

**District of Columbia Courts
FY 2009 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 2004 through 2008.

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 2004	Actual 2005	Actual 2006	Estimated 2007	2008 Enacted	Request 2009
CJA						
Obligations	\$26.1	\$30.2	\$29.2	\$30.9	\$31.9	\$31.9
Outlays	\$23.5	\$25.7	\$25.4	\$26.8	\$26.0	\$26.0
CCAN						
Obligations	\$10.7	\$10.8	\$12.8	\$12.9	\$14.5	\$14.5
Outlays	\$ 8.2	\$ 10.0	\$11.2	\$11.4	\$12.2	\$12.0
Guardianship						
Obligations	\$1.3	\$1.3	\$1.5	\$1.7	\$1.7	\$1.7
Outlays	\$0.9	\$1.1	\$1.2	\$1.4	\$1.2	\$1.4
Totals						
Obligations	\$38.1	\$42.3	\$44.0	\$45.5	\$47.9	\$47.9
Outlays	\$32.6	\$36.8	\$37.8	\$39.6	\$39.4	\$39.4

FY 2009 Request

The Courts request \$47,975,000 for the Defender Services base programs in Fiscal Year 2009. This request consists of \$31,900,000 for CJA; \$14,500,000⁴ for CCAN; and \$1,655,000 for Guardianship (see Table 1 above). A request for additional funds to finance a rate increase is at page 8.

Beginning in FY 2006, the Office of the Attorney General for the District of Columbia commenced filing petitions 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 will continue to increase obligations from the Guardianship Fund. However, 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). As a result of these

⁴ It is noted that \$3,600,000 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.

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 2008 and 2009, 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 2008 and FY 2009, 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 2.

Table 2
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 2009 Resource Requirements

The Courts applied the outlay percentages determined by KPMG to the expected FY 2007 payments to produce a FY 2009 budget request estimate. Using actual CJA expenditure data for the Fiscal Years 2003 through 2006 and projections of expenditures for Fiscal Years 2007 and 2008, FY 2009 expenditures for CJA are projected to be roughly \$26.0 million that can be attributed to current-year and prior-year appointments (see Table 3). 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 2009 by attorneys who were appointed to cases in Fiscal Years 2003 through 2009.⁵

Table 3
CJA Estimated Resource Requirements in FY 2009
(in millions of dollars)

Year Attorney Appointed	Total Expenditures	FY 2009 Expenditures Attributed to Appointment in Fiscal Year							Total Projected FY 2009 Outlays
		2009	2008	2007	2006	2005	2004	2003	
FY 2009	26.0	10.40 (40%)							
FY 2008	26.0		8.06 (31%)						
FY 2007	26.8			4.56 (17%)					
FY 2006	25.4				1.27 (5%)				
FY 2005	25.7					1.29 (5%)			
FY 2004	23.5						0.23 (1%)		
FY 2003	22.6							0.23 (1%)	
									26.0 (100%)

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.

Accrued, Unpaid CJA Liabilities (Obligations)

In addition to estimating the FY 2009 budget authority needed to pay CJA vouchers submitted by attorneys appointed in fiscal years 2003 through 2009, 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 4 below.

Table 4
Estimated Outstanding CJA Liability in FY 2009

<u>Year of Attorney Appointment</u>	<u>Total Outlays (\$ Millions)</u>	<u>% Not Paid</u>	<u>Outstanding Liability (Total Obligations) (\$ Millions)</u>
0 (FY 2009)	26.0	60%	15.6
-1 (FY 2008)	26.0	29%	7.5
-2 (FY 2007)	26.8	12%	3.2
-3 (FY 2006)	25.4	7%	1.8
-4 (FY 2005)	25.7	2%	.5
-5 (FY 2004)	23.5	1%	.2
-6 (FY 2003)	22.6	1%	.2
			<u>29.0</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 of the foregoing, 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.

Ensuring Adequate Compensation for Defender Services

Table 5
Total Funding Required for Hourly Rate Increase by Program

Initiative Elements	Requested Increase
Increase in Hourly Rate – CJA Attorneys	\$ 3,550,000
Increase in Hourly Rate – CCAN Attorneys	900,000
Increase in Hourly Rate – Guardianship Attorneys	50,000
Total	\$ 4,500,000

Problem Statement. Adequate hourly rates are necessary for the Courts to attract a pool of highly qualified attorneys to represent the indigent and children and families in the District of Columbia. In FY 2008, Congress appropriated funds to increase the hourly rate paid to attorneys who participate in the District’s Criminal Justice Act (CJA) and Counsel for Child Abuse and Neglect (CCAN) programs to \$80. However, attorneys representing the indigent defendants in similar matters at the U.S. District Court across the street from the D.C. Courts are paid \$100 an hour. This disparity in compensation makes it difficult for the D.C. Courts to secure competent representation for these most vulnerable residents. Recent Court reforms to the CJA and CCAN programs, including revision of the CJA plan and the creation of attorney “panels” based on a comprehensive review of qualifications and experience, must be accompanied by competitive rates of compensation.

