

The logo for the New York City Bar Association, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

# NEW YORK CITY BAR

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## REPORT ON THE 2014 FEDERAL JUDICIARY BUDGET

The New York City Bar Association (“NYCBA”) respectfully urges you to ensure that the Federal Judiciary receives sufficient funding in the 2014 fiscal year. A 2014 budget or continuing resolution that merely continues funding for the federal courts at the reduced levels required by the March 1, 2013 sequestration would be unacceptable. While the additional \$51 million in funding provided by the anomalies for the Judiciary and Defender Services in the October 17 Continuing Resolution provided some welcome relief, that amount is not nearly sufficient to restore the federal courts’ ability to continue to operate at adequate levels, to protect the constitutional rights of defendants before the courts, and to protect public safety in criminal cases.

The March 1, 2013 sequestration cuts have taken a painful toll on the federal courts and their ability to administer justice, in New York and nationwide. Sequestration cut nearly \$350 million from appropriations to the Judiciary in the 2013 fiscal year. These cuts have been felt sharply. Unlike the executive branch, which can eliminate funding to grants and projects, the Judiciary does not have any control over its workload and does not have any significant programs to postpone or discard. Instead, reductions to the Judiciary’s budget mean eliminating staff positions and laying off or furloughing people whose jobs are essential to the normal functioning of our federal court system and to the protection of constitutional rights and public safety in criminal cases. In fact, as of this September, the Judiciary has been forced to downsize by 1,000 staff members and has forced employees to take furloughs equivalent to 4,500 days.<sup>1</sup>

These cuts have had a direct impact on public safety. The personnel terminated or furloughed include court security officers and probation officers. The number of convicted felons under the supervision of federal probation officers is at a record high and continues to increase. At the same time, there are fewer officers to ensure offenders are complying with their probation obligations and reintegrating into society.<sup>2</sup>

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<sup>1</sup> See “Fact Sheet: Sequestration and the Federal Judiciary”, U.S. Courts, *at* <http://news.uscourts.gov/content/fact-sheet-sequestration-and-federal-judiciary> (last visited Dec. 2, 2013).

<sup>2</sup> The budget for related programs in drug testing, drug treatment, and mental health treatment was also reduced by 20%, leading to offenders being removed from these programs and further exacerbating this problem. *See id.* Additionally, the cost of devices like GPS monitoring bracelets has forced probation staff to ration their use. *See* “Effects of Sequestration on Specific Federal Courts”, American Bar Association, July 24, 2013, *at* [http://www.americanbar.org/content/dam/aba/uncategorized/GAO/effects\\_of\\_sequestration.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/GAO/effects_of_sequestration.authcheckdam.pdf) (last visited Dec. 2, 2013).

These reductions in staffing have also interfered with the normal operations of the federal courts and slowed the resolution of cases. For example, the Western District of New York has been forced to stop hearing criminal trials on Fridays; the Eastern District of New York was forced to halt jury trials entirely during the month of August; and the Bankruptcy Court for the Southern District of New York has been forced to stop proceedings at 5:00 p.m. sharp each day, to avoid paying overtime for staff, even though this court handles some of the biggest and most complex “mega-bankruptcies” where there is often a pressing need for prompt resolution, and proceedings would ordinarily continue well into the evening.<sup>3</sup>

The greatest impact of the cuts to the Judiciary, however, has been on the funding for criminal defense services. The courts obviously have no control over the number of criminal defendants brought before the court, and each of them has a constitutional right to effective legal representation. As a result, to meet the sequester budget cuts, federal defenders offices have had to cut staff, and the Defender Services have lowered and deferred payments to private attorneys who have been appointed to represent criminal defendants in particular cases.<sup>4</sup> Staffing at the Federal Defenders of New York is now a full 15% below the level of a year ago, which has inevitably slowed the ability of the courts to handle criminal cases. In addition, attorneys who were not terminated were furloughed for an average of 15 to 19 days between March 1 and the end of the fiscal year on September 30.<sup>5</sup> Federal Defender offices are also critically short on funds for training and outside case-related expenses. These budget cuts have forced federal defender offices to request stays in a number of criminal trials and to withdraw altogether from some resource-intensive representations.<sup>6</sup> Ironically, the reduction in full-time staff employed by the federal defenders has resulted in increased referrals to court-appointed private attorneys. Because these private attorneys receive hourly compensation, the result has been to *increase* the cost of providing constitutionally-required representation to criminal defendants. This is counter-productive and unsustainable.<sup>7</sup>

We understand the difficult work in negotiating the federal budget. But supporting the work of the federal judiciary is a fundamental responsibility of the federal government, is driven by constitutional mandates, and the courts do not have the ability to cut discretionary programs. We are gravely concerned that the courts will be unable to fulfill those constitutional mandates if the Judiciary does not receive significantly more funding in the coming year.

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<sup>3</sup> See American Bar Association *id.*

<sup>4</sup> Almost the entirety of the Federal Defender budget is spent on compensation for public defenders, compensation for court-appointed private attorneys, rent, and case-related expenses (interpreters, expert witnesses, etc.). See *supra* note 1.

<sup>5</sup> See *supra* note 1.

<sup>6</sup> The Federal Defender Office in New York, for example, asked for a stay in the trial of Sulaiman Abu Ghaith, alleged terrorist and son-in-law of Osama bin Laden.

<sup>7</sup> Deferment in private attorney payments means that eventually they also will be unable to take on these cases, and ultimately alleged offenders could be released on speedy trial grounds.