

**AMERICAN BAR ASSOCIATION**  
**NEW YORK STATE BAR ASSOCIATION**  
**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

1 RESOLVED, That the American Bar Association urges federal elected officials, as they consider  
2 deficit reduction for fiscal year 2013 and beyond, to maintain the ability of individuals, as well as  
3 business and other organizations, to have access to justice by assuring that (1) the federal courts  
4 receive funding adequate to permit them to perform their constitutional functions effectively and  
5 efficiently, and (2) the Legal Services Corporation receives funding to meet the needs of our  
6 country's most vulnerable individuals who are eligible for services provided by the nation's legal  
7 service providers.



## REPORT

### Summary of the Resolution

This resolution deals with an immediate potential crisis that confronts the federal courts and the Legal Services Corporation. Within the next few weeks, substantial automatic budget cuts will take place unless Congress and the President agree to some alternative. Intensive negotiations are currently underway in Washington to determine which programs will be cut. It is anticipated that there will be significant cuts, whether automatically or by agreement, in many federal programs. As the national voice of the profession, the American Bar Association must speak out at this time on behalf of the federal courts and the Legal Services Corporation. This resolution is intended make sure that federal officials know that the Association considers both vital to the fabric of our democracy. It is a resolution designed to give voice to the support these institutions need at a critical time - - a time for the Association to be heard.

### Background

In 1985, the Gramm-Rudman-Hollings Act was enacted into law, requiring mandatory federal budget cuts if Congress failed to meet defined budget reduction goals. Failure to meet these goals would result in what became known as sequestration.

On August 2, 2011 the Budget Control Act of 2011 (PL 112-35) was signed into law after a very contentious debate over raising the nation's debt limit. That Act created what became known as a super committee, which was given the task of meeting the goals required by the 1985 Act. Under the Act's provisions, failure by the super committee would result in automatic reductions, lowering spending by \$1.2 trillion over ten years. The Act required \$109.2 billion in cuts beginning in fiscal year 2013, half of which were to come from defense and the other half from the remainder of the federal budget, although certain specific programs were exempted. The cuts were to affect both mandatory and discretionary spending, with proportionate cuts to both. The automatic cuts were to take effect on January 2, 2013.

The super committee was created in 2011 following enactment of the Budget Control Act, but it failed in its efforts. Consequently, sequestration was scheduled to take place on January 2, 2013.

On January 1, 2013, Congress completed passage of the American Taxpayer Relief Act of 2012, which President Obama signed into law on January 3, 2013. While there were numerous provisions in this new law, the provision directly affecting the subject of this resolution was a two month delay in the implementation of sequestration. Consequently, sequestration, with its automatic across the board spending reductions, will take place on March 1 unless Congress acts. At the moment, intensive negotiations are taking place with respect to this subject, and they are expected to continue. Consequently, the resolution speaks to a very immediate topic.

### The Courts

# 10A

Should sequestration be implemented, the federal courts will have imposed a budget reduction of 8.2 percent according to a report of September 14, 2012 from the Office of Management and Budget. Hon. Julia Gibbons, Chair of the Committee on the Budget of the Judicial Conference of the United States, has said that sequestration “would cut the Judiciary’s budget by more than \$500 million below the 2012 funding level.” Her evaluation of the impact of this cut of is that “a reduction of this magnitude would cripple the operation of the federal Judiciary and our constitutional mission would be compromised due to these sudden, arbitrary budget cuts.”

While an 8.2 percent reduction seems large, that number is actually deceptively low. When fully understood, the cuts are much more drastic. As noted in a letter of November 30, 2012 from Thomas Hogan, Secretary of the Judicial Conference, to Senator Charles Grassley, the federal courts have mandatory costs which make up over 40 percent of their expenses. These costs must be paid in full. For some courts, these mandatory costs are well over 40 percent. For example, the New York State Bar Association has been advised by the Chief Judge of the District Court for the Eastern District of New York that about 60 percent of that court’s budget is devoted to mandated costs. These costs include such things as judges’ salaries and rent. As a result, the entire cut must come out of the portion of each court’s budget that pays for its various support services. These cuts can be from about 15 to even more than 20 percent - - and they are immediate.

While each court would have to manage cuts of this magnitude, possibly with some guidance from the Administrative Office of the Courts, the consequences would be very significant. The New York State Bar Association has spoken with court officials from several of that state’s federal courts, and they have offered examples of what these cuts might mean.

Clearly, the clerk’s offices would not be able to maintain the hours during which they are currently open. There would be either staff reductions or furloughs or a combination of both. In one court, the Association was told that 20 percent of the court clerk staff would have to be laid off if there were no furloughs.

Furthermore, it is likely that court hours would need to be cut short. Security would necessarily be reduced, and courthouses cannot open without adequate security, even if some personnel were present.

Beyond the shortening of hours, support services would necessarily be reduced. This includes support for case management, jurors and information technology. It is questionable whether the advances in technology, such as a 24 hour PACER system, could be maintained. Payments to jurors, as well as to attorneys performing services under the Criminal Justice Act, would likely be delayed, probably for significant periods.

Another area that would likely be reduced is probation services. Supervision of those released to probation would necessarily be limited.

All of these staff reductions and/or furloughs would clearly lead to significant delays in the advancement of pending cases. However, every court would have to give priority to criminal cases because of the constitutional requirement of a speedy trial. Some of the court officials with

whom the New York State Bar Association have spoken have estimated that criminal trials would require all of the trial time available and that civil trials would not be held for some period of time. At a minimum, civil trials would be extensively delayed. Final resolution of these cases would become extremely difficult.

