relevant here, the required payment date under the act is 30 days after receipt of a "proper invoice."[23] The Prompt Payment Act defines a proper invoice as one that contains or is accompanied by substantiating documentation required by regulation or contract that is necessary to permit the agency to approve the bill.[24]

On December 10, 1998, the Chief Judge of the Superior Court issued a memorandum to all judges and hearing commissioners stating that with regard to vouchers for CJA and CCAN payments, it had been determined that the date DC Courts receives a proper invoice is the date the authorizing judge or hearing commissioner approves the voucher. The Superior Court Trial Lawyers Association has raised concerns over this determination. We share their concern because if a proper invoice is "received" only when it is approved, DC Courts could avoid incurring interest on vouchers simply because the judge or hearing commissioner has not reviewed them. We understand that this matter is currently under discussion between DC Courts and the Superior Court Trial Lawyers Association.

As of June 1999, DC Courts did not have a mechanism for tracking vouchers from acceptance to due date to ensure that they were processed and paid in time and to avoid interest penalties. Further, the absence of policies or procedures for retaining data on the number of vouchers

[22]To perform our analysis on the timeliness of voucher processing, we used data DC Courts merged from databases in its voucher tracking and voucher payment systems. Court of Appeal cases and vouchers for court transcribers are not tracked in the voucher tracking system. Therefore, they are not a part of this analysis. We excluded some records because of missing or erroneous data in data fields. DC Courts was unable to explain completely the reasons for the missing or erroneous data.

[23]31 U.S.C. 3902 (b), 3903 (a) (1) (B) (1994).

[24]31 U.S.C. 3901 (a) (3) (1994).

reported as missing or the disposition of such vouchers created additional concern that a significant number of vouchers would not be paid until after the due date.

Lost or Missing Vouchers

Prior to and during our review, court-appointed attorneys claimed that filed vouchers were sometimes lost and had to be refiled. The DC Courts accounting manager responsible for voucher processing and payment estimated that out of over 4,000 vouchers processed each month, about 50 vouchers were reported as missing. However, the accounting manager did not have any specific information. The underlying causes of this problem could not be explained.

We noted that procedures in effect presented opportunities for vouchers to be misplaced or lost at two different stages during voucher processing. DC Courts date-stamps each voucher when it is received but does not maintain a log of these submissions. Further, DC Courts does not input voucher data into its tracking system until the voucher is audited for accuracy, a process that, according to the accounting manager, takes about 8 working days. Without logging in all vouchers upon receipt or immediately entering voucher data into the tracking system, DC Courts cannot ensure complete accountability for all vouchers. This increases the risk that vouchers lost or misplaced at this stage will not be recovered.

After a voucher is audited for accuracy, it is forwarded to the presiding judge or hearing commissioner for approval. Although DC Courts' voucher tracking system identifies the date of specific events, vouchers are hand-delivered to and from the judges' chambers, presenting additional opportunities for vouchers to be misplaced or lost.

Reduction of Voucher Amounts

During the final review of vouchers, the judge or hearing commissioner has the authority to reduce the amount of the voucher if he or she determines that some of the attorney's or provider's hours or expenses should be disallowed. DC Courts did not have procedures covering how judges or hearing commissioners were to document such decisions to the attorney or provider. However, DC Courts officials stated that this information was available to attorneys who requested it.

Our analysis of fiscal year 1998 paid voucher data showed that judges or hearing commissioners reduced voucher amounts in 9 percent of the cases, more than half of which involved reductions of $100 or less.

Crime Victims Compensation Program

During our review, we identified a matter that, while not affecting DC Courts' use of its fiscal year 1998 appropriation for court operations, needs to be addressed to provide DC Courts the requisite authority to make payments out of its Crime Victims Fund. A District law established the Crime Victims Compensation Program under DC Courts jurisdiction prior to the enactment of the Revitalization Act.[25] The District law provides that the fund may be credited with (1) appropriations made to it, (2) fines assessed on persons convicted of serious traffic or misdemeanor offenses, or persons convicted or pleading guilty or no contest to felony offenses, (3) amounts recovered by the District from offenders or third parties by subrogation to the victim's rights as a result of payments of claims to victims, (4) repayments of overpayments or false claims payments from claimants, and (5) amounts received from any source, including grants from the federal government, for the purpose of the fund. The District law provides that compensation totaling up to $25,000 from the fund can be made to crime victims for economic loss. Payments can also be made for shelter, burial costs, or medical expenses. DC Courts' records indicated that about $1.5 million in such payments plus almost $300,000 of administrative cost payments were made during fiscal year 1998 and that the balance of the fund at September 30, 1998, was about $6.8 million.

While the Revitalization Act amendment to the Home Rule Act supports the authority of DC Courts to deposit the fines, fees, and other money identified in the District law to the Crime Victims Fund, the Revitalization Act makes no mention of spending amounts deposited to the fund. Further, nothing in the language of the District's fiscal years 1998 or 1999 appropriation acts appropriates amounts from the Crime Victims Fund. Finally, we have not identified any other federal law authorizing payments from the fund. The District of Columbia Home Rule Act[26] states that no officer or employee of the District of Columbia government may obligate or spend an amount unless it is approved by an act of the Congress and then only according to that act. Accordingly, we conclude that DC Courts did not have the requisite legislative authority to make payments from the fund.

[25]The Victims of Violent Crime Compensation Act of 1996, D.C. Law 11-243, 44 DCR 1142, 2601 (April 9, 1997), D.C. Code Ann. Secs. 3-421 through 3-438 (1998 Supp.).

[26]Section 446 of the Home Rule Act, as amended.

Conclusions

DC Courts experienced difficulties in planning and budgeting in fiscal year 1998, its first year of operations with direct federal funding. In a transition year in which DC Courts underwent changes to its functions and responsibilities, DC Courts' management did not properly execute its responsibility to operate within available resources. Appropriate recognition of obligations incurred and resources available and compliance with federal laws and guidelines addressing its financial management are crucial to improving DC Courts' performance in this area. In addition, DC Courts did not have complete information in its voucher tracking system to ensure that all submitted vouchers were promptly tracked, processed, and paid. Revised procedures in this area and improvements to its voucher tracking system could improve DC Courts' timeliness in making voucher payments and reduce the incidence of missing vouchers. Improvement in these areas has become critical in fiscal year 1999, now that DC Courts is subject to the federal Prompt Payment Act and may be required to pay interest on payments made more than 30 days after receipt of a proper invoice.

Recommendations to the Congress

If the Congress continues to require the U.S. Treasury to pay quarterly apportionments to DC Courts, we recommend that the Congress consider authorizing DC Courts to retain the interest earned and requiring DC Courts to include estimated interest in its annual budget request. This would alleviate the need for DC Courts and U.S. Treasury to process interest repayments to U.S. Treasury.

If the Congress wishes to ensure that appropriated funds intended for payment of court-appointed attorneys are not used for other purposes, we recommend that the Congress consider making a separate appropriation to DC Courts for payments to court-appointed attorneys.

Recommendations to DC Courts

We recommend that the Joint Committee on Judicial Administration

- perform all necessary investigation and reporting under the Anti-Deficiency Act related to DC Courts' overobligation of its fiscal year 1998 appropriation,
- transfer to the U.S. Treasury all interest earned on appropriated funds or seek legislative relief from repaying the interest that was improperly retained,

- issue guidance providing that interest is to be paid when vouchers containing or accompanied by all required substantiating documentation are not paid by the required payment date,
- establish procedures that require all vouchers to be logged and tracked immediately upon receipt, and
- seek legislation authorizing DC Courts to use the Crime Victims Fund to pay eligible claims under the Crime Victims Compensation Program.

