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Testimony

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Committee on Appropriations, House of Representatives

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DISTRICT OF COLUMBIA
COURTS

Financial Related Issues
for Fiscal Year 1998

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to respond to your questions related to the District of Columbia Courts' (DC Courts) financial operations for fiscal year 1998, its first year of operations with direct federal funding. Consistent with your request, we focused on the following four questions:

- What were DC Courts' obligations for fiscal years 1996, 1997, and 1998?
- Did DC Courts have a spending plan for fiscal year 1998 and obligate funds consistent with available resources?
- Why were payments to court-appointed attorneys deferred from July through September 1998?
- Did DC Courts process payments to court-appointed attorneys in accordance with policies and procedures?

In summary, we found that DC Courts experienced difficulties in planning and budgeting during this transition year. As adjusted by us, its records showed that it potentially over-obligated its resources by more than \$5 million, which would violate the Anti-Deficiency Act. After we briefed DC Courts officials, they told us they do not believe that a violation of the Anti-Deficiency Act occurred. I will compare the essence of our respective positions later in my statement. We also identified a legal issue regarding the Crime Victims Compensation Program.

In performing our work, we reviewed DC Courts' financial records, and held extensive discussions with DC Courts officials over the past several months. We shared a draft of this statement with DC Courts officials, and incorporated their comments to the extent that it was appropriate. Our work was performed in accordance with generally accepted government auditing standards.

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, \$119, and \$126.3 million, respectively. Fiscal year 1998 obligations reflect our adjustments, as discussed later, and are not comparable to the prior years' obligations. This is primarily due to the changes resulting from the Revitalization Act of 1997. For example, DC Courts non-judicial employees received federal benefits that increased DC Courts' obligations for fiscal year 1998. In addition, the adult probation function was transferred from DC Courts to a new entity, the Court Services and Offender Supervision Agency for the District of Columbia (COSA), in fiscal year 1998. DC Courts also provided its non-judicial

employees a 7-percent pay raise and assumed responsibility for the judges' pension costs as part of its fiscal year 1998 appropriation for court operations.

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 no longer had operational responsibility for the adult probation function, but continued to pay salaries and related costs on behalf of the COSA Trustee. In March 1998, the COSA Trustee took over the payments for the operations and subsequently reimbursed DC Courts \$7.8 million for the costs DC Courts paid on the COSA Trustee's behalf. These costs and the related reimbursements were included in DC Courts' fiscal year 1998 obligations and available funds.

DC Courts' Spending Plan

Upon receipt of its fiscal year 1998 appropriation, DC Courts was responsible for developing a spending plan based on an appropriation that was about \$15.5 million less than it requested. DC Courts did not develop a plan to ensure that its obligations did not exceed available resources. It obligated 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. DC Courts also received \$12.1 million in grants, interest, and reimbursements, including the \$7.8 million from the COSA Trustee, during the fiscal year.

However, letters between DC Courts and the Office of Management and Budget (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, 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. Specifically, its records showed obligations of almost \$122.2 million and funds received of about \$121.8 million. However, as I will now discuss, we found that adjustments needed to be made to these amounts.

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- DC Courts deferred more than \$4.1 million of court-appointed attorney payments that were eventually paid with fiscal year 1999 funds, but did not record these amounts as fiscal year 1998 obligations. While DC Courts officials had the authority to make these payments with fiscal year 1999 funds, this did not make the deferred payments fiscal year 1999 obligations. The vouchers were approved by the presiding judges or hearing commissioners in fiscal year 1998, and the obligations should have been recorded in fiscal year 1998. Accordingly, we added this amount to DC Courts' reported fiscal year 1998 obligations.
 - DC Courts treated interest earned primarily from its 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 have reduced the amount that DC Courts reported as available resources for fiscal year 1998 by \$773,000.

As adjusted, DC Courts' recorded obligations and available funding for fiscal year 1998 would be \$126.3 and \$121 million, respectively, resulting in a potential over-obligation of more than \$5 million. The Anti-Deficiency Act prohibits federal and DC government officials from making expenditures or obligations in excess of amounts available in an appropriation or fund unless otherwise authorized by law. The Anti-Deficiency Act requires the head of an agency to report immediately any such violation to the President and the Congress, 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 over-obligation, any extenuating circumstances, the adequacy of the system of 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.

DC Courts officials told us that they do not believe that a violation of the Anti-Deficiency Act occurred. In essence, DC Courts officials assert that the authority Congress provided in the fiscal year 1999 Appropriation Act to use fiscal year 1999 funds for deferred attorney payments constitutes an exception to the Anti-Deficiency Act. DC Courts officials further assert that the exception is available whenever they have obligations in excess of their budgetary resources. We disagree with this position. The fiscal year 1999 Appropriation Act was enacted after fiscal year 1998 ended. The authority cited by DC Courts only authorizes it to use fiscal year 1999

appropriations to pay deferred amounts to court-appointed attorneys, but does not excuse DC Courts from managing its activities within the appropriation level Congress provided or authorize obligations in excess of available budgetary resources. Accordingly, the critical issue for applying the Anti-Deficiency Act in this case is whether the over-obligations were entirely attributable to the mandatory obligations for court-appointed attorneys and were, therefore, authorized by law. We conclude that they were not, primarily because

1. fiscal year 1998 obligations for court-appointed attorneys were similar to the prior fiscal year and the estimated amount for fiscal year 1998;
2. DC Courts did not base its spending during most of the fiscal year on the appropriation it received; and
3. DC Courts' records indicated that a discretionary pay raise of about \$2.8 million was given to its non-judicial employees during fiscal year 1998.

