

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
501 POTTER STEWART U.S. COURTHOUSE
100 EAST FIFTH STREET
CINCINNATI, OHIO 45202-3988**

**Deborah S. Hunt
Clerk**

513-564-7071

February 4, 2016

Hon. Kathleen Cardone
Hon. Edward C. Prado
Members of the Ad Hoc Committee to Review the Criminal Justice Act Program

RE: Birmingham Public Hearing Testimony of Deborah S. Hunt

Dear Mdme. Chairwoman, Mr. Chairman Emeritus, and Committee Members:

Thank you for providing this opportunity to present comments to the Committee. I submit these comments as the delegate of Hon. R. Guy Cole, Jr, Chief Judge of the Sixth Circuit Court of Appeals. Chief Judge Cole has asked that I provide comments from my perspective as Clerk of Court, whose interface with the CJA is as a court manager administering the CJA panel appointments, case management, and compensation process. I do not speak for the Court as a whole or any individual judges, unless specifically noted.

As Clerk, I (and, under my direction, my staff) have daily interaction with the CJA program in the following aspects:

- Managing the CJA Panel
- Making counsel appointments
- Managing the progress of cases and facilitating counsel's work in functions such as transcript production, briefing, and the disposition of motions referred to the Clerk pursuant to Fed. R. App. P. 45
- The technical auditing, processing, and forwarding for judicial review of vouchers for attorney, expert service, and transcript production vouchers—including vouchers for Court of Appeals cases and excess vouchers in district court cases
- Processing payment of approved vouchers

The Sixth Circuit Court of Appeals criminal caseload¹ constitutes approximately 25% of the total case load of the court. Of those criminal cases, over 80% of the defendants/appellants are represented by counsel pursuant to the Criminal Justice Act. Thus, a substantial portion of

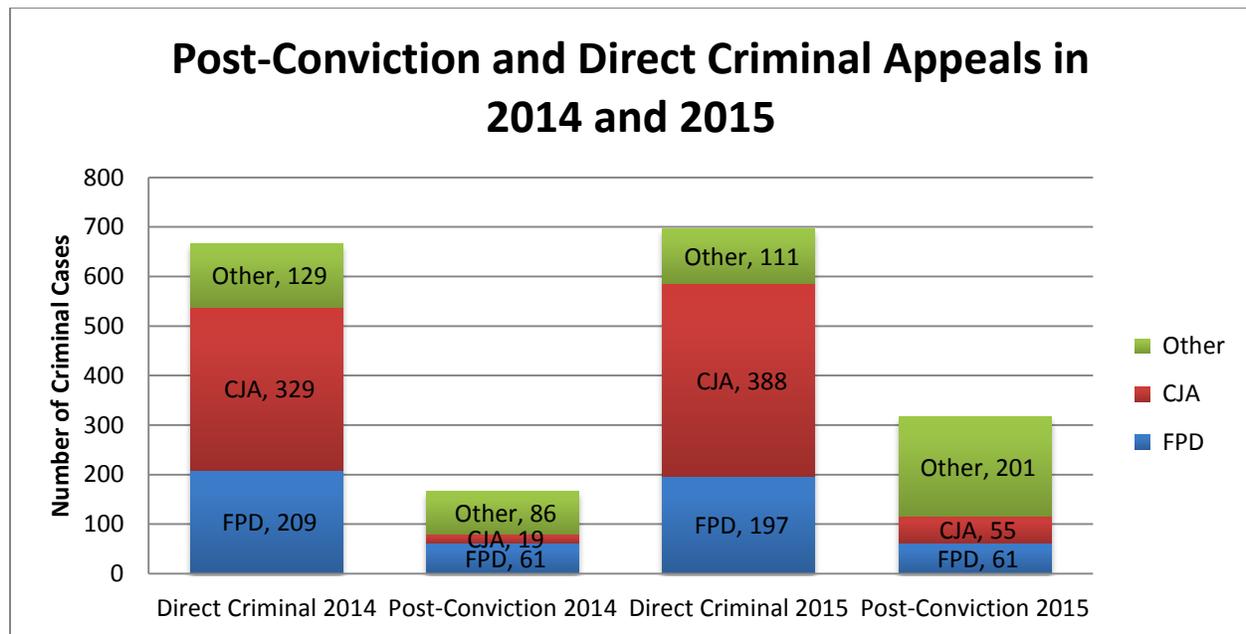
¹ Criminal cases include direct appeals from district court criminal convictions, as well as appeals from post-conviction relief cases, *i.e.*, Motions to Vacate Sentence under 28 U.S.C. § 2255 and Motions to Correct Sentence under Fed. R. Civ. P. 60(b).