DC Courts' Comments and Our Evaluation

In commenting on a draft of the report, DC Courts disagreed with our findings concerning

- its violation of the Anti-Deficiency Act in fiscal year 1998 and
- its use of interest earned on its appropriation as a resource to fund court operations.

In addition, DC Courts disagreed with our conclusions and the need for implementing three of our recommendations. They agreed to seek clarifying legislation to address two of our other recommendations. DC Courts did provide technical comments which we have incorporated as appropriate but have not reproduced in our report.

In several meetings with us and in a written statement submitted to us in May 1999, DC Courts stated that it disagreed with the legal basis for our conclusion that DC Courts violated the Anti-Deficiency Act by overobligating its budgetary resources by approximately $4.6 million in fiscal year 1998.[27] We considered DC Courts' position in preparing the draft of this report. In summarizing its position in its comments on our draft, DC Courts stated two principal reasons why its actions were in conformity with the Anti-Deficiency Act.

First, DC Courts asserted that because it has the authority to defer attorney payments under its appropriation act, its actions constitute an exception to the Anti-Deficiency Act. As discussed in detail in this report, we disagreed with DC Courts' position. We stated that the appropriation act provides authority to use current funds to pay prior year obligations and not the

[27]In our testimony on May 18, 1999, we reported that the amount of the potential overobligation was $5.2 million. Subsequent to our testimony, DC Courts provided us with proposed deobligations for fiscal year 1998. We reviewed the proposed deobligations in May 1999 and, as a result, revised the amount of DC Courts' overobligation for fiscal year 1998 to about $4.6 million.

authority to decide to defer paying obligations already identified and ready for payment. The Congress' granting of this authority in the fiscal year 1999 appropriation act (and prior years' acts) addressed the difficulty of attorney claims being submitted and approved in one fiscal year for services rendered in prior fiscal years and, therefore, being obligations chargeable to the prior fiscal years. This authority in the appropriation act is significant because without it, the fiscal year 1999 funds would not have been available to pay prior year obligations. DC Courts' comments do not address this basic tenet of appropriations law but rather commingle the separate issues of whether DC Courts may (1) overobligate its fiscal year 1998 appropriation to the extent of its attorney payments and (2) use its fiscal year 1999 appropriation to pay claims attributable to prior years.

Furthermore, we observed that DC Courts' position establishes no limits as a matter of law and would undermine congressional control. DC Courts characterizes the appropriation as providing authority to defer attorney payments from one year to the next only when confronted with extraordinary circumstances. However, it offers no statutory basis for limiting the asserted authority only to extraordinary circumstances. As discussed in our report, DC Courts is authorized to obligate funds for court-appointed attorneys in excess of available resources without violating the Anti-Deficiency Act if overobligations are solely attributable to mandatory spending as evidenced by (1) unanticipated spending for attorneys and (2) reductions in discretionary spending designed to keep total obligations within total resources. This authority is very different than the authority to defer attorney payments from one year to the next and spend the "saved" attorney payments on court operations that DC Courts attempts to read into the appropriation act.

Second, DC Courts asserts that the Anti-Deficiency Act allows for a deficiency or supplemental request for appropriations where (1) the enactment of new laws after budget requests are submitted to the Congress results in increased costs or (2) the government's continuation of essential functions for the safety of human life or the protection of property is required. DC Courts refers to 31 U.S.C. 1515 (b)(1)(A) and (B), a provision of the Anti-Deficiency Act. However, DC Courts' reliance on this provision is misplaced. Section 1515 is not an exception to the Anti-Deficiency Act's basic prohibition of obligating or spending in excess of or in advance of an appropriation. Rather, section 1515 is a statutory exception only to the general apportionment rule in 31 U.S.C. 1512, which prohibits apportioning funds at a rate indicating a deficiency or a need for a supplemental appropriation. This distinction is discussed in II GAO, Principles of Federal

Appropriations Law (GAO/OGC 92-13, December 1992, pp. 6-80 through 6-83). Further, OMB Circular A-34, sec. 33.2 (Rev. Nov. 7, 1997) makes clear that an apportionment indicating a deficiency or a need for supplemental appropriation does not guarantee the agency that OMB, the President, or the Congress will support the agency's request for supplemental funding. Even if DC Courts had met the conditions in section 1515(b) and received an apportionment indicating a need for supplemental funding, section 1515 provides no legal basis for DC Courts to obligate funds in excess of the amount appropriated.[28]

One of the themes running through DC Courts' comments is that DC Courts received inadequate funding and had limited options available for spending reductions. DC Courts asserts that our report needs more information on this matter because such information would make the report more complete and accurate and lead to different legal conclusions. In general, DC Courts' comments about the Revitalization Act, as well as its dealings with the Congress, OMB, and other executive branch entities over the funding it believes it should have received for fiscal year 1998, may be among the factors DC Courts could offer as extenuating circumstances that resulted in its violation of the Anti-Deficiency Act. However, none of the additional information DC Courts has offered affects our legal analysis of DC Courts' Anti-Deficiency Act violation. In this regard, DC Courts commented that our report "overstates the very limited relevance of a modest pay increase." However, we found that the discretionary pay raise was almost $3 million, or about 65 percent of DC Courts' $4.6 million overobligation of its resources in violation of the Anti-Deficiency Act.[29]

DC Courts also disagreed with our conclusion that it lacked the authority to retain and spend interest earned on the federal funds appropriated for

[28]DC Courts' reference to 31 U.S.C. 1515 is also misplaced for factual reasons. After passage of the Revitalization Act and before enactment of the District's fiscal year 1998 appropriation act, the President submitted a revised budget request to the Congress that reflected the Revitalization Act's changes. Accordingly, a request for supplemental funding under section 1515(b)(1)(A) could not be based on the Congress having passed a law affecting DC Courts after having received a budget request for DC Courts. Further, while DC Courts may have had funding difficulties in fiscal year 1998, those difficulties did not result, as section 1515(b)(1)(B) requires, from an "emergency." Finally, when OMB's last apportionment for the year to DC Courts was made in April 1998, OMB warned DC Courts that it needed to reduce its rate of spending to avoid violating the Anti-Deficiency Act.

[29]Our central point regarding the pay raise is that it represents discretionary spending that could have been postponed or eliminated. This is supported by the effective date of the pay raise, which was "subject to sufficient funds being available," and which was awarded after DC Courts knew that the Congress had authorized an appropriation for fiscal year 1998 that was over $15 million less than the amount requested.

court operations. As discussed in the report, our conclusion is based on the language of the Home Rule Act and the Revitalization Act consistent with basic principles of federal appropriations law. In contrast, DC Courts asserts that it may infer the authority to retain and spend the interest because the Congress "remained silent on the matter of interest" even though the Congress required the Department of the Treasury to make quarterly payments to DC Courts, and it was inevitable that DC Courts would deposit the payments in an interest-bearing account. DC Courts' view is contrary to the fundamental principle of appropriation law that prohibits an agency from augmenting its appropriation from other sources unless specifically authorized by law. Because nothing in the language of any act, or even legislative history, indicates that the Congress wanted DC Courts to retain and spend interest earned on fiscal year 1998 appropriations, we find no basis to impute to the Congress a grant of authority that overrides limitations found in law and grounded in principles of appropriations law. Accordingly, as discussed in this report, the interest should have been deposited to Treasury, as required by section 450 of the Home Rule Act as amended by the Revitalization Act.

