

SHOULD THE UNITED STATES IMMIGRATION COURT COLLECT FEES

EXECUTIVE SUMMARY
Institute for Court Management
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Written by:

Sandra L. Roberts
Court Administrator - Detroit

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Executive Office for Immigration Review

EXECUTIVE SUMMARY

The Immigration Court is struggling to accomplish its mission because Department of Justice is not fully funding the courts. The Executive Office for Immigration Review (EOIR) became a separate agency in 1983 after breaking away from the Immigration and Naturalization Service (INS). However, INS still collects the fees and uses the money to primarily cover INS expenses.

In addition to the funding problem, there is a perception problem that EOIR and INS are not separate. A 1999 survey that was conducted in the southwestern United States and in Honolulu, Hawaii, an overwhelming 68% of the survey participants did not view the Immigration Court as being fully separate from the INS (Creppy, 1999, p.100-101). Many people assume the INS money is going to the courts, yet only a small portion of INS fees are given to EOIR. EOIR was struggling with this funding issue and it came to a crisis point in 1998 when Congress did not fund the nine million dollar Berlitz's contract. The Berlitz contract provides interpreters for non-English speaking aliens. EOIR had to absorb the cost and a hiring freeze was placed on the agency in 1998 and that lasted for approximately a year.

Unfortunately, EOIR is still suffering from the effects of the hiring freeze. Many courts remained understaffed. Therefore, it is time to take a look at collecting fees to supplement congressional funding. Many federal courts rely on fees to offset their expenses, why not the Immigration Court? The Immigration Courts are considering fees to supplement Department of Justice (DOJ) and INS funding.

The Immigration Court is a fairly young organization and is struggling in keeping up with the demand of a changing American pie. Over the next 25 years, minority concentrations are projected to increase

in all parts of the country, but especially in the South, Southwest, and West. If current trends continue, almost half of the U.S. population will be non-white by 2050 (Ameristat.org, 1999, p. 1). Will EOIR be able to survive the increase in workload with its present way of doing business and with the present level of funding? The purposes of this research are to (1) examine the fee issue, (2) to determine if there is support from EOIR and AILA, and (3) to develop short and long term recommendations.

While fees and charges should not be an alternative form of taxation, they have proven beneficial to sustaining the court systems. Fees have been around for a long time. The practice of charging fees developed from the English system of charging for each service performed (Public Affairs of Louisiana, 1993, p. 34).

Neither courts nor specific court functions should be expected to operate from proceeds produced by fees and miscellaneous charges. Court should receive adequate financial funding from governmental sources to enable them to fully carry out their constitutional mandates (Ibid, p. 37).

A number of federal agencies that already have statutory authority for user fees have been moving toward implementation of higher fees covering more services (Gillette and Hopkins, 1987, p. 1). Policy considerations for fee structures must include an analysis not only of user benefits, but also of community benefits. Like police protection, ambulance services and fire protection, the courts require such a broad economic base of support that they cannot be conceived as potentially self-sufficient (Alaska Judicial Council, 1974, p. 2).

To determine the level of support for collecting fees in the Immigration Court, two electronic surveys were developed. Both surveys were sent via e-mail to EOIR staff and another survey to the American Immigration Lawyers Association (AILA), the Detroit Chapter. The internal survey was administered to address staff concerns and get their opinions on collecting fees. The external survey was administered to shed light on how AILA attorneys felt the fees would impact immigrants. The surveys were developed and administered using Microsoft "Front Page" software and the results were analyzed using a statistical software. Most of the questions were multiple choice and a few questions did allow for comments.

Of one-thousand - one-hundred (1,100) surveys sent out to EOIR, one-hundred -ninety-six (196) employees responded, producing an 18 percent response rate. Of one-hundred fifty (150) surveys sent to AILA, Detroit Chapter, twenty-five (25) AILA members responded, producing a 17 percent response rate.

EOIR staff supported collecting fees if the courts would increase staff, increase training, and improve technology. The majority indicated that they are willing to accept the responsibility of collecting fees. Most were in agreement that fees should be waived for those who cannot afford to pay.

AILA was in support of paying fees for some services and even made recommendations on the amounts. Some of the AILA attorneys have expressed interest in paying the fees to the court, instead of the INS. Most members wanted to have various methods of paying the fees. Checks/Money order, Cash and Credit card were selected by the majority of AILA members. Most members also agreed upon waiving fees for those who cannot afford them. A minority of the AILA respondents felt the court received enough funding from Department of Justice.

Based upon research and findings, further exploration of establishing fees is advised. Obtaining fees would allow for funding for Interpreter services, increase staffing and supporting of a pro bono program. These improvements are compatible with the Trial Court Performance Standards. They will provide for greater access, participation, eliminating delay of hearings and providing for future court

needs (Trial Court Performance Standards, 1997).

Other factors need to be considered if fees are collected. Internal controls need to be set up to protect the monetary receipts. Protection against loss needs to be set up through a surety or fidelity bond. Selection and use of banks to control and safeguard the money (Tobin, 1995, p 1, 2, 37).

Two part set of final recommendations based on research and survey are:

Short term recommendations:

1. Establishment of fees.
2. A study should be conducted internally with the help of consultants and a grant or funding should be explored to cover cost. The purpose of study is to establish procedures of fees, waiving of fees, and staffing needs.

Long term recommendations:

1. Have Congress establish a specialized legislative court under Article 1 of the U.S. Constitution and maintain fees.

Adopting these short term and long term recommendations, will improve quality, perception of justice, and provide the best level of service for Immigrants special needs. Setting an example throughout the world that all people are entitled to justice, can only demonstrate the importance of our democracy now and in the future.

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