

Andrew M. Skier & Associates

Attorneys at Law

www.skierlaw.com

Andrew M. Skier
amskier@skierlaw.com

8191 Seaton Place
Montgomery, AL 36116
Telephone: 334-263-4105
Fax: 334-277-0423

February 4, 2016

Honorable Kathleen Cardone
Chair, Committee to Review
The Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

RE: Testimony of Andrew M. Skier, CJA Panel Representative, Middle District of Alabama

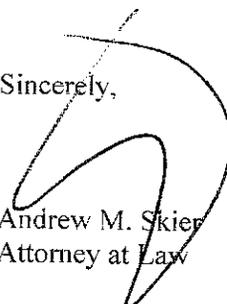
Dear Judge Cardone:

Thank you for the opportunity to address your Committee and help with the important work you are doing on a national level.

Since our CJA lawyers are rarely if ever involved in Habeas or Capital litigation, I have directed my comments to issues that we have addressed in the past couple of years that I believe have national implications.

Should you have any further questions, please feel free to call me at the numbers above.

Sincerely,


Andrew M. Skier
Attorney at Law

Judges, prosecutors, clerks, and administrators all have a responsibility under the CJA to ensure that the Constitutional guarantee of effective representation is satisfied for our indigent clients. Sometimes overlooked is the important role that the CJA lawyer him or herself plays in providing this vital service.

Through my testimony before this Committee, I want to share some of my observations as CJA panel representative over the past five years in Alabama's Middle District, as well as offer some suggestions for actions to be taken on a national level to help ensure uniformly excellent legal advocacy to the people we as CJA lawyers serve.

THE CHANGING LEGAL ATMOSPHERE IN OUR COMMUNITY

Any legal practitioner today, in any area of specialty, will tell you that there are simply “too many lawyers.” The competition for paying clients has never been more intense. As of May, 2014, there were 14,571 lawyers in the state of Alabama,¹ with approximately 25% of that number being age 36 or younger.² Three ABA-accredited and several other non-accredited law schools in the state continue to admit full classes of aspiring lawyers, many of whom will eventually earn law licenses and join the profession.

This overpopulation has resulted in a dramatic change in how CJA panel membership works, particularly in the application process. When I became a CJA lawyer, approximately ten years ago, I was prodded to do so by an older lawyer whom I admired. I had been practicing law for over a decade and had tried dozens of jury trials at the State level. I completed the CJA application process and the training and became part of the panel. At the time, the panel was made up of mostly older, more experienced lawyers who had a good deal of experience in the Federal system, and there was no waiting list to join. Importantly, panel membership was advertised largely through word of mouth and via invitation, as was the case with my recruitment.

By contrast, today we have approximately 30 lawyers on the panel³ with 11 on the “mentoring” panel (a de facto waiting list for potential panel lawyers) and 4 on the waiting list. Many applicants for panel membership today have little or no criminal law experience, let alone experience at the Federal level.

I attribute this change directly to the number of lawyers in the community, combined with the

¹<https://www.alabar.org/about-the-bar/member-statistics/>

²https://en.wikipedia.org/wiki/Alabama_State_Bar

³Recently pared down from 38 as a result of term limits, discussed below.

recent founding of a state public defender office in Montgomery County which has severely limited the number of state criminal defense appointments available in that community. There are lawyers out there who, for lack of a better term, simply need the work, and see CJA service as a way to find billable hours.

As leaders in the CJA community, we must be very careful to screen new admittees to ensure that the quality of legal work remains high, and avoid the CJA panel becoming a “jobs program” for underemployed lawyers.

ALABAMA’S DISPARITY IN COMPENSATION BETWEEN STATE AND FEDERAL WORK

Alabama, bluntly put, does not adequately compensate lawyers who perform appointed criminal defense work at the State level. The hourly rate for State appointed work is a flat rate of \$70 per hour, with a fee cap of \$1,500 in the majority of cases. Needless to say, the Federal rate (currently \$129 per hour) is much more enticing to a lawyer who accepts criminal appointments. The easier availability of funds for experts, investigators, and other resources make Federal practice much more satisfying than the same in the State system.

It goes without saying that we should expect a high level of performance from CJA lawyers to justify the added compensation received in Federal court.

ALABAMA'S MIDDLE DISTRICT CJA PLAN

Faced with the combined challenges of CJA lawyers who were under performing in their appointed cases, panel lawyers who were basically inactive, and the growing waiting list of quality lawyers for whom there was simply not space on the panel, we instituted a new CJA plan designed to address these issues and to ensure that those clients appointed CJA lawyers received the best quality representation:

Size of Panel

When drafting the CJA plan, the organizing committee agreed that ideally each CJA panel lawyer should have the opportunity to receive between 3 and 5 appointments per year in order to maintain proficiency. Based on the latest numbers we had available, a panel of between 25 and 30 lawyers was ideal; at the time we had 38. As of this writing, one year after the plan's implementation,

the panel stands at 30 lawyers. This improvement was achieved by adding term limits and CLE requirements for all CJA lawyers in our district.

Term Limits

Before implementation of our plan, once a lawyer's name was listed on the panel, that lawyer stayed on the panel unless he or she affirmatively indicated that they wanted to be removed. The result of this was a significant number of panel lawyers who rarely or never accepted appointments, with some that had moved out of the district or stopped practicing altogether.

We implemented a 3-year term for each panel member. At the end of each term, each lawyer is required to re-apply and be re-evaluated by the membership committee. Feedback is received from both District and Magistrate judges, and committee members review the case load and sample pleadings of each re-applicant.

After this process of review, the committee in 2016 voted to remove two CJA lawyers for poor performance on their assigned cases, with 6 others removed either voluntarily, because they moved out of the Middle District, or because they were moved to the Emeritus panel.⁴

CLE Requirements

The plan also instituted a requirement that each CJA lawyer receive a minimum of 6 hours of annual CLE related to CJA issues, with at least two related to sentencing.^{5 6} Failure to meet this requirement will result in suspension from the panel until such time as the lawyer meets the requirement.⁷

APPLICABILITY TO NATIONWIDE STANDARDS

In drafting the district's CJA plan, the drafting committee considered model plans from other districts and took into consideration factors unique to our legal community. We sought to construct a

⁴This panel is for older lawyers who do not wish to be in the regular rotation, but will take especially complex or difficult cases from time to time.

⁵The committee consensus was that sentencing issues are the most unique and difficult faced by CJA lawyers.

⁶The FDO office in the Middle District offers monthly "Brown Bag" CLE seminars, as well as an annual training, offering the opportunity to easily meet this requirement, and without cost.

⁷In the first year of this practice, two lawyers are, as of this writing, currently suspended pursuant to this policy.

scheme that would best serve our clients while being fair to those in the legal community who have an interest in and aptitude for representation at the Federal level. We were surprised to find no national standards for experience, proficiency, or quality of CJA lawyers.

National standards for experience, competency, and continued training would be helpful to ensure a national level of competence and effectiveness across district lines. My suggestion to this committee is that consideration be given to establishing national standards for CJA lawyers, with the goal of ensuring effectiveness and competence. Our plan in Alabama's Middle District is, I believe, a good start toward that end, but is by no means a complete solution, even for us.

Thank you for the opportunity to testify before this committee. I am hopeful that the recommendations you make will improve the services that we provide our clients in these most important matters.