Relationship to Court Mission and Goals. By ensuring quality services for indigent clients under the defender services programs, this initiative would promote the Courts’ goal of broadening access to justice by promoting the availability of quality legal services to court users without regard to economic status.

Relationship to Divisional Objectives. The Courts, through the Budget and Finance Division, process some 42,000 attorney and expert services vouchers and court orders for compensation annually under the Defender Services programs. Major efforts to reform all of the Defender Services programs have included revised attorney eligibility criteria, a streamlined attorney assignment process, major revisions to the CJA Plan, automated tracking of CJA, CCAN, and Guardianship vouchers from receipt to payment, automated issuance of CCAN vouchers, and assumption of responsibility for CJA voucher issuance. The Courts have also developed a web-enabled system that permits the electronic filing, review, and approval of vouchers.

Methodology. Because a large number of vouchers are submitted for payment during fiscal years following appointment, additional funds would be required in FY 2010 and FY 2011 to fully implement the hourly rate increase. Table 6 contains cost estimates for obligations in FY 2008 through FY 2010.

Performance Indicators. It is envisioned that this initiative would promote equity in the quality of legal services provided to all District of Columbia residents, regardless of economic status, and would also 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.

Legislative Analysis. The Courts' administer the CJA program under *Title 11, sections 2601 – 2609* of the District of Columbia Code. The Joint Committee on Judicial Administration is responsible for providing a plan for furnishing representation to any defendant in the District of Columbia who is financially unable to do so. Responsibility for the administration of the CCAN program is provided under *Title 16 sections 2301 – 2372*, while responsibility for the Guardianship program is prescribed under *Title 21 sections 2001-2098*.

Because the D.C. Code prescribes the hourly rate for CJA and CCAN attorneys (Under *Title 11 section 2604*), the initiative would require enactment of legislation (1) to increase the hourly compensation rate to \$90; and (2) to increase the maximum compensation per case. Requested language changes follow:

Administrative Provisions:

SEC. _____. (a) Section 11-2604, District of Columbia Code, is amended --

(1) in subsection (a), by striking “65” and inserting “90”;

(2) in subsection (b) – to read as follows:

“(b) (1) For representation of a defendant before the Superior Court, the compensation to be paid to an attorney shall not exceed the maximum amounts set forth in the Criminal Justice Act of 1964 (18 U.S.C. § 3006A(d)(2)) for misdemeanors or felonies, as the case may be, in the district court.

“(2) For representation of a defendant before the District of Columbia Court of Appeals, the compensation to be paid to an attorney shall not exceed the maximum amount set forth in the Criminal Justice Act of 1964 (18 U.S.C. § 3006A(d)(2)) for representation in the appellate court.

“(3) For representation of a defendant in post-trial matters, the compensation to be paid to an attorney shall not exceed the maximum amounts set forth in the Criminal Justice Act of 1964 (18 U.S.C. § 3006A(d)(2)) for misdemeanors or felonies, as the case may be, in the district court.”

(b) Section 16.2326.01(b), District of Columbia Code is amended –

(1) by striking “1,600” each time it appears and inserting “1,980”;

(2) in paragraph (3), by striking “2,200” and inserting “2,700”;

(3) in paragraph (4), by striking “1,100” and inserting “1,350”.

(c) The amendments made by this provision shall apply with respect to cases and proceedings initiated on or after [a date on or after the effective date of the Act].

Compensation from the Guardianship fund is paid pursuant to *Title 21-2060* of the D.C. Code, and the Chief Judge of the Superior Court of the District of Columbia sets the hourly rate.

**Table 6
CJA, CCAN, and Guardianship Hourly Rate Increase**

	<i>FY 2008 Enacted</i>	<i>Requested FY 2009</i>	<i>Estimated FY 2010</i>
Base Program			
CJA (\$80/hour)	\$31,864,000	\$31,864,000	\$31,864,000
CCAN (\$80/hour)	14,456,000	14,456,000	14,456,000
Guardianship (\$80/hour)	<u>1,655,000</u>	<u>1,655,000</u>	<u>1,655,000</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		3,550,000	5,850,000
CCAN		900,000	1,500,000
Guardianship		<u>50,000</u>	<u>50,000</u>
<i>Subtotal, Hourly Rate (cumulative)</i>		<i>4,500,000</i>	<i>7,400,000</i>
 Total, Defender Services	 \$47,975,000	 \$52,475,000	 \$55,375,000