

ADMINISTRATIVE PROVISIONS—THE JUDICIARY (INCLUDING TRANSFER OF FUNDS)

Note: For bill language, the judiciary used the language from P.L. 117-328, Financial Services and General Government Act, 2023. Therefore, the bracketed and italicized changes reflected below are being made to FY 2023 language as it appears in P.L. 117-328.

SEC. 301. Appropriations and authorizations made in this title which are available for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

SEC. 302. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in this Act may be transferred between such appropriations, but no such appropriation, except “Courts of Appeals, District Courts, and Other Judicial Services, Defender Services” and “Courts of Appeals, District Courts, and Other Judicial Services, Fees of Jurors and Commissioners”, shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under sections 604 and 608 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in section 608.

SEC. 303. Notwithstanding any other provision of law, the salaries and expenses appropriation for “Courts of Appeals, District Courts, and Other Judicial Services” shall be available for official reception and representation expenses of the Judicial Conference of the United States: *Provided*, That such available funds shall not exceed \$11,000 and shall be administered by the Director of the Administrative Office of the United States Courts in the capacity as Secretary of the Judicial Conference.

SEC. 304. Section 3315(a) of title 40, United States Code, shall be applied by substituting “Federal” for “executive” each place it appears.

SEC. 305. In accordance with 28 U.S.C. 561–569, and notwithstanding any other provision of law, the United States Marshals Service shall provide, for such courthouses as its Director may designate in consultation with the Director of the Administrative Office of the United States Courts, for purposes of a pilot program, the security services that 40 U.S.C. 1315 authorizes the Department of Homeland Security to provide, except for the services specified in 40 U.S.C. 1315(b)(2)(E). For building-specific security services at these courthouses, the Director of the Administrative Office of the United States Courts shall reimburse the United States Marshals Service rather than the Department of Homeland Security.

SEC. 306. (a) Section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note), is amended [in the matter following paragraph 12–]

[(1)] in the second sentence (relating to the District of Kansas) *following paragraph (12)*, by striking “[31]32 years and 6 months” and inserting “[32]33 years and 6 months”]; and]

[(2)] in the sixth sentence (relating to the District of Hawaii), by striking “28 years and 6 months” and inserting “29 years and 6 months”].

(b) Section 406 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Public Law 109–115; 119 Stat. 2470; 28 U.S.C. 133 note) is amended in the second sentence (relating to the eastern District of Missouri) by striking “[29]30 years and 6 months” and

inserting “[30]31 years and 6 months”.

(c) Section 312(c)(2) of the 21st Century Department of Justice Appropriations Authorization Act (Public Law 107–273; 28 U.S.C. 133 note), is amended—

(1) in the first sentence by striking “[20]21 years” and inserting “[21]22 years”;

(2) in the second sentence (relating to the central District of California), by striking “[19]20 years and 6 months” and inserting “[20]21 years and 6 months”; and

(3) in the third sentence (relating to the western district of North Carolina), by striking “[18]19 years” and inserting “[19]20 years”.

[SEC. 307. Section 677 of title 28, United States Code, is amended by adding at the end the following:

“(d) The Counselor, with the approval of the Chief Justice, shall establish a retention and recruitment program that is consistent with section 908 of the Emergency Supplemental Act, 2002 (2 U.S.C. 1926) for Supreme Court Police officers and other critical employees who agree in writing to remain employed with the Supreme Court for a period of service of not less than two years.”.]

[SEC. 308. Section 996(b) of title 28, United States Code, is amended by inserting “84 (Federal Employees’ Retirement System),” after “83 (Retirement),”.]

Sec 307. Section 3006A(d)(1) of title 18, United States Code, is amended in the first sentence by inserting after “Any attorney appointed pursuant to this section” the following: “ or the attorney’s law firm”.

This title may be cited as the “Judiciary Appropriations Act, [2023]2024”.

Explanation of Changes

- Changes in section 306 extend 9 temporary district judgeships for 12 months each: Alabama-Northern, Arizona, California-Central, Florida-Southern, Kansas, Missouri-Eastern, New Mexico, North Carolina-Western, and Texas-Eastern.
- Changes in sections 307 and 308 delete these provisions since they were already enacted as permanent law.
- New section 307 is a technical change to allow payments to private “panel” attorneys appointed by courts under the Criminal Justice Act, to be made to the panel attorney’s law firm. A more detailed explanation of this provision is provided on the following page.

New Section 307 Explanation

Federal courts appoint private attorneys to represent financially eligible defendants charged with a federal crime in accordance with the Criminal Justice Act (CJA). These attorneys are referred to as “panel” attorneys because they serve on a panel of qualified counsel maintained by a federal court. The CJA provides that panel attorneys are paid at authorized hourly rates. According to the Judiciary’s most recent data, approximately half of active panel attorneys are members of law firms.

The AO interprets the CJA as precluding direct payments to a panel attorney’s law firm for any CJA work performed by that panel attorney. As a result, all payments are currently made to individual panel attorneys via Treasury paper checks regardless of their employment or partnership arrangements. Panel attorneys at firms then turn over the checks to their law firm. Although panel attorneys support transitioning to direct deposit via electronic funds transfer (EFT) payments, they are concerned about EFT payments being deposited into their personal bank accounts and the additional steps required to transfer those funds to their law firms and file tax forms notifying the IRS that their firms are the true recipients of that income.

The inability to pay law firms directly has led to complications with tax reporting for the CJA program and has delayed the Judiciary’s transition to EFT payments for panel attorney vouchers. This legislative provision would permit CJA attorneys to designate their law firm as the payee for CJA work, aligning such payments with tax reporting and billing for all other legal work and expediting the transition to the more secure and efficient EFT payments, as required by the Debt Collection Improvement Act. The Act requires that all federal payments other than tax refunds be made by EFT.

The Judiciary also is concerned that, without this legislative provision, the ongoing administrative burden and tax complications of signing over CJA payments (made by Treasury paper check) to law firms will cause many attorneys to decline CJA appointments or resign from the panel. In addition, the reliance on Treasury paper checks for paying panel attorneys is particularly problematic as the Judiciary is seeing a significant increase in delayed mail, lost, stolen, and undelivered Treasury checks; difficulty depositing checks when they are signed over from panel attorneys to their law firm; and a growing number of canceled checks requests and check re-issuance. Treasury paper checks are inefficient and time consuming and resource intensive to administer.

This technical amendment to the CJA would produce meaningful efficiencies for the Judiciary. Improving panel attorney retention by reducing the administrative burden on panel attorneys will result in reductions in panel management costs (i.e., recruitment, retention, and training of the panel) for the Judiciary. Eliminating paper checks will also improve the efficiency and cost effectiveness of the payment process. In FY 2022, for example, the Judiciary requested the issuance of 105,053 Treasury paper checks totaling \$357 million to pay CJA vouchers. According to the U.S. Treasury Department, paper checks are four times more expensive to issue, seven times more likely to have an exception claim (i.e., be lost, stolen, or returned), and 14 times more likely to have a non-receipt claim compared to electronic payments.

In summary, this technical amendment to the CJA would significantly improve the efficiency of panel attorney payments, improve compliance with IRS tax reporting and statutes requiring EFT payments, facilitate the Judiciary’s transition to EFT for CJA payments, and support the recruitment and retention of qualified panel attorneys.