From: James R. Silkenat, ABA President  
Sent: Thursday, August 15, 2013

Dear ABA Member:

I am so deeply concerned about the potential funding crisis facing the federal judiciary that I am sending you this alert – as my first official communication as ABA President – to request your assistance in educating Members of Congress about the adverse effects that sequestration already is having on our federal courts and to urge Congress to enact a FY 2014 appropriation for the federal judiciary that restores funding cuts and assures access to justice.

The House and Senate appropriators have sent a clear message that the judiciary needs to be treated as a funding priority by approving FY 2014 appropriation bills that increase funding for the courts by 5.5 percent and 7.5 percent, respectively, over current sequestration levels. However, these bills are not likely to receive floor consideration. It is generally expected that the judiciary, along with the rest of the federal government, will operate under a Continuing Resolution at current sequestration levels. Even worse, unless the House and Senate agree to a budget that meets mandated discretionary spending caps or enact an alternative bipartisan deficit reduction plan, the federal courts could be subject to yet another round of across-the-board budget cuts that will be even more severe than those currently in place.

The message that needs to be delivered to Congress is straightforward: Regardless of the outcome of ongoing fiscal negotiations or the vehicle used to fund the government in October, Congress needs to provide the federal judiciary with a sufficient and certain FY 2014 appropriation. Our federal courts must be able to plan for and execute their essential constitutional and statutory functions in a fair, efficient, and timely manner. To accomplish this, we urge Congress to increase the federal judiciary’s FY 2014 appropriation to the Senate Appropriations Committee’s recommended funding level of $6.67 billion.

To facilitate your communications with your congressional delegation, we have provided a link to their contact information and prepared talking points and suggestions for taking action. Please find this information at the bottom of this letter. Thank you for participating in this important effort.

Sincerely,

James R. Silkenat  
President
Talking Points on Federal Court Funding

Nothing is more persuasive than letting your Member of Congress know how sequestration has adversely impacted his or her constituents. If possible, you should increase the impact of your advocacy by using concrete examples to demonstrate the impact of cutbacks on the courts in your state. For example: provide examples of how staffing cuts to clerks’ offices have curtailed access to justice by requiring your courthouse to close earlier; or how cuts to defender services have delayed the processing of criminal cases, which in turn has increased costs because defendants wind up in jail for additional days; or how a particular business has lost productivity because of delays in getting its day in court to resolve an important dispute over a patent or business practice governed by federal law.

Here are some generic talking points that can be adapted to your needs:

1. The federal judiciary’s annual appropriation must be sufficient to enable it to carry out all of the justice functions assigned to it by the Constitution and Congress: adjudicating all cases filed in federal court; supervising defendants awaiting trials and persons on post-conviction release; providing constitutionally mandated representation for indigent criminal defendants; securing jurors for jury trials; and ensuring the safety of all those who work at or enter federal court facilities. These are vast responsibilities that generate workloads over which the judiciary has no control.

2. As a result of FY 2013 sequestration cuts, the courts have had to continue to downsize and furlough staff, a process that began in 2011, and scale back programs and services that in the long-run save the government money. These include pretrial diversion programs; representation of indigent defendants through federal and community defender offices rather than Criminal Justice Act panel attorneys; use of electronic monitoring and other alternatives to incarceration; post-conviction supervision and the provision of services to help those released from prison transition back into the community.

3. We are gravely concerned that continued funding cuts to federal defender services will imperil a defendant’s Sixth Amendment right to effective assistance of counsel and statutory guarantee of a speedy trial. Sequestration has had an inordinately adverse impact on defender service programs across the country because their budgets are primarily comprised of rent, staff salaries, and case-related expenses. Defender offices across the country are furloughing staff for 15 days or more this fiscal year, and some have had to lay off attorneys, close satellite offices, or decline complex cases. If funding is not increased, defender offices will be crippled as they are forced to make additional steep staffing cuts and have no money in their budgets to pay for case-related expenses.
4. Cuts in staffing are resulting in the slower processing of civil and bankruptcy cases in some courts. Delays, which harm individuals, small businesses, and corporations, will worsen and become more widespread the longer sequestration lasts.

5. Sequestration has reduced pretrial and probation office staffing throughout the courts, which creates the likelihood of less deterrence and detection of resumed criminal activity. In addition, 20% cuts to funding for drug testing and substance use disorder and mental health treatment programs also increases the risk to public safety.

**Take Action Now**

These next few weeks are critical. Please make a concerted effort to contact your Members of Congress while they are in their home districts during the August recess. Once they return to Washington, there will only be nine legislative days left to enact some kind of FY 2014 funding measure to keep the government open after September 30.

Lawyers, in particular, have the knowledge and responsibility to explain why a fully operational federal judiciary is a core component of our government and essential to the preservation of our personal liberties and constitutional government based on the rule of law.

1. Visit, write, and call your Senators and your Representative in their district offices. Send letters to their district offices and to their offices in Washington DC. You can lookup contact information for your Members of Congress with our “Find Your Legislator” tool by clicking here. You may want to refer to our “Communicating with Congress” tip sheet for helpful recommendations to guide your communications.

2. Activate or coordinate your efforts with your state and local bars.

3. Use social media to focus on your member’s district office with messages on a specified day. You can find a list of Members of Congress with verified Twitter accounts here.

4. Enlist local news outlets to report on what is happening to federal courts in your communities. Educate and urge editors of your local papers to take a stand supporting the need for increased federal court funding.

5. Write your own Op-Eds explaining why the courts must not be held hostage to the ongoing and contentious appropriations process and why increased funding for FY 2014 must not be delayed. Read our guide on “How to Write an Op-Ed” here.
Additional background on these issues can be found at:


We would appreciate your letting us know of any responses from Members that you receive.

Should you have any questions concerning the funding crisis facing the federal judiciary or how to be heard effectively by your representative, feel free to call or email Denise Cardman, Deputy Director of the ABA Governmental Affairs Office at (202) 662-1761 or at Denise.Cardman@americanbar.org.