Thomas Hogan, in the letter noted above to Senator Grassley, summed up all of this very well: “These cuts in service will create real and substantial hardships on all those who look to the federal courts to administer the nation’s system of justice.”

### The Need for the Resolution

The New York State Bar Association has been in regular and ongoing communication with members of the New York Congressional delegation with regard to this issue. In November, its leaders went to Washington and visited most of the members of the New York delegation or their staffs. What was clear was that very few had given any consideration to the impact of the automatic cuts on the courts. They had thought about how these cuts would affect other programs, but they had little, if any, knowledge of what this meant for the courts. Even those members who, in the past, had shown concern for the courts, had not understood how severely the courts would be hurt.

All of the above analysis is based on the reduction that would be imposed by sequestration. However, that is not the ultimate risk to the courts. Negotiations are currently taking place to avoid the across the board cuts required by current law. The courts are now competing with other programs, some of which are likely to receive less in the way of reductions and some more if the negotiations are successful. Thus, the courts are in competition with other very important programs as spending reductions are being negotiated. They could easily lose out to other valuable or popular programs and suffer even greater cuts than under sequestration.

This is a critical moment, and the American Bar Association needs to do whatever it can to advocate for the courts. This resolution addresses this most immediate dangerous situation.

### Legal Services Corporation

The American Bar Association has long fought for funding for the Legal Services Corporation, as this has been a legislative priority for years. However, for the same reasons the courts are facing a crisis, there is now significant risk of real and substantial funding cuts to the Corporation. Thus, while the Association’s policy is long established, there is a need for it to speak to the particular threat at hand.

Since its creation in 1974, there have been periodic attempts to eliminate the Corporation. The last few years have seen a renewed attack on the Corporation that has had a real impact. In FY 2010, the Corporation received \$420 million. Its appropriation was reduced in FY 2011 to \$404 million, and then again in 2012 to \$348 million. If sequestration were to be implemented, the Corporation would face a further 8.2 percent cut, leaving it with a budget appropriation of \$319 million. This is about 75 percent of its budget just three years ago.

# 10A

Just two years ago, a proposed amendment to the budget that would have eliminated all funding for the Corporation was placed on the floor of the House of Representatives for a vote. While it failed, there were a significant number of votes for that amendment. At this time, with major reductions in all government programs being discussed, there is no assurance that LSC will survive.

This resolution is not intended to explain all of the critical work that is funded through the Legal Services Corporation. That has long been promoted by this Association. Rather, it is intended to make a statement at a critical moment in the history of the Corporation.

## GENERAL INFORMATION FORM

Submitting Entity: New York State Bar Association

Submitted By: Seymour W. James, Jr., President

1. Summary of Resolution(s).

This resolution urges federal elected officials to adequately fund the federal courts and the Legal Services Corporation as they negotiate deficit reduction with the imminent threat of the implementation of sequestration if they fail.

2. Approval by Submitting Entity.

The proposed resolution was approved by the Executive Committee of the New York State Bar Association at its January 14, 2013 meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

Resolutions generally supporting the federal courts and the Legal Services Corporation have been previously adopted. This resolution addresses a specific, immediate threat to both institutions.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

This resolution would call on federal elected officials to protect, in the face of an immediate threat in funding, institutions long supported by the ABA.

5. What urgency exists which requires action at this meeting of the House?

Unless Congress and the President act within the next three weeks, there will be major funding cuts to both the federal courts and the Legal Services Corporation by operation of law.

6. Status of Legislation. (If applicable)

See No. 5

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

As noted, this resolution does not adopt policy; it is intended to voice the concern of the ABA House on an imminent issue of critical importance.

# 10A

8. Cost to the Association. (Both direct and indirect costs)

No cost to the Association is anticipated.

9. Disclosure of Interest. (If applicable)

None

10. Referrals.

None. This resolution is submitted late because it became viable only after Congress acted in early January to extend the date of sequestration to the end of March.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Richard Rifkin, Esq.  
New York State Bar Association  
One Elk Street  
Albany, NY 12207  
Phone: (518) 487-5614  
Fax: (518) 487-5694  
Email: [rrifkin@nysba.org](mailto:rrifkin@nysba.org)

12. Contact name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Seymour W. James, Jr., Esq.  
The Legal Aid Society  
199 Water Street  
6th Floor  
New York, NY 10038  
Phone: (212) 577-3648  
Fax: (646) 616-4648  
Email: [swjames@legal-aid.org](mailto:swjames@legal-aid.org)  
Cellphone: (917) 882-3511

**EXECUTIVE SUMMARY**

1. Summary of the Resolution  
This resolution urges federal elected officials to adequately fund the federal courts and the Legal Services Corporation as they negotiate deficit reduction with the imminent threat of the implementation of sequestration if they fail.
  
2. Summary of the Issue that the Resolution Addresses  
It addresses the imminent threat of major funding cuts to the federal courts and the Legal Services Corporation.
  
3. Please Explain How the Proposed Policy Position will address the issue  
As noted, this resolution does not adopt a new policy. Rather, it is intended to permit the ABA House to give voice to protect the federal courts and the Legal Services Corporation at a time when major funding cuts are threatened within the next three weeks.
  
4. Summary of Minority Views  
None are known.