the workload of Clerk’s office staff is devoted to the management of the CJA program and counsel. **Table 1** and **Chart 1** below shows the number of criminal cases in which FPD and CJA attorneys have been appointed during 2014 and 2015.

Table 1

	DIRECT CRIMINAL APPEALS			POST-CONVICTION APPEALS		
	<u>Total</u>	<u>FPD</u>	<u>CJA</u>	<u>Total</u>	<u>FPD</u>	<u>CJA</u>
2014	667	209	329	166	61	19
2015	696	197	388	317	61	55

Chart 1



Panel Management

While many of the CJA/FPD appointments continue from the district court, a substantial number of defendants/appellants are represented by counsel appointed in the appellate court. These appointments may occur as the result of appointed trial counsel’s preference not to continue on appeal and, more often, from the withdrawal of privately retained trial counsel when the defendant is no longer able to retain counsel and qualifies for CJA appointment. In 2014, the court made 311 CJA appointments, and in 2015 there were 325 appointments.

The CJA Panel of the Sixth Circuit Court of Appeals is very robust and includes a former solicitor general of the United States, former law clerks to judges of the Court of Appeals and justices of the Supreme Court of the United States, members (both partners and associates) of well-known local and national law firms, attorneys in small firms and in solo practice, law school appellate practice clinics under the direction of law professors, and attorneys employed by FPD's and Community Defender Organizations ("CDO") within the circuit. These attorneys are experienced in federal appellate representation and understand this court's rules and procedures. My staff reports that the court's panel members are cooperative and comply with transcript production protocols, motions practice, and briefing requirements, which allows their cases to move to disposition without unnecessary delay. Following case disposition, the judges of the court provide feedback on counsel's performance, which factors into future appointments.

Compensation/eVoucher

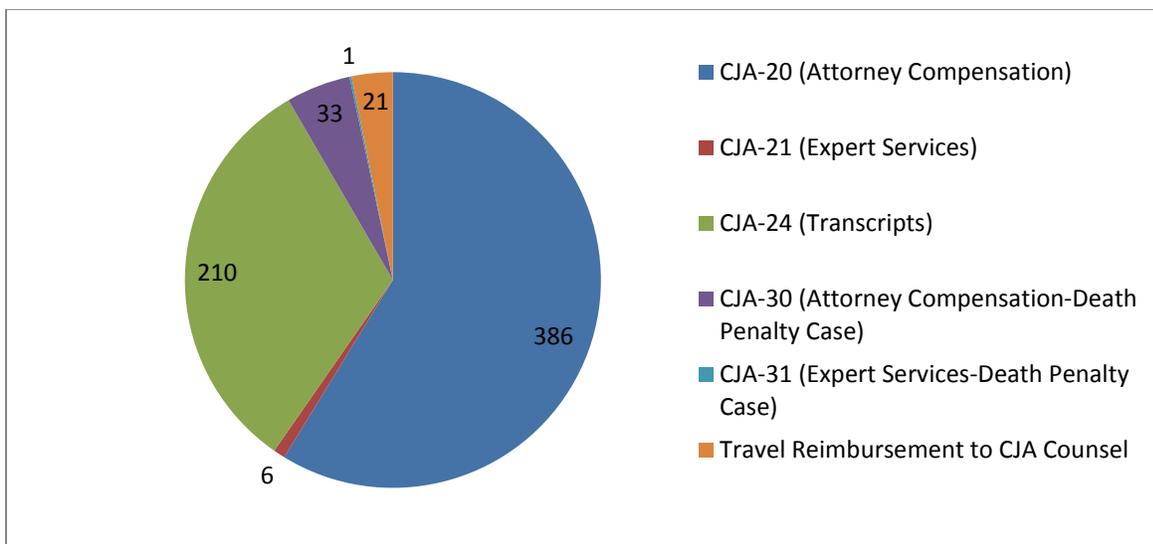
CJA counsel not employed by a FPD or CDO, court reporters preparing transcripts in those cases, and experts (usually interpreters/translators) are compensated by vouchers processed in the Clerk's office. In 2015, my office processed 659 vouchers for Court of Appeals cases; we additionally processed 1,137 "excess" vouchers from the district courts. Processing vouchers involves technical and mathematical audit of the vouchers for compliance with CJA payment strictures. The vouchers are then forwarded for judicial review. Once judicial review is complete, my office processes the vouchers for payment. In total, five employees have some responsibility for voucher review: two employees review all transcript payment vouchers for rate compliance and confirm the page count and timely production of the transcript by cross referencing the court of appeals and district court dockets; three other employees audit attorney payment vouchers for technical compliance, consulting the court of appeals docket as necessary.

