

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA**

**CHARLES S. COODY**  
UNITED STATES MAGISTRATE JUDGE

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February 4, 2016

Honorable Kathleen Cardone and  
Members of the Committee to Review the Criminal Justice Act

Re: Birmingham Hearing for the Criminal Justice Act Review

Dear Judge Cardone,

Chief Judge Watkins designated me to represent the Middle District of Alabama at the hearing before your Committee. I have been involved with the Criminal Justice Act since my appointment as a Magistrate Judge in 1987. I was also involved with our District's formation of our Community Defender Organization (CDO) which was approved in 1995 and was the first defender organization in the State of Alabama. To assist the committee, I have attached information about our district and a copy of our Criminal Justice Act plan and the Bylaws of our Federal Defender Program, Inc. In these written comments I will address a few but not all of the focus topics specified in Judge Cardone's invitation letter of January 7, 2016.

### **Judicial Involvement**

The Middle District's Community Defender Organization is managed by a board of directors which is responsible for the overall management of the corporation and the appointment of the Executive Director who is the Federal Defender for the District. The Court has the responsibility for reviewing the continued eligibility of the defender program and "may at any time by order and on reasonable notice terminate its designation as the community defender organization" for the district. MDAL CJA Plan § V.A. While the CDO Executive Director manages the CJA panel of private attorneys, the Court retains the authority to resume management of the panel at any time. Plan § V.C. The Court approves attorney membership on the CJA panel after receiving recommendations from a Panel Selection Committee, which is established according to the Plan. Members of the CJA Panel serve at the pleasure of the court.

### **Compensation and Availability of CJA Panel Members**

The judges of this District endeavor to review and process vouchers as quickly as possible. Where questions arise about compensation requests, counsel are provided the

opportunity to provide an explanation. The hourly rate for CJA panel attorneys is minimally adequate to attract and maintain competent panel representation. However, unfortunately this fact is largely due to the poor compensation criminal defense attorneys receive when appointed in state court where hourly rates are approximately one-half the current CJA rate. The District has two satellite courthouses located in Opelika and Dothan, Alabama. The Eastern Division Opelika courthouse is approximately 64 miles from Montgomery, Alabama, the location of the District's main courthouse. The Southern Division Dothan courthouse is located approximately 105 miles from Montgomery. Neither of these satellite courthouses is adequate for the trial of criminal cases involving more than two defendants. Thus, multi-defendant cases must be tried in Montgomery, Alabama. In addition, all criminal pretrial proceedings are held in Montgomery. Historically, it has been difficult to secure CJA panel members from the Southern Division. We attribute this difficulty to counsel's reluctance to undertake cases where so much travel time must be undertaken for adequate representation.

### **Quality of Representation**

The attorneys employed by the CDO afford defendants excellent representation in all phases of the criminal process. The District's CDO is also involved in death penalty cases at both the federal and state level. The CDO's Death Penalty Unit directly assists defendants seeking federal habeas relief and provides advice to attorneys representing defendants in state death penalty cases. The selection and appointment process for CJA panel members insures that they provide representation which is on a par with the representation afforded by the CDO lawyers. The quality of CJA panel representation is enhanced by frequent seminars presented by the CDO at locations throughout the District.

### **Parity of Resources**

Our newest Magistrate Judge was formerly was an Assistant United States Attorney for this District. With his permission I will quote him regarding what he aptly characterized as asymmetry in parity of resources in cases where a defendant is represented by a CJA panel attorney.

In my prosecutions, I always had a primary case agent, and routinely supplemented his/her expertise with a financial analyst/accountant and other experts like medical doctors, chemists, fingerprint analysts, etc. In my five years, no indigent defendant ever retained a single rebuttal expert. Often this was because their own expert would have merely confirmed, for example, that the fingerprint lifted was the defendant's. For many other cases, an alternative financial calculation or other conflicting opinion could

have been beneficial to the defense.

Our judges concur with this observation and believe there are a variety of reasons for this situation. First, notwithstanding that this topic is covered in educational seminars, CJA panel attorney members simply may not be aware of the variety of investigative and expert services for which compensation is available under the CJA. Secondly, we believe that a more salient reason relates to structure of the CJA services compensation policies. Under Guide to Judiciary Policy, Vol. 7, Ch. 3, § 310.20.30, the maximum compensation for investigative, expert and other services without prior authorization is \$800.00. Especially when mental health services may be necessary this limitation is inadequate, and even if counsel has time to secure advance authorization for services the limitations are not presently adequate. Counsel often must spend time contacting numerous experts to locate one willing to provide services under the compensation maximums. Of course, there is a procedure for requesting and securing approval for the waiver of the maximums but that procedure involves a written request by counsel, a written approval by the trial judge and a request to the Chief Judge of the Circuit or his designee for final approval. Even though experience teaches that the judges involved act expeditiously, the process takes time, involves additional work, and often requires a delay in the trial. We believe that the committee should consider whether approval at the Circuit Court is necessary when the judges at that level are far removed from the particular facts and requirements of the criminal case.

Our Court appreciates the opportunity to provide our views, and I look forward to seeing you at the hearing in Birmingham.

Yours truly,

/s/Charles S. Coody  
CHARLES S. COODY  
UNITED STATES MAGISTRATE JUDGE

cc: Honorable W. Keith Watkins