During our review, we requested documentation from DC Courts regarding its preparation and execution of a spending plan tied to its fiscal year 1998 appropriation. We found that when DC Courts received an appropriation that was over $15 million less than it requested, it did not take immediate steps to cut planned spending to reflect the actual level of funding but rather proceeded with a discretionary pay raise and continued to spend at a rate that would necessitate a deficiency or a supplemental appropriation. Other than not filling vacant positions (which, according to DC Courts, cut almost $3 million in operational costs), DC Courts did not propose the necessary spending cuts until the third quarter of the fiscal year and only after requests for supplemental funding did not materialize. At that point, as DC Courts officials pointed out, their options to make spending cuts were limited.

DC Courts took exception to our discussion of the Prompt Payment Act in relation to its processing of payment vouchers because, as we noted in our report, DC Courts was not subject to the Prompt Payment Act until fiscal year 1999. We found it useful to refer to the Prompt Payment Act because in the absence of any legal requirements to make timely payments, it provided a recognized standard and DC Courts payments were made subject to the Prompt Payment Act beginning in fiscal year 1999.

DC Courts also stated that our report did not accurately characterize the nature of communications between DC Courts and both OMB and Members of Congress. However, this report and our previously issued testimony and chronology of events[30] fairly reflect all the relevant and critical documentation DC Courts provided to us. DC Courts did not include new or additional information in its comments that affects our legal positions and conclusions.

Subsequent Congressional Actions

Following the receipt of comments from DC Courts on a draft of this report and discussion of our recommendations with the House and Senate staff of the oversight and appropriations committees, the Conference Committee reported H.R. 2587, the District of Columbia appropriations bill for fiscal year 2000, on August 5, 1999.[31] If enacted as reported by the Conference Committee, H.R. 2587 would address four of our recommendations as follows:

- It addresses the recommendation that the Congress consider authorizing DC Courts to retain interest earnings and reflect estimated interest in its budget requests if the Congress continues to require the U.S. Treasury to pay quarterly apportionments to DC Courts. The proposed language eliminates the requirement that the U.S. Treasury pay the apportionments quarterly to DC Courts and requires all amounts to be quarterly apportioned by OMB, obligated, and expended in the same manner as funds appropriated to other federal agencies.[32] Thus, federal funds will remain with the Treasury until needed for authorized DC Courts activities, and disbursements for these authorized activities will be made directly from the Treasury. This change would eliminate the need for an interest-bearing bank account to handle the federal payment to DC Courts.
- It addresses the recommendation that the Congress consider making a separate appropriation to DC Courts for payments to court-appointed attorneys. The proposed language establishes a separate federal payment for "Defender Services in the District of Columbia Courts," specifically for making payments to court-appointed attorneys under the

[30]District of Columbia Courts: Chronology of Events Associated with DC Courts' Financial-Related Issues for Fiscal Year 1998 (GAO/AIMD-99-204R, June 7, 1999).

[31]H.R. Rep. 106-299.

[32]H.R. Rep. 106-299, at 3.

CJA, CCAN, and Guardianship programs, and requires that payroll and financial services be provided by GSA, which must submit monthly reports to the President and specific committees.[33]

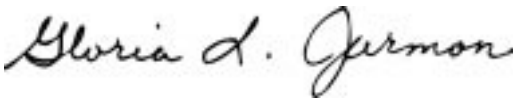
- It addresses the recommendation that DC Courts pay the Treasury the interest already earned on prior federal payments. H.R. 2587 would authorize DC Courts to use up to $1.2 million of interest earned on the fiscal year 1999 federal payment to make certain payments to court-appointed attorneys for indigents.[34] Our recommendation that DC Courts pay the Treasury interest earned on the fiscal year 1998 federal payment remains unaffected.
- It addresses the recommendation that DC Courts request legislative authority to spend money in the Crime Victims Fund. Section 160(b)(1) of H.R. 2587 would authorize DC Courts to spend moneys properly deposited in the Crime Victims Fund for purposes authorized by the Crime Victims Act, as amended. In addition, section 160(e) of H.R. 2587 would ratify any payments made from the Crime Victims Fund on or after April 9, 1997, to the extent the amounts are authorized under the Crime Victims Compensation Act of 1996, as amended.

We are sending copies of this letter to Senator Kay Bailey Hutchinson, Chairwoman, Subcommittee on the District of Columbia, Senate Committee on Appropriations; Senator Richard Durbin, Ranking Minority Member, Subcommittee on the District of Columbia, Senate Committee on Appropriations, and Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, Senate Committee on Governmental Affairs; Senator George Voinovich, Chairman, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, Senate Committee on Governmental Affairs; and Representative Eleanor Holmes Norton, Ranking Minority Member, Subcommittee on the District of Columbia, House Committee on Government Reform. We are also sending copies to the Joint Committee on Judicial Administration, DC Courts, through the Honorable Annice Wagner, Chair; the Honorable Jacob J. Lew, Director, Office of Management and Budget; and Grace Mastelli, Deputy Assistant Attorney General, Department of Justice. Copies will be made available to others upon request.

[33]H.R. Rep. 106-299 at 3-4.

[34]H.R. Rep. 106-299 at 3-4.

If you have any questions, please contact me or Steven Haughton at (202) 512-4476. Key contributors to this assignment were Marcia Washington, Lou Fernheimer, Jeffrey Jacobson, and Richard Cambosos.



Gloria L. Jarmon
Director, Health, Education, & Human Services
Accounting and Financial Management Issues

Comments From the District of Columbia Courts

District of Columbia Courts
Joint Committee on Judicial Administration
Washington, D. C. 20001

July 29, 1999

Ms. Gloria L. Jarmon
Director, Health, Education & Human Services
Accounting and Financial Management Issues
Accounting and Information Management Division
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Jarmon:

The Joint Committee on Judicial Administration in the District of Columbia submits herewith its response to the Draft Report of the United States General Accounting Office to Congressional Requesters on the D.C. Courts' budgeting and planning during fiscal year 1998. We trust that GAO will give fair consideration to our response. It is our understanding that our response in its entirety will be made an attachment to GAO's final report. Please let us know if anything further is required.

Sincerely yours,

Annice Wagner, Chair
Joint Committee on Judicial Administration
in the District of Columbia

RESPONSE OF THE JOINT COMMITTEE ON JUDICIAL ADMINISTRATION IN THE DISTRICT OF COLUMBIA

TO THE DRAFT REPORT OF THE UNITED STATES GENERAL ACCOUNTING OFFICE TO CONGRESSIONAL REQUESTERS

ON THE DISTRICT OF COLUMBIA COURTS' BUDGETING AND PLANNING DURING FISCAL YEAR 1998

July 29, 1999

SUBMISSION TO THE GENERAL ACCOUNTING OFFICE
IN RESPONSE TO DRAFT REPORT ON DC COURTS FISCAL YEAR 1998 FISCAL REVIEW

I. Summary

This submission responds to a draft report of the General Accounting Office (GAO), now entitled DC Courts, Planning and Budgeting Difficulties During Fiscal Year 1998 (Draft Report). The Courts appreciate the professionalism shown by GAO's team during this period of review. Nevertheless, as you know, we are compelled to bring to your attention any errors or omissions in the Draft Report, particularly those which will preclude complete and accurate responses to the questions posed by the Congressional requesters ("Requesters").

