

Court Cost Recovery System

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ICM Phase III Project

EXECUTIVE SUMMARY

This Executive Office for Immigration Review (EOIR) is the arm of the United States Department of Justice (USDOJ) that conducts hearings at the trial court level and appellate proceedings to resolve charges brought by the United States Immigration and Naturalization Service (INS) against named aliens allegedly in violation of specific provisions of the Immigration and Nationality Act (INA). The two EOIR elements carrying out these responsibilities are the individual Immigration Courts under the supervision of the Office of the Chief Immigration Judge and the Board of Immigration Appeals (BIA). Authority for them to do so is found in the Code of Federal Regulations, Title 8, Section 3.

Fifty Immigration Courts nationally rendered 245,916 decisions during Fiscal Year 1999. The BIA and its thirteen members decided 32,903 appeals for relief from Immigration Judge decisions during that same period. These figures represent a dramatic increase over the past five years, and the lack of proportionate increase in funding authority during the same period has historically resulted in annual shortfalls of \$9,000,000. In order to make up for these shortfalls, reductions in spending in other critical areas were required. This included implementation of a hiring freeze.

The severity of the budgetary situation within EOIR and its specific effect on the San Francisco Immigration Court served as a catalyst for this project, which attempts to examine the feasibility of establishing a court cost recovery program within EOIR. The paper identifies three primary points which must be looked at in the analysis:

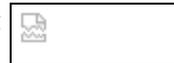
- A. Defining potential cost areas for consideration. Identification of four specific areas of potential cost recovery was done through interview with EOIR officials, review of cost data from statistical reports, surveys designed to provide information and statistical data where none existed, and from records kept by San Francisco Immigration Court personnel. The four areas identified were:
 1. Contracted transcript preparation. This is an area of BIA expense exceeded \$2.3M in Fiscal Year 99. These transcripts are most frequently produced as a result of an alien filing an appeal. The cost is borne by EOIR and is augmented by internal EOIR expense, which requires employment of four additional persons to coordinate the case by case execution of the contract with the contractor. Although regulations simply require EOIR to make transcripts "available," it does not prohibit passing the expense through. These transcripts have routinely been produced and disseminated to all parties at no charge.

2. Contracted interpreter services. In the interest of due process, the Immigration Courts have historically provided interpreter services during hearings. With the caseload increases experienced over the past several years, this contracted service has increased 386% to \$13.9M in Fiscal Year 99. This contract is the largest contributor to the historic shortfall listed above, and because the service is not statutorily based and has been shown in this project to be subject to abuses by attorneys, it should be looked at carefully as a possibility for cost recovery.
 3. Immigration Court proceedings are recorded by audio cassette as the official record. It has been a long-standing practice to provide certified copies of these tapes at no cost to requesting counsel. In the San Francisco Immigration Court, there were 228 requests for such tapes in Fiscal Year 99. Considering productivity loss of approximately 88 hours, the cost for cassette tapes, as well as postage costs in returning records that had been requested from the Federal Records Center, the local court expended approximately \$2,273 providing this gratuitous service.
 4. On a daily basis, attorneys, paralegals and respondents can be found reviewing case files and copying the contents using the photocopiers and the San Francisco Immigration Court. Additionally, attorneys who find themselves in court and not having brought sufficient copies of legal documents are also prevailing upon the court to provide the same. A photocopy survey instrument was placed on each copier and revealed 780 copies were made in a two week period by this grouping of persons. Extrapolating from the 780 copies, one can easily project 26,280 copies per year. Since the photocopier contract provides for only 7,000 copies per month, the excessive and free use by those outside of the court amounts to almost 4 months of contract expense per year to the Court.
- B. Assessing precedent and propriety of such a program. This area was explored through surveys of other court administrators and court officials through e-mail. It was augmented by reference to Alexander Hamilton's Federalist #17, and United States Order 00-2, Fee Schedules from the Judicial Conference, Miscellaneous Fee Schedules, Title 28, United States Code Annotated (U.S.C.A.). It was found that while argument exists for not entering into a system of cost recovery within court systems, in practice there is little objection when such a system is warranted and properly authorized. Further, in courts such as the Cook County Circuit Court in Chicago, Illinois, the pursuit is aggressive.
- C. Determining legal authority. Basis of authority was researched through study of Title 31, U.S.C.A., §9701(a)(b)(c), 1999 and Title 8, Code of Federal Regulations (C.F.R.), §§3, 103.7. A comparative study was conducted that revealed that congressional intent for government agencies to provide self-sustaining services or "things of value" to individuals. It further authorized department heads to create appropriate regulations to that end. Study of the departmental regulation (8 C.F.R.) indicated no such authorization from the Attorney General in matters of cost recovery within EOIR.

Having defined two large areas of administrative expense and two lesser ones which have cumulatively contributed substantially to the historic \$9,000,000 shortfalls within the EOIR budget, and, having determined that there is precedent in establishing cost recovery, and, in pin-pointing a

legal authority in 31 U.S.C.A. 9701(a)(b)(c), it is concluded that given the establishment of an appropriate change in the departmental regulation, considerable dollar savings could result from implementation of an appropriate program. It is recommended that an EOIR committee be formed to study and define other areas which should be considered, and then prepare a recommendation to the Attorney General which defines a specific program and includes an appropriate draft change to the departmental regulation.

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