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December 22, 2015

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

Dear Judge Cardone:

Thank you for inviting me to testify before the CJA Committee at the public hearing in Miami, Florida, on Tuesday, January 12, 2016, at 2:00 p.m. Please accept this letter as my introduction to the committee, and as my written comments about the structure and function of the Criminal Justice Act.

By way of background, I have practiced law since 1992 in Savannah, Georgia, which is located in the Southern District of Georgia. I clerked for the Honorable John F. Nangle, a United States District Judge, from 1992 until 1994; practiced in a local civil firm from 1994 until December 1999; served as an Assistant United States Attorney and appellate chief in the Southern District of Georgia from January 2000 until September 2009; and after the leaving that office, practiced first solo, and now with my husband, with a focus on federal criminal defense at both the trial and appellate levels. I am a member of our court's CJA panel, as well as a member of the CJA panels of the United States Courts of Appeal for the Fourth and Sixth Circuits. I routinely accept assignments from all three courts, as well as from the Eleventh Circuit when called.

Although I will happily answer questions about my appointments in the Fourth and Sixth Circuits, I intend to focus my testimony before the committee on the appointment of counsel in the Southern District of Georgia, my home district.

I share concerns with other panel attorneys about the adequacy of the hourly rate and the various caps, but this letter focuses its remarks on the quality of representation under the CJA.

The Southern District of Georgia is one of the few districts in the country that currently lacks a Federal Defender's office. Although there was a Federal

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Defender in this district many years ago, there has not been an office here in the 23 years that I have lived and worked in this district. Instead, the district court has used a variety of methods to provide CJA counsel. Until the appointment of the current chief judge, the district required *all* attorneys who were admitted to federal court to represent indigent criminal defendants. This system resulted in, for instance, real estate attorneys (who were admitted to the district's bar to appear occasionally in bankruptcy court) representing defendants charged with federal felonies. It created a strange relationship between these appointed attorneys and Assistant United States Attorneys, who felt the need both to represent the government and suggest (for instance) that the appointed attorneys file suppression motions. As the appellate chief of the local United States Attorney's Office, I saw a number of ineffective assistance claims spawned by attorneys who fell in this category.

What would happen if attorneys told the district court (truthfully) that they lacked competence to represent criminal defendants as appointed counsel? The district court was known to *suspend attorneys from practice in the Southern District of Georgia* until they could gain competence.


The new system under the current chief judge is better in that permits attorneys to opt into the roster of CJA counsel. This draws attorneys who are at least willing to do criminal defense work, even if they have no experience. But there is no current grading system for counsel, meaning that inexperienced attorneys still can – and often do -- represent clients on difficult charges. This leads to situations where attorneys who primarily represent state court misdemeanants find themselves representing health care fraud defendants in document-intensive cases, or attorneys who primarily do insurance defense work pleading clients out to life sentences. From time-to-time, I have been called in by the district court to work after these attorneys, and the situations that I have inherited distress me, especially where good lawyering could have made a difference.

To ensure quality representation under the CJA, my district would benefit from a different approach -- whether by a grading system used to pair more experienced attorneys with more complex cases, or by the creation