The principal flaws in the Draft Report which render its conclusions invalid on the central issues addressed are (1) the omission of critical facts essential to the fair application of the legal principles discussed, (2) inferences premised on insufficient or erroneous factual premises, and (3) erroneous legal conclusions which necessarily follow. Specifically, omitted from the Draft Report is information on the full magnitude of the budgetary shortfall for the Courts in FY 1998 brought about by the passage of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act),[1] the results of the cost-savings measures undertaken by the Courts throughout that fiscal year, the amounts required for the Courts to continue essential constitutional and statutory functions, and the limited options available for spending reductions in the face of the necessity for continuation of functions essential for the safety of human life or the protection of property. Without this omitted information, it is not possible for GAO to answer the three questions posed by the Congressional requesters, i.e. (1) "[w]hat were the Courts' obligations for fiscal year[]. . . . 1998; (2) did the D.C. Courts "have a spending plan for fiscal year 1998, and obligate funds consistent with available resources;" (3) why did the Courts defer payments to court-appointed lawyers between the latter part of July and September 1998.[2]

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[1] Public Law No. 105-33, Title XI Stat. 712 (1997).

[2] See Draft Report, p. 2.

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Moreover, because of these omissions, the conclusion reached by the GAO that the Courts potentially violated the Antideficiency Act, 31 U.S.C. § 1341 (ADA) cannot be justified, particularly where, as here, the omitted facts are relevant to that determination and to the applicability of specific statutory exceptions to the ADA.[3] See e.g. 31 U.S.C. § 1515(b)(1)(A) and (B). We recognize that the omission from GAO's Draft Report of much of the critical information concerning the costs to the Courts of performing essential functions during this unique transition year is attributable to the limitations placed on the scope of GAO's review. Nevertheless, a critical analysis of the facts and the law will reveal, we submit, that the Courts did not violate the Antideficiency Act, and we strongly recommend that the GAO reconsider its position on this issue in light of the information set forth in this response and the statement submitted to the GAO on May 6, 1999 (May Submission). At the very least, GAO should state candidly in its final report that it is unable to reach definitive conclusions concerning the Courts' efforts to operate under extraordinary circumstances, during a unique transition year, or regarding any alleged statutory violation, since many of the facts and circumstances related to the scope and genesis of FY1998 budgetary shortfall and the fiscal requirements for court operations following implementation of the Revitalization Act are not within the scope of GAO's review.[4]

In the remaining parts of this response, we address more fully the findings and conclusions in the Draft Report related to the Courts' obligations and spending during the fiscal crisis created as a result of implementation of the Revitalization Act, and the other findings related to the processing of vouchers for payment of court-appointed counsel under certain statutes. We are pleased that GAO found upon review that court-appointed attorneys are paid timely (94% within 30 days) and that vouchers are rarely lost (a loss rate of less than 1%). Implementation of the Courts' automated CJA/CCAN Voucher System later this year will address GAO' s recommendation for logging and tracking vouchers. We recommend that the Draft Report be revised to include a more detailed explanation of the process by which the amount of payments for court-appointed attorneys is judicially determined, and we have offered suggested language for that purpose. Such information

[3] This issue is explained further in the next section of this response.

[4] See e.g. Draft Report, pp. 1, 15-18.

is necessary for a full understanding of how these obligations arise and why the Courts view them as claims only upon final determination of the amount payable and approval by a judicial officer. For your convenience, attachment 1 to this response identifies other specific changes which should be made in the Draft Report for accuracy or clarity.

II. Impact of the 1997 Revitalization Act on the D.C. Courts and the ADA

The Draft Report does not describe fully the facts concerning the budget crisis of FY 1998 resulting from the implementation of the Revitalization Act nor present a complete outline of the Courts' legal position. Therefore, we have provided the following additional narrative which we recommend for inclusion in the final report. We have combined in this response sections treated separately in the Draft Report, i.e., the impact of the Revitalization Act and the Anti-deficiency Act discussion, because the issues are related.[5]

In summary, it is the legal position of the Courts that they operated in conformity with the requirements of 31 U.S.C. § 1341 (a)(1) (the Antideficiency Act or ADA) in FY 1998 for two principal reasons. First, the deferral of payments for claims presented under the Criminal Justice Act of 1974, the District of Columbia Neglect Representation Equity Act of 1984, and the District of Columbia Guardianship Protective Proceedings and Durable Power of Attorney Act of 1986 (collectively referred to as CJA/CCAN) near the end of FY 1998, and the payment of those claims from the FY 1999 appropriations, was authorized by law. Second, the ADA allows for deficiency or a supplemental request for appropriations (1) where the enactment of new laws subsequent to the submission to Congress of budget estimates results in increased costs or (2) where the continuation by the government of essential functions for the safety of human life or the protection of property is required. See 31 U.S.C. § 1515 (b)(1)(A) and (B). The circumstances faced by the Courts in FY 1998 come within each of these statutory exceptions to the ADA.

The ADA provides that an officer or employee of the government may not involve the government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341 (a)(1)(B) (emphasis added). To constitute an ADA

[5] A more detailed account appears in the Courts' May submission.

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exception, "the authority must be authority to incur the obligation in excess or advance of appropriation." See Principles of Federal Appropriations Law, 2d ed., at 6-53 (September 1992). In every year since fiscal year 1976, the year after the Courts assumed financial responsibility for payment of indigent criminal defendants' legal representation, Congress has authorized the Courts to pay claims for legal representation incurred in prior years out of the appropriation for a subsequent year. This cost-spanning proviso is essential to provide for flexibility because of the impossibility of budgeting for costs of legal representation where there is always a lag time between the time appointed counsel renders services, which can span years, and the time that the attorney's claim for services is presented and approved by the Courts.

The FY 1998 estimates for representation under CJA/CCAN, although insufficient, were close to projections; however, other extraordinary circumstances occurred in FY 1998 which resulted in a severe, unintended budgetary shortfall for the Courts. Specifically, the enactment of a new law, the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33 (Revitalization Act), subsequent to the submission of the budget estimates for the Courts, resulted in unanticipated increased costs of approximately $3 million.[6] In addition, the Revitalization Act transferred responsibility for adult probation supervision from the Courts to the District of Columbia Offender Supervision Trustee (Trustee), and an adjustment was made removing $20 million from the Courts' budget to the Trustee's budget, although the costs for adult probation had never exceeded $12 million.[7] The $8 million difference eliminated from the Courts' budget represented funding needed for other essential case processing functions. Thus, the FY 1998 appropriation unintentionally created a built-in shortfall of over $11 million. The Courts immediately responded to this shortfall in their budget through two major courses of action: (a) by adjusting to a spending plan with significantly reduced discretionary expenditures; and (b) by notifying Executive Branch officials, including the Office of Management and Budget (OMB), and

[6] Under the Revitalization Act, the Courts were responsible for paying for additional costs for Federal benefits for employees whose status was converted under the Act, as well as the costs of contracting with the General Services Administration for payroll and disbursement services.

[7] The FY 1998 Appropriation of approximately $108 million included $5 million that was designated as a payment through the Courts into the judicial retirement plan. Thus, the appropriation for operating costs was equivalent to roughly $103 million, $20 million less than was originally requested by the Courts and supported by Congress.

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subsequently, the relevant Congressional committees in an effort to obtain a supplemental appropriation to correct what most of the affected and responsible entities acknowledged to be an unintended error. Initially, the Courts and executive branch officials seemed to believe that no Congressional action would be required to address this situation once the OMB, the Trustee, and the Courts agreed upon the extent of the underfunding of the Courts and the overfunding of the Trustee. In the meantime, the Courts succeeded in reducing discretionary expenditures by over $3 million. Other relief would not come until later. The Office of Management and Budget (OMB), the Trustee, and other Executive Branch officials agreed that the transfer of funds from the Courts to the Trustee was excessive, and ultimately, $2.8 million was transferred back to the Courts ($1.1 million through a grant on August 7, 1998, and $1.7 million pursuant to Congressional legislation on October 8, 1998, PL. 105-245 [H.R. 4060] Section 507. In addition, Congress authorized the payment of $4.1 million in FY 1999 for the payment of claims under CJA/CCAN for the prior year.

Although the Courts reduced spending in an effort to meet this exigency, as a practical matter, it was impossible to make up the full $11 million and at the same time continue essential constitutionally and statutorily mandated functions. Confronted with these extraordinary circumstances, the Courts, among other measures, requested a supplemental appropriation on March 13, 1998 as contemplated by 31 U.S.C. § 1515 (b)(1). The Courts' budget estimates had been submitted before the passage of the Revitalization Act, and there were increased costs which were not included in the submission as a result, thus making applicable § 1515 (b)(1)(a). The constitutional and statutory functions, in the Courts' opinion, constitute the types of governmental functions which may continue where there is a budgetary shortfall in the interest of the protection of the public health and safety as provided for in 31 U.S.C. § 1515 (b)(1)(B). Under these provisions of the U.S. Code, the necessity for a deficiency or supplemental budget request does not violate the ADA.

Because of the size of the unintended budgetary shortfall, the Courts were confronted with a situation where only two alternatives were available to cover the enormous gap and avoid expenditures beyond the FY 1998 appropriation: (1) the furlough of Court employees which would result in the disruption of critical essential court functions; or (b) the deferral of payment of certain court-appointed attorney costs in accordance with a long-standing ADA exception. It was the

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judgment of Court officials that a furlough of employees from the Courts would be detrimental to the administration of justice, and therefore the health and safety of the community. In addition, OMB had instructed the Courts not to effect savings through personnel costs.

When it appeared during FY 1998 that relief would not be achieved in time to avoid a deficiency, the Court officials determined that they were compelled to utilize another statutory exception to the ADA. As indicated above, this statutory exception has appeared in every D.C. Appropriations Act since 1976. It allows for claims for counsel fees approved in one fiscal year to be paid in a subsequent fiscal year. The legislative history of the District of Columbia Appropriations Act, 1976 (Pub. L. No. 94-333) reflects that the reason Congress authorized the payment for legal representation in prior fiscal years out of a subsequent year's appropriation was to cover a budgetary shortfall from the prior year. The written statement of Arnold Malech, the Executive Officer for the D.C. Courts at the time, states the following with respect to the request for the authority which Congress granted:

> As a result of the vastly increased number of criminal prosecutions in the local courts this calendar year, all of these branches of the District government have recognized that the budget estimate for the first year was quite inadequate and have agreed upon the substantially larger figure requested for this purpose in fiscal year 1976, with the recommendation that the subcommittee will include in the appropriation bill it reports out, a proviso that will enable the District to charge against such appropriation whatever sums are needed to pay vouchers approved by the courts for services rendered pursuant to appointments in the prior fiscal year.

District of Columbia Appropriations for 1976: Hearings on H.R. 13965, Subcommittee on District of Columbia Appropriations, 94th Cong. 222 (1975).

In FY 1998, the Courts were confronted with comparable unforeseen and extraordinary circumstances. It was in order to **avoid** an ADA violation that the Courts used this statutory exception to cover the severe budgetary shortfall. Nothing in the legislative history of the succession of Appropriations Acts since 1976 (including the FY 1999 Act, Pub. L. No. 105-277, section (c), repeating this authorization) states or implies that the Courts may not cover a shortfall in funds or budget estimates through utilization of this provision. This authority to pay prior years' obligations from the current year provides the legal authorization, referenced in the statute, for payment in a subsequent year without violating ADA. *See* 31 U.S.C. § 1341 (a)(1)(B).

The Courts' position on this issue does not logically extend to a conclusion that the Courts could have spent the entire appropriation on operations and deferred all the court-appointed attorney

costs. It simply means that, when confronted with extraordinary circumstances as outlined above, the statutory framework allows the Courts a means by which to address the exigency without violating the ADA, in this case, until legislative actions could be taken to remedy this shortfall.

The Draft Report overstates the very limited relevance of a modest pay increase granted non-judicial employees early in FY 1998 to the budget shortfall. The report states that the Courts provided employees with a 7% pay increase. (Draft Report, p. 3.) At the time of the increase, the average differential between the Courts' pay scale and federal rates of pay was more than 18%. Court officials had reason to believe that funding would be available to cover the modest cost impact. Therefore, following nearly a decade of no salary increases, the Courts did provide non-judicial employees a 7% pay increase in FY 1998, but the fiscal impact of this raise amounted to only a 5.7% increase because it did not become effective until December 7, 1997, three months after the commencement of the fiscal year. The cost of the pay raise could not begin to cover the enormous budgetary gap or alter the requirement for the deferral of payments for certain CJA/CCAN services. Therefore, it is misleading to convey the impression that it was this modest salary increase for employees which brought about the conditions which necessitated the deferral of CJA/CCAN payments during the latter part of FY 1998. This impression should be corrected.

While the Courts do not claim that the cause of the shortfall nullifies the prohibitions in the Antideficiency Act, a fair understanding of the Courts' response requires a full presentation of the facts underlying the origin of the crisis and the magnitude of the shortfall. As is clear from our May Submission, as well as from the facts outlined herein, the Courts did in fact "take all reasonable steps to manage the account within the amounts appropriated." It was simply impossible to continue essential court operations and avoid an ADA violation without deferring payments in the only area specifically authorized by law.

III. The Courts' Response to the FY 1998 Budget Crisis

On page 3 of its Draft Report, the GAO states that "DC Courts did not prepare and execute a budget based on amounts appropriated for fiscal year 1998," and on page 11 reiterates that "DC Courts did not develop such a plan." The Draft Report goes on to state that after learning that their appropriation would result in a substantial shortfall for its anticipated obligations, the Courts

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continued to authorize expenditures in FY 1998 in the expectation that they would receive supplemental funding.[8] These statements fail to take into account that the Courts adopted a series of measures in an attempt to respond immediately to the FY 1998 budgetary crisis, and imply that the Courts failed to act responsibly in accordance with their legal obligation to authorize expenditures only within the limits of their appropriation. In fact, the Courts *did* adjust their spending plans during FY 1998 as a result of the unanticipated shortfall in the appropriation. As described in the May Submission, the Courts reduced discretionary expenditures by a total of more than $3 million. This fact and other information should be included in the final report.

Although a large portion of the budgetary shortfall was absorbed through cost-savings measures instituted by the Courts throughout the year, it was not possible to effect savings sufficient to make up for a shortfall of more than $11,000,000. The Courts' budget supports functions and activities that are largely mandatory in nature. In the Superior Court, for example, over 75% of the FY 1998 budget ($52,196,000 of $68,813,000) was allocated for pay for judicial and non-judicial personnel. Indeed, out of the Courts' total appropriation, only 19% comprises non-personnel services, and one-half of these amounts are used for statutorily mandated fees and services (e.g. interpreter services and witness and juror fees). Thus, the Courts could not responsibly have relied solely on a reduction in discretionary expenditures to cure the unanticipated FY 1998 shortfall. For this reason, the Courts immediately sought other ways to help correct the unintended underfunding.

One important measure was to identify immediately the nature of the problem for the Administration and Congress and to secure a much justified adjustment. The Draft Report does not accurately characterize the nature of the communications between the Courts and both the OMB and members of Congress during FY 1998. The report states that these letters "reflect[] DC Courts officials' expectations of receiving additional resources." (Draft Report, p. 11). This statement ignores the content and tone of these letters, which were designed to raise a warning flag to the OMB and to Congress that, through no fault of their own, the Courts were faced with a severe funding crisis that could only be solved by one or more unusual and difficult measures, <u>one</u> of which was to

[8] *See* Draft Report, pp. 11-12.

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receive a supplemental appropriation. It was simply not the case, and it is not accurate to imply, that the Courts waited for the problem to be solved for them. The Courts adopted a number of active cost-reduction measures, and based on directives received from the OMB, stopped just short of the ultimate such measure, namely, a furlough of its full-time employees with the consequential result of disruption of essential governmental functions.

Members of the Joint Committee and the Executive Officer and his staff spent a significant amount of time working with the Administration, the Congress and the Trustee throughout the year to address these funding issues and to secure the adjustments which ultimately came, but too late to avoid the extreme action which the Courts were forced to take. The Courts did receive some modest relief in the form of transfers from the Trustee. Towards the end of FY 1998 and at the beginning of FY 1999, $2.8 million was returned to the Courts from the Trustee: $1.1 million in August 1998, which allowed the Courts to function through the end of the fiscal year, and $1.7 million in October 1998 which allowed the Courts to pay some of the deferred court-appointed attorney claims. Nevertheless, absent a complete supplemental appropriation, the Courts were faced with only two measures that could alleviate the funding crisis: (a) to furlough employees, and (b) to defer payment on certain CJA/CCAN services. The Office of Management and Budget directed the Courts not to use personnel costs (furloughs) to make up the FY 1998 budgetary shortfall. Consequently, the Courts, at the end of July 1998, reluctantly implemented the only remaining option, deferral of payments to court-appointed attorneys.

The Courts and the community benefit greatly from the dedication of these CJA/CCAN lawyers, who continued to provide quality services for indigent clients under the CJA, CCAN and Guardianship Program during the Courts' 1998 fiscal crisis. However, as further explained below and in the May Submission, the Courts rightfully decided that the only lawful way to deal with the budgetary shortfall in FY 1998 was to defer certain payments related to these services until FY 1999. Therefore, the Courts respectfully request the GAO to modify its Draft Report to include a full account of the active cost reduction measures immediately adopted by the Courts in response to the shortfall in the appropriation.

IV. Adjustments for CJA/CCAN Payments

The Draft Report adds the $4.1 million of CJA/CCAN costs that were paid by the Courts in FY 1999, in accordance with the Courts' FY 1999 Appropriation, to the Courts' FY 1998 obligations.[9] GAO provides as reason for this adjustment that these amounts were not unexpected, and therefore, the Courts had no right to defer them for payment in FY 1999. Based on this adjustment, the Draft Report concludes that DC Courts must investigate and report an "apparent over-obligation of its fiscal year 1998 appropriation." Draft Report, p. 27. In taking this position, the GAO does not address the extensive legal analysis of the CJA/CCAN appropriation provided in the May Submission. While acknowledging that Congress has long recognized the unpredictability of CJA/CCAN payments, and that this unpredictability has led Congress consistently to enact the CJA/CCAN proviso and thereby to allow current year funds to be used to make payments relating to CJA/CCAN services rendered in a prior year, the Draft Report imposes an additional requirement which has never existed in the CJA/CCAN proviso. The ability to use a current year's CJA/CCAN appropriation for CJA/CCAN services rendered in a prior year has never been conditioned upon the level of the prior year's services being "unexpected." Instead, the CJA/CCAN proviso has, in every year since its 1976 inception, allowed for the payment of prior year CJA/CCAN costs irrespective of the level of those costs or their relation to the prior year's appropriation.

The Draft Report also overlooks the fact, which was discussed in the May Submission, that the time at which CJA/CCAN claims are submitted or approved does not explain the need for the CJA/CCAN proviso in the Courts' annual appropriation. Late claims can be paid out of the funds for the year in which the services were rendered, if such funds were not fully depleted. If they were fully depleted, then *necessarily* the CJA/CCAN costs must either have been a violation of the Antideficiency Act, or, by virtue of the CJA/CCAN proviso, must constitute an *exception* to the Antideficiency Act. Because the CJA/CCAN proviso has been enacted in every DC Courts' appropriation since 1976, it is clear that the only accurate reading of the law is that it constitutes an exception to the Antideficiency Act.

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[9] *See* Draft Report, p. 12.

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The Draft Report parses the intent of Congress much too finely. In effect, the report states that, by enacting the CJA/CCAN proviso, Congress authorizes funds for costs relating to services performed in a prior year for which all funds were already obligated, but that this *authorization* does not *entitle* the Courts to defer payment of those costs. But it simply is not reasonable for there to be authority to do something but no right to do it. The clear import of the traditional CJA/CCAN proviso, therefore, gave both the authority and the right to the DC Courts to defer these payments.[10] If that were not the case, Congress clearly could have so indicated. It did not in FY 1999, nor did it in any of the prior appropriations containing the CJA/CCAN proviso.

In support of its unwillingness to see a deferral right contained in the CJA/CCAN proviso, the report argues that such a right would "undermine Congressional control of DC Courts' appropriations." (Draft Report, p. 20). The argument here is that the CJA/CCAN proviso, properly understood, would allow the Courts to defer *all* CJA/CCAN payments from one year to the next in order to use funds designated for those costs for other projects, and that this right would therefore undermine Congressional control of the Courts' budget. This argument is wrong, for two obvious reasons. First, Congress does not generally require agencies to spend specific funds on specific portions of their budgets, even if the formal budget submitted in the appropriation process itemizes certain expected expenditures. *See* May Submission, p. 24. Second, Congress can easily reverse this normal rule whenever it wishes—as it in fact did by specifically identifying the funds the Courts could spend on CJA/CCAN costs from its FY 1999 appropriation—and this Congressional reversal in no way contradicts the natural and necessary meaning of the CJA/CCAN proviso.

The specific level of CJA/CCAN costs is therefore not a prerequisite for use of the CJA/CCAN proviso unless Congress has expressly required that certain appropriated funds be used *only* for CJA/CCAN expenditures (as was done in FY 1999, but *not in FY 1998, nor in earlier years).* Nevertheless, it is also worth emphasizing that the Draft Report does not fairly characterize the level of CJA/CCAN expenditures in FY 1998. The report states that the level was "similar to those in fiscal year 1997 and the estimates for fiscal year 1998." In fact, as of mid-year in FY 1998,

[10] The Draft Report notes in footnote 21, page 19, that the FY 1999 Appropriation was passed after the Courts deferred the CJA/CCAN payments. This fact in no way detracts from either the ability of the DC Courts to rely on the traditional CJA/CCAN proviso, or from the clear endorsement of this reliance that actually was contained in the FY 1999 Appropriation.

the level of CJA/CCAN expenses was $16.9 million, indicating an annual level of obligations that would be up to $3 million more than in FY 1997, and up to $6 million more than in FY 1996. While the ultimate level incurred in FY 1998 may not have represented a significant increase from the prior two years, the report is wrong to ignore the fact that at the time the Courts were forced to decide how to deal with their budgetary shortfall, there were very good grounds for concluding that a deferral of CJA/CCAN costs could in no way be avoided. At any rate, these costs are inherently unpredictable, and therefore, pose a greater risk to the Courts' budget even in a normal years. In a crisis year, such as FY 1998, the unpredictability of the CJA/CCAN costs and the necessity of avoiding a furlough of permanent employees combine to make use of the CJA/CCAN proviso entirely reasonable and justified.

Finally, the Draft Report did conclude, in accordance with the findings it had expressed to DC Courts throughout the audit, that CJA/CCAN payments were made "in accordance with established policies and procedures." Draft Report, p. 4. While the Draft Report makes certain suggestions for improving the documentation of these expenditures, it does not allege any failure to comply with policies and procedures. This point needs emphasis in the Draft Report, rather than being de-emphasized by inclusion in a lengthy and inconclusive discussion of recommended improvements in the administration of the CJA/CCAN programs.

Thus, based on reasons set forth more fully in the May Submission, the DC Courts respectfully request GAO to reconsider its assertion that the Courts had no right to defer $4.1 million in costs associated with CJA/CCAN services from FY 1998 to FY 1999. This deferral was in direct keeping with the traditional CJA/CCAN proviso, and was endorsed by Congress in the FY 1999 Appropriation.

V. Interest

Based on the express terms of an act of Congress, the DC Courts received quarterly payments from the United States Treasury in FY 1998, and each payment was approved by the OMB. The lawfulness of the receipt of these quarterly appropriations is not in doubt, nor is the lawfulness of the retention or expenditure of these amounts. However, because the Home Rule Act provides that the Courts cannot spend funds other than those approved for the Courts by an act of Congress, the

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GAO surmises in the Draft Report that the Courts had no right to deposit these quarterly apportionments into interest-bearing accounts, and should transfer all interest so earned back to the U.S. Treasury from whence came the underlying appropriation. (*See* Draft Report, pp. 14, 27.)

While the Courts' ability to obligate or expend funds is limited by the Home Rule Act to amounts authorized by Congress, it is a substantial leap from that rule—which prevents the Courts from seeking alternative funding sources that lie beyond Congressional control—to a rule that prohibits the Courts from earning interest on funds that Congress gave the Courts prior to expenditure and using such interest to pay court expenses. Congress clearly authorized the payment of the Courts' appropriations in quarterly apportionments in advance of actual expenditures. It was a natural, if not inevitable, consequence that the Courts would have derived some interest income from the manner in which Congress directed that payments be made. Given the inevitability of such interest, if Congress intended for such interest to be paid back to the U.S. Treasury, there would have been some indication to that effect. Having remained silent on the matter of interest, and given that Congress must have understood that the "time value" of the funds it advanced to the Courts, the natural interpretation of the statutory scheme is that any interest received remains with the Courts. The present circumstances are quite distinguishable from other circumstances in which GAO has in the past concluded that interest earned by an agency must be returned to the Treasury.

Moreover, as the Draft Report acknowledges, the amendment to the Home Rule Act added by the Revitalization Act, which provides that "moneys received by DC Courts be deposited in the United States Treasury or the Crime Victims Fund," refers "to funds received from non-federal sources, such as fines and fees." (*See* Draft Report, p. 14, n. 12). The thrust of this provision is in keeping with the spirit of the Home Rule Act, which requires that the Courts remain under the fiscal control of Congress—a principle which is in no way compromised by taking the natural and unsurprising step of depositing quarterly advances made in accordance with the express will of Congress into interest-bearing accounts. The small amount of interest that resulted was neither a threat to Congressional control, since it was implicit in the quarterly advances, nor a material alteration of the Courts' operating budget, of which it represented less than .75%.

For these reasons, which are elaborated upon in the May Submission, the Courts request the GAO to revise its Draft Report to reflect that the interest earned on the quarterly advances

constituted funds obtained in accordance with Congressional will and not in violation of the legal obligations of the DC Courts. However, in light of GAO's position, the Courts are seeking legislation to authorize specifically the use of any interest earned on its appropriation for court operations.

VI. Additional Specific Responses

Following are the Courts' summarized responses to additional specific points in the different sections of the Draft Report.

A. Results in Brief

* As explained above, the 7% pay increase was in fact only a 5.7% pay increase,

* For fiscal year 1998, the Courts' available resources included Title IV-D and Title IV-E of the Social Security Act reimbursements, Trustee reimbursements, D.C. Department of Human Services reimbursements, and interest earned on quarterly apportionments. These funding sources were included in the Courts' FY 1998 spending plans prepared for the Office of Management and Budget (OMB), beginning in March and April 1998, and approved by OMB officials.

* According to court records, the D.C. Courts' obligations for fiscal year 1998 exceeded available resources by $4.1 million, reflected by the deferred payments to court-appointed attorneys, which were within the Courts' authority.

* The GAO correctly notes that "...D.C. Courts processed vouchers for court-appointed attorneys and expert-service providers in accordance with its policies and procedures." Draft Report, p. 21. In fact, the GAO found that 94% of all attorney claims were paid within 30 days of judicial approval and that very few, if any, CJA or CCAN vouchers were "lost" in the system. The GAO also found that judges or hearing commissioners reduced voucher amounts in only 9% of the cases, and that more than half of such reductions were of $100 or less. The Courts' performance in this area suggests that the GAO's concerns about the lack of policies regarding time frames and judicial documentation of voucher reductions are not warranted. Nevertheless, the Courts' performance in

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this area will be enhanced with the implementation, later this year, of an automated CJA/CCAN voucher tracking and monitoring system which has been under development at the Courts for several years.

B. Impact of Revitalization Act

* It is misleading to make the following statement without clarifying that it only relates to the transfer of the adult probation function from the D.C. Courts to the Offender Supervision Agency: "[u]nder the Revitalization Act, the federal government took over certain financial responsibilities and roles previously held by D.C. Courts under the Court Reform Act. Some activities became federal government responsibilities, while others remained local government activities funded with federal dollars." Draft Report, pp. 5,6.

* It is also important for the GAO to clarify that while the Revitalization Act transferred the adult probation function, including all funds and personnel to the Trustee, the D.C. Courts continued until March 1998 to incur all personnel costs and most operating costs for adult probation. Moreover, the Courts continue to this day to incur many adult probation costs for which the Trustee continues to reimburse the Courts.

C. Court-Appointed Attorneys

* While the GAO's description is generally accurate, it should be noted that *all* parties in child abuse and neglect cases, including children as well as their parents, either individually or as a couple, are entitled to CCAN representation.

D. D.C. Courts' Spending Plan and Obligation of Funds

* During fiscal year 1998, the D.C. Courts and the General Services Administration prepared and transmitted spending reports (S.F. 133 reports) to the Congress on a monthly basis, beginning December 31, 1998, in compliance with the reporting requirements prescribed in the fiscal year 1998 Appropriations Act.

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* At the request of the Office of Management and Budget the D.C. Courts developed and updated spending plans and incurred obligations in accordance with those plans, including the use of interest earned on appropriations. It is, therefore, misleading for the GAO to state that the "DC Courts did not develop such a plan." Draft Report, p. 11.

* It is also misleading for the GAO to state that the Courts "obligated throughout the year based on its expectation of receiving additional funds." Draft Report, p. 11. On the contrary, the Courts instituted cost savings measures throughout fiscal year 1998, which enabled the Courts to reduce its budgetary shortfall from $11 million to $6.9 million by year's end.

* There was extensive contact and communication between the D.C. Courts and the Office of Management and Budget during the 1998 fiscal year, in contrast to the description provided by the GAO. Telephone conversations and meetings occurred routinely and frequently, and the OMB assured the Courts that the budget shortfall would be addressed. Throughout FY 1998, the OMB representatives discussed with the Courts what they termed "various funding vehicles" available in order to secure additional funds for the Courts, and worked toward that end.

* When the close-out of FY 1998 was completed, court records showed available resources of $121.8 million and obligations of $121.6 million – with $4.1 million in court-appointed attorney claims deferred and payment authorized from the FY 1999 appropriation. There are no other obligations outstanding for fiscal year 1998.

E. Adjustments to Fiscal Year 1998 Obligations and Resources

* There is no basis for adjusting the Courts' FY 1998 obligations and resources. Since Congress directed the Courts to pay the $4.1 million in court-appointed attorney deferrals from its FY 1999 appropriation, these charges must be, and have been, recorded as FY 1999 obligations.

* Further, as noted previously, the Office of Management and Budget was advised and sanctioned the Courts' use of interest income as an available resource from which to pay FY 1998 obligations.

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Therefore, this adjustment by the GAO is also unjustified.

* The statutory provisions of the Home Rule Act and the Revitalization Act do not, as suggested by the GAO, "support the general proposition that when the Congress appropriates funds for DC Courts, it establishes an authorized program level beyond which D.C. Courts may not operate." Draft Report, p. 14. The Courts annually operate several million dollars in excess of appropriations in order to support the federal Title IV-D and Title IV-E programs, for which the Courts are reimbursed.

F. Payments to Court-Appointed Attorneys: Voucher Processing Procedures

* GAO found that the D.C. Courts processed voucher payments in accordance with its policies and procedures. This positive finding is buried in the Draft Report, as the report focuses instead on what the Courts do not do. Specifically, the GAO reports that the Courts do not have: timeframes for making payments; procedures for maintaining data on missing vouchers; and procedures for advising attorneys when vouchers are reduced.

* The fact is that GAO found that the Courts process 94% of the CJA/CCAN vouchers within 30 days of the judicial officers' approval. Although the development of timeframes might be a valuable exercise, it is certainly not required given the Courts' excellent performance in this area.

* Discussion and comments regarding the federal Prompt Payment Act and its implementation by the Courts should be excluded from this report. As stated in The Report on page 22, "For fiscal year 1998, D.C Courts was not subject to the federal Prompt Payment Act or the District Quick Payment Act." Therefore, this issue is outside the scope of GAO review. Further, it improper for GAO to speculate on the Courts' adherence or ability to adhere to the mandates to which the Courts were clearly not subject.

* Regarding a mechanism for tracking vouchers from acceptance to the due date, it should be noted that the D.C. Courts have been developing an automated voucher tracking and monitoring system

which will maintain information on vouchers from the time they are issued to the time they are paid. The new system is expected to be completed and implemented this calendar year, and will give the Courts the ability to better project future CJA/CCAN expenses. It will also assist the Courts in determining the status of vouchers have been identifying their location.

* While the GAO criticizes the Courts for not having "procedures covering how judges or hearing commissioners were to report [the decision to reduce payments] to the attorney or provider" (Draft Report, p. 25), none are required. The GAO found that judicial officers reduced voucher amounts in only 9% of all cases, with over half of the reductions being for $100 or less. There is no statutory requirement that judges must notify claimants of payment adjustments and, in practice, adjustments are so infrequently made that it is not a significant issue. Such information can and is made available to attorneys, upon request.

G. Crime Victims Compensation Program

* The GAO reports that there is no federal law authorizing the Courts to make payments to crime victims from the Crime Victims Fund. However, when the program was transferred to the Courts from the D.C. Department of Human Services, in March 1997, the U.S. Justice Department assisted with the transfer and advised the Courts that the transfer of authority was adequate.

VII. Conclusions

1. It is unfair and incorrect for the GAO to reach the conclusions stated in the Draft Report without recognizing that the primary cause of the FY 1998 "difficulties in planning and budgeting" was the severe underfunding of the D.C. Courts resulting from the deduction of $8 million from their appropriation that was not properly attributable to the adult probation function. It is likewise incorrect, as we have demonstrated, to conclude that the Courts even "potentially" violated the Antideficiency Act.

2. The D.C. Courts' management properly executed its responsibility in FY 1998, it

implemented cost savings measures, sought supplemental funding, and worked tirelessly with administration officials to remedy the error which resulted in the D.C. Courts' underfunding. The temporary deferral of payments for CJA/CCAN services, while regrettable, was both lawful and undertaken in complete good faith.

3. While the Courts are always looking for ways to enhance the processing of court-appointed attorney vouchers, and are currently completing the development of an automated system, there is no basis from which to determine that the Courts need to revise procedures in this area. As the GAO learned, court-appointed attorneys are paid timely by the Courts (94% are paid within 30 days of judicial approval), their claims are seldom reduced (91% of the vouchers are paid in full), and vouchers are rarely lost (less than 1% loss rate). The implementation of the Courts' automated CJA/CCAN Voucher System later this year will address GAO's recommendation regarding the logging of vouchers, as the new system will track vouchers from the date of issuance.

4. Given GAO's position, the Courts intend to seek clarifying legislation to specifically authorize the Courts to use interest earned on its appropriation.

5. Given GAO's position, the Courts intend to seek clarifying legislation to specifically authorize the Courts to authorize payment of eligible claims from the Crime Victims Fund.

6. Finally, the Courts have already investigated, and analyzed the GAO's allegation of a possible ADA violation. As explained in its May Submission, and elaborated on in this Response, the Courts did not violate the ADA in deciding to defer payment for certain CJA/CCAN services, nor in earning interest on certain quarterly apportionments of its appropriation. Nevertheless, the Courts have already prepared formal letters to the President and to both Houses of Congress, in

accordance with OMB Circular A-34, § 22.8,[11] that will be sent in the event that a final GAO Report continues to allege a possible violation of the ADA. These letters will discuss the disagreement between the Courts and the GAO, and will directly attach the May Submission, and will also likely reference this Response to the Draft Report, in an effort to ensure that the position of the Courts is well understood.

[11] The Courts believe they have already substantially complied with any reporting obligation that might apply by virtue of OMB Circular A-34, through its several letters to the OMB, the Counsel to the President, and relevant members of each House of Congress. Nevertheless, the Courts have prepared the letters described above in order to provide full information to the President and Congress should GAO continue to assert a possible ADA violation.

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