We implemented eVoucher in July 2015, which we hope will substantially reduce the time devoted to technical voucher review and enhance our ability to transmit information within this court and further between this court and the 9 district courts within the circuit's jurisdiction. Additionally, we look forward to the ability to readily provide the court with data regarding CJA costs generally, as well as data regarding the utilization and costs of individual appointments. However, the transition to eVoucher has required additional resources from my office and has resulted in additional work (both internally and externally) to migrate attorneys to the use of the new system. The circuit wide implementation of eVoucher in the district courts should provide relief from much of the technical review and auditing of excess compensation vouchers from those courts. This work is graphically presented in **Table 2** and **Chart 2** below:

Table 2. CJA Vouchers Processed by the Court of Appeals

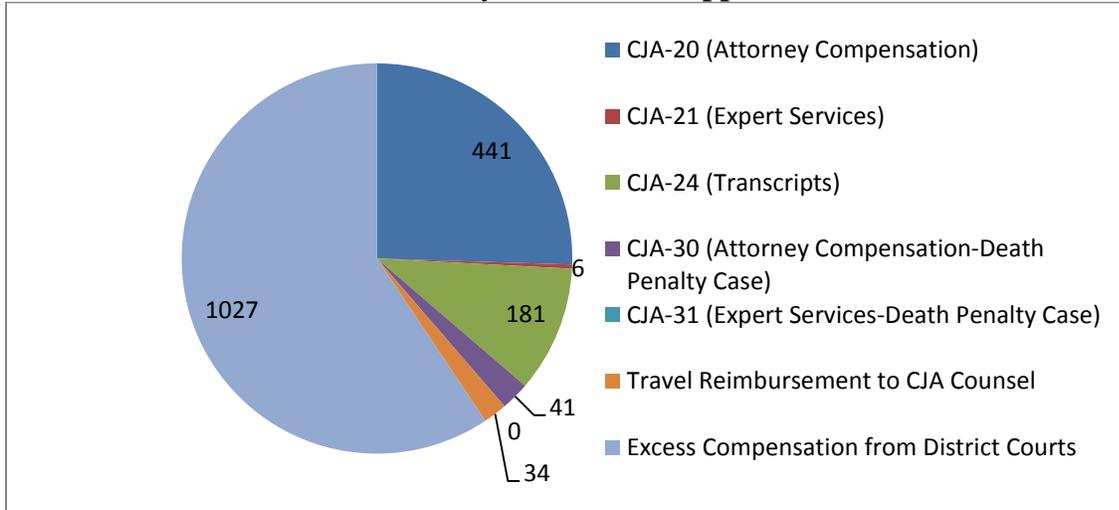
Type of Voucher	2014	2015
CJA-20 (Attorney Compensation)	441	386
CJA-21 (Expert Services)	6	6
CJA-24 (Transcripts)	181	210
CJA-30 (Attorney Compensation-Death Penalty Case)	41	33
CJA-31 (Expert Services-Death Penalty Case)	0	1
Direct Payments For Travel ²	34	21
Total From Court of Appeals	705	659
Excess Compensation from District Courts	1027	1137
Grand Total	1,732	1,796

Chart 2. Court of Appeals CJA Vouchers Processed



² We make arrangements for CJA counsel appearing at oral argument to charge their travel to a special account to avoid the attorney's out of pocket expense for those charges.

Chart 3. All Vouchers Processed by the Court of Appeals



Death Penalty Cases

All death penalty matters pending before the court involve representation by counsel appointed pursuant to the CJA. The appeals require intensive monitoring and case management by the Clerk's office. At this writing, 56 death penalty habeas appeals pend before the court, involving 43 individuals sentenced to death. Also pending is one appeal in which most of death row population of the State of Ohio challenges the State's execution protocol. In another appeal, many of those same inmates challenge an Ohio statute that screens the identity of the manufacturers of drugs to be used in executions.

The death row inmates are represented by a combination of FPD, state public defender organizations, and private CJA counsel. Fifty-three different attorneys appear, many of whom provide representation in multiple cases. There are four Capital Habeas Units in the circuit: located in in the Northern and Southern Districts of Ohio and in the Eastern and Middle Districts of Tennessee. Those units currently provide representation in 24 pending appeals. The FPD Capital Habeas Unit in Pittsburgh, Pennsylvania, provides representation in one appeal. The Department of Public Advocacy, the state public defender organization in Kentucky, provides representation through CJA appointments at specially negotiated rates³ in 12 cases. The Ohio Public Defender likewise provides CJA representation in one pending appeal. Private attorneys appointed pursuant to the CJA provide representation in 31 pending appeals.

³ The Circuit's Case Budgeting Attorney negotiates these rates with the state entities. The rates are substantially less than the allowable hourly CJA rate as a result of restrictions in appropriations law which limit payments to state entities.

There is one pending direct appeal of a capital sentence, in which representation is provided by Capital Appellate Resource Counsel from the Northern District of New York, with private CJA co-counsel.

Based on the number of cases now pending in the district courts and the number of individuals under a sentence of death, we do not predict a diminution in the number of appeals likely in the foreseeable future. A total of 79 death penalty habeas actions are pending in the district courts throughout the circuit. Seven defendants face federal capital charges in the circuit.

As noted in **Table 1**, our court processed 55 CJA vouchers in death penalty appeals during 2015. Some were interim vouchers paid during the course of pending appeals; all required review in the Clerk's office before forwarding for judicial review/approval.

Case Budgeting Attorney

Since 2008, the Court of Appeals has employed a Case Budgeting Attorney (CBA), initially as a part of a successful pilot program, which has become a permanent position in this court, and is now found in all circuits. The CBA provides assistance to non-FPD CJA attorneys in district court capital and mega cases in the preparation of budgets to be submitted for the approval of the district courts. The budgets are subsequently approved by a Court of Appeals judge designated by the Chief Judge. The CBA coordinates resources in multi-defendant cases providing enhanced services to the attorneys and his efforts take advantage of economies of scale in sharing services, such as discovery coordination, amongst defendants. In capital cases, CJA counsel receive the benefit of the CBA's expertise about the presumptive costs and rates associated with various services and where and how expert services can be sourced. The courts are assured that the CBA's imprimatur indicates that the costs to the CJA system are reasonable and objectively determined.

The CBA also assists the judges of the Court of Appeals in evaluating CJA voucher claims about which they have questions and provides an additional level of substantive review of all excess CJA vouchers forwarded for approval from the district courts to the Court of Appeals.

Conclusion

The management of the CJA panel, appointment of counsel, and processing compensation requests are labor intensive processes for the Clerk's office. The latter tasks, however, we hope will become less onerous as the district courts implement eVoucher and financial integration of the review and payment systems is completed. Working with FPD's, CDO's, and experienced private CJA counsel improves the management of criminal and habeas appeals in the court and assists the Clerk's office in its core mission of supporting the judges of the court. We look forward to continuing that partnership.

Deborah S. Hunt, Clerk
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Thank you, again, for allowing me to provide my perspective as the Clerk of the Sixth Circuit Court of Appeals.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah S. Hunt". The signature is written in a cursive style with a large initial "D" and "H".

Deborah S. Hunt, Clerk
Sixth Circuit Court of Appeals