In addition, DC Courts officials told us that they were authorized to retain the interest earned on quarterly apportionments of their appropriation and make it available for court operations. They noted that no statute prohibits retaining interest earned on apportionments. We disagree with this position primarily because the Revitalization Act specifically requires "that all money received by the District of Columbia Courts shall be deposited in the Treasury of the United States or the Crime Victims Fund." Thus, DC Courts did not have statutory authority to augment its appropriation with interest earned on apportioned appropriations.

Recently, DC Courts officials advised us that there were obligations of over \$1 million in their fiscal year 1998 records that needed to be de-obligated. DC Courts officials stated that these included amounts that the District should not have recorded as obligations and amounts for services that were no longer anticipated. We are currently reviewing these proposed de-obligations. It will be important that DC Courts continue reviewing its records and do all required investigating and reporting under the Anti-Deficiency Act.

Deferral of 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 during the summer, as well as deferring court-appointed attorneys' and expert service providers' payments. In May 1998, OMB officials advised DC Courts to reduce non-personnel costs instead of furloughing employees or closing the courts to avoid an Anti-Deficiency Act violation. DC Courts made the decision on July 24, 1998, to defer payments for court-appointed attorneys for the remainder of the fiscal year, and then used fiscal year 1999 appropriations to pay those amounts. DC Courts had budgeted \$31.6 million for such payments in fiscal year 1998, an amount that was similar to the previous fiscal year, and as of July 1998, \$25.8 million had been expended on court-appointed attorney payments. The Congress authorized use of the DC Courts' fiscal year 1999 appropriation to fund these deferred payments. However, this did not change the payments from fiscal year 1998 obligations to fiscal year 1999 obligations. The presiding judges or hearing commissioners approved the vouchers in fiscal year 1998 and the obligations should have been recorded in fiscal year 1998.

Processing of Payments to Court-Appointed Attorneys

Now I would like to discuss the payments that were made to court-appointed attorneys during fiscal year 1998 in terms of the process for making such payments, and whether they were made promptly. Your concern was that court-appointed attorneys were being paid late or not the right amount and that vouchers were sometimes being lost.

We found that DC Courts processed vouchers for court-appointed attorneys in accordance with its policies and procedures. However, its procedures did not include time frames for making payments to court-appointed attorneys. Our analysis of DC Superior Court's fiscal year 1998 paid voucher data through July 1998, showed that 94 percent of the vouchers for court-appointed attorneys and expert service providers were paid within 30 days¹ of the presiding judge's or hearing commissioner's

¹The District's fiscal year 1999 Appropriation Act provided that DC Courts would be subject to the federal Prompt Pay Act, which requires that DC Courts pay a "proper invoice" within 30 days of its receipt or be subject to an interest penalty.

approval and 83 percent of these vouchers were paid within 60 days of the date submitted.

You were also interested in the incidence of voucher amounts being reduced at the time they are approved by the presiding judges or hearing commissioners. Our analysis of fiscal year 1998 paid voucher data showed that judges or hearing commissioners reduced voucher amounts in 9 percent of the cases, of which more than half involved reductions of \$100 or less. DC Courts did not have procedures covering how judges or hearing commissioners were to report to the attorney or expert service provider their decisions to reduce voucher amounts claimed. However, DC Courts officials stated that this information was available to attorneys who requested it.

Regarding lost or missing vouchers, we found that there were no procedures for retaining data on the number of vouchers reported as missing or the disposition of such vouchers. DC Courts officials stated that such data were not maintained.

Crime Victims Compensation Program

I would now like to discuss a matter that did not affect DC Courts' use of its fiscal year 1998 appropriation for court operations, but that will need to be addressed if DC Courts is to have 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. The Revitalization Act supports the authority of DC Courts to deposit fines, fees, and other money to the credit of the Crime Victims Fund under the District law. The District law provides that payments of up to \$25,000 from the Fund can be made to crime victims for shelter, burial costs, or medical expenses. DC Courts' records indicated that over \$1.5 million in such payments were made during fiscal year 1998.

However, there is nothing in the language of the District's fiscal years 1998 or 1999 Appropriation Acts that appropriates amounts from the Crime Victims Compensation Fund, nor have we identified any other federal law authorizing payments from the Fund. Accordingly, we conclude that DC Courts did not have the requisite legislative authority to make payments from the Fund. This is a matter for the Congress and DC Courts to address.

Mr. Chairman, this concludes my statement. We will be separately reporting to you on these and other issues that you asked us to review and will include recommendations for addressing the matters discussed in this testimony. I will be happy to answer questions from you or other members of the Subcommittee.

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