

**District of Columbia Courts
FY 2010 Budget Justification
Defender Services**

As required by the Constitution and statute, the District of Columbia Courts appoint and compensate attorneys to represent persons who are financially unable to obtain representation under three Defender Services programs. The Criminal Justice Act (CJA) program provides court-appointed attorneys to indigent persons who are charged with criminal offenses.¹ The Counsel for Child Abuse and Neglect (CCAN) program provides the assistance of a court-appointed attorney in family proceedings in adoptions, where child abuse or neglect is alleged, or where the termination of the parent-child relationship is under consideration and the parent, guardian, or custodian of the child is indigent.² The Guardianship program provides for compensation to service providers in guardianship and protective proceedings for incapacitated adults.³ In addition to legal representation, these programs offer indigent persons access to services such as transcripts of court proceedings; expert witness testimony; foreign and sign language interpretation; investigations; and genetic testing.

Attorneys and experts who provide Defender Services submit vouchers to the D.C. Courts' Budget and Finance Division detailing the time and expenses involved in working on a case. Following administrative review and approval by the judge or magistrate judge presiding over the case, the voucher is processed for payment by the General Services Administration (GSA), which issues checks from the Defender Services appropriation.

Workload data

Table 1 provides actual and estimated data on the value of Defender Services vouchers received and paid in fiscal years 2005 through 2009.

¹ See D.C. Code §11-2601 *et seq.*

² See D.C. Code §16-2304.

³ See D.C. Code §21-2060.

Table 1
Defender Services Obligations and Outlays
(in millions of dollars)

	Actual 2005	Actual 2006	Actual 2007	Projected 2008	Enacted 2009	Request 2010
CJA						
Obligations	30.2	29.2	30.9	31.4	35.4	36.3
Outlays	25.7	25.4	26.8	26.0	31.0	34.0
CCAN						
Obligations	10.8	12.8	12.9	14.5	15.3	16.7
Outlays	10.0	11.2	11.4	12.0	13.6	15.0
Guardianship						
Obligations	1.3	1.5	1.7	2.0	1.7	2.0
Outlays	1.1	1.2	1.4	1.7	1.9	2.0
Totals						
Obligations	42.3	44.0	45.5	47.9	52.4	55.0
Outlays	36.8	37.8	39.6	39.7	46.5	51.0

FY 2010 Request

The D.C. Courts request \$55,000,000 for the Defender Services programs in Fiscal Year 2010. This request consists of \$36,300,000 for CJA; \$16,700,000⁴ for CCAN; and \$2,000,000 for Guardianship (see Table 1 above). The requested amount represents a \$2.6 million increase above the FY 2009 enacted level to continue phasing-in the hourly rate increase to \$90.

In fiscal 2008, the Congress financed an hourly rate increase for attorneys to \$80, and to \$90 in FY 2009. Because attorneys representing indigent defendants in similar matters at the U.S. District Court across the street from the D.C. Courts are paid over \$100.00 an hour, the Courts have sought to promote equity in the quality of legal services provided to all District of Columbia residents, regardless of economic status, and to ensure that highly qualified, adequately compensated attorneys are appointed to represent abused, neglected, and adoptive children, their parents, mentally incapacitated individuals, and indigent defendants under all of the Defender Services programs. It is also envisioned that efficiencies would be realized by maintaining the best qualified representation for indigent clients.

Although the hourly rate increase is included in the FY 2009 appropriation, a large number of vouchers are submitted for payment during fiscal years following appointment. Accordingly, additional funds would be required in FY 2010 to implement fully the hourly rate increase to \$90. Table 2 below contains cost estimates for obligations in FY 2009 through FY 2011.

⁴ It is noted that \$4,500,000 of this requested level is for contractual services to provide guardians ad litem to abused and neglected children in the District of Columbia Family Court.

Table 2
CJA, CCAN, and Guardianship Hourly Rate Increase
(Expressed as projected obligations)

	<i>Enacted</i> <i>FY2009</i>	<i>Requested</i> <i>FY 2010</i>	<i>Estimated</i> <i>FY 2011</i>
Base Program			
CJA (\$80/hour)	\$31,864,000	\$30,900,000	\$30,900,000
CCAN (\$80/hour)	14,456,000	15,345,000	15,345,000
Guardianship (\$80/hour)	<u>1,655,000</u>	<u>1,730,000</u>	<u>1,730,000</u>
<i>Subtotal, Base program</i>	<i>47,975,000</i>	<i>47,975,000</i>	<i>47,975,000</i>
Hourly Rate Increase (to \$90/hour)			
CJA	3,500,000	5,400,000	5,400,000
CCAN	900,000	1,400,000	1,400,000
Guardianship	<u>100,000</u>	<u>225,000</u>	<u>225,000</u>
<i>Subtotal, Hourly Rate (cumulative)</i>	<i>4,500,000</i>	<i>7,025,000</i>	<i>7,025,000</i>
Total, Defender Services	\$52,475,000	\$55,000,000	\$55,000,000

In addition, the Office of the Attorney General for the District of Columbia commenced filing petitions in FY 2006 for the appointment of guardians to make health care decisions for persons who are under the care of the Mental Retardation and Developmental Disabilities Administration, MRDDA. These filings emanated from the *Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005*, which became effective October 28, 2005. Based on an analysis of the foregoing, it appears that the resulting new cases created will continue to increase obligations from the Guardianship Fund. The impact on the Fund results from the mandatory appointment of counsel and a guardian in these cases. Guardians *Ad Litem* may be appointed as well. If so, the fiscal impact will be slightly greater.

Increased efficiencies in attorney payment processing contribute to the increased Defender Services outlays by accelerating payments and moving them from succeeding fiscal years into the current fiscal year. In fiscal year 2000, only 40% of attorneys were appointed to a case and paid in the same year. Revisions in the CJA Plan permit attorneys to submit vouchers at earlier stages in the case and to submit guideline vouchers (flat fees per case).

In addition, as a result of these revisions and business process reengineering, the time between appointment to a case and payment of the voucher is compressed, producing an increase in the number of vouchers that are expected to be submitted in Fiscal Years 2009 and 2010, resulting in a significant increase in expected outlays.

Moreover, the enactment of the *Innocence Protection Act of 2001* produced an increase in expert services costs related to DNA testing of biological material pertaining to a defendant's case, which, coupled with rising crime rates in the District of Columbia, places fiscal pressures on the

account and renders even more critical the retention of existing reserves in the Defender Services account.

The Courts expect to enhance current electronic voucher capabilities by implementing a web-enabled process for the issuance and submission of vouchers. It is envisioned that the efficiencies realized from this process will expedite the submission and processing of vouchers, which will further accelerate the amount of outlays in the subject fiscal year.

Assuming that the Courts receive the full funding requested for FY 2010, it is envisioned that outstanding liabilities, as well as any increases in outlays resulting from the foregoing can be borne from the remaining carryover balance in the Defender Services account.

Projecting Resource Requirements

Predicting program obligations has been difficult because attorneys submit claims for reimbursement only after the conclusion of a case, which may be years after their appointment to a case. To quantify the time lag between attorney appointment and payment, the Courts analyzed CJA expenditure data for the five-year period from 1995 through 1999. This analysis revealed that in any given year, the Courts make payments to attorneys who were appointed to CJA cases up to six years earlier.

Since its inception, the difficulty in projecting resource requirements for the CJA program has led to budgetary shortfalls, supplemental appropriations, legislative authority to pay prior year claims from current year appropriations, and the need to augment the CJA appropriation with funds from the Courts' already strained operating budget. Beginning in FY 2000, Defender Services funds are available until expended, permitting any excess funds from one year to be available to cover increased program costs in later years.

The KPMG Methodology

KPMG analyzed a representative sample of 180 CJA vouchers identified previously by the Government Accountability Office (GAO) to compare the Courts' outlays in any given year for CJA vouchers with the year of attorney appointment. This sample included information on the type of case, dates of attorney appointment and payment, and the amounts claimed and paid. KPMG found that only 40% of all outlays were for vouchers submitted by attorneys who were appointed in the same year, and 31% of all outlays were for vouchers submitted by attorneys appointed in the previous year. Using KPMG's methodology for the FY 2000 CJA expenditures of \$25.4 million, \$10.2 million (40%) were to pay attorneys who were appointed in FY 2000; another \$7.9 million (31% of the total) were to pay attorneys who were appointed in FY 1999. The seven-year payment pattern is presented in Table 3.

Table 3
CJA Outlays by Year of Attorney Appointment

<u>Year of Appointment</u>	<u>% of CJA Outlays</u>
0	40%
-1	31%
-2	17%
-3	5%
-4	5%
-5	1%
-6	1%

Source: KPMG analysis of GAO sample of CJA vouchers.

Estimating FY 2010 Resource Requirements

The Courts applied the outlay percentages determined by KPMG to the expected FY 2009 payments to produce a FY 2010 budget request estimate. Using actual CJA expenditure data for the Fiscal Years 2004 through 2007 and projections of expenditures for Fiscal Years 2008 through 2009, FY 2010 expenditures are projected to be roughly \$35.0 million that can be attributed to current-year and prior-year appointments (see Table 4). This estimate, when considered with actual expenditure data, represents total CJA obligational authority needed to liquidate all vouchers that we project could be submitted in FY 2010 by attorneys who were appointed to cases in Fiscal Years 2004 through 2010.⁵

⁵ Given the data limitations on the outstanding liability associated with case assignments and vouchers not yet submitted for payment, this methodology uses annual expenditures as a proxy for annual obligations.

Table 4
CJA Estimated Resource Requirements in FY 2010
(in millions of dollars)

Year Attorney Appointed	Total Expenditures	FY 2010 Expenditures Attributed to Appointment in Fiscal Year							Total Projected FY 2010 Outlays
		2010	2009	2008	2007	2006	2005	2004	
FY 2010	35.0	14.0 (40%)							
FY 2009	31.0		10.85 (31%)						
FY 2008	26.0			5.95 (17%)					
FY 2007	26.8				1.75 (5%)				
FY 2006	25.4					1.75 (5%)			
FY 2005	25.7						0.35 (1%)		
FY 2004	23.5							0.35 (1%)	
									35.0 (100%)

Accrued, Unpaid CJA Liabilities (Obligations)

In addition to estimating the FY 2010 budget authority needed to pay CJA vouchers submitted by attorneys appointed in Fiscal Years 2004 through 2010, the KPMG methodology may be used to estimate yet-to-be submitted vouchers, or outstanding liabilities of the CJA program. KPMG concluded that, if 40% of all CJA payments in year one were for vouchers submitted by attorneys who also were appointed in year one, then 60% of all obligations for attorney vouchers in that year must be outstanding. Similarly, if 31% of all outlays are to pay vouchers from attorneys who were appointed in the prior year, then 29% of voucher obligations from year two remain unpaid (100% - (40% + 31%)). The seven-year unliquidated liabilities stream estimated by KPMG appears in Table 5 below.

Table 5
Estimated Outstanding CJA Liability in FY 2010

<u>Year of Attorney Appointment</u>	<u>Total Outlays (\$ Millions)</u>	<u>% Not Paid</u>	<u>Outstanding Liability (Total Obligations) (\$ Millions)</u>
0 (FY 2010)	35.0	60%	21.0
-1 (FY 2009)	31.0	29%	9.0
-2 (FY 2008)	26.0	12%	3.1
-3 (FY 2007)	26.8	7%	1.9
-4 (FY 2006)	25.4	2%	.5
-5 (FY 2005)	25.7	1%	.3
-6 (FY 2004)	23.5	1%	.2
			<u>36.0</u>

The Courts assumption of the voucher issuance process, including the use of electronic systems, together with the implementation of tighter controls, rules and policies governing voucher issuance, retrieval, and submission, has further enhanced the Courts' ability to account for and project its Defender Services liabilities. As a result, the Courts anticipate that the previously established seven-year unliquidated liabilities stream will continue to be compressed in future fiscal years and almost all of the outlays under the Defender Services programs will be made within two years of the appointment of counsel. Therefore, future projections will be based on a revised methodology, taking into consideration the anticipated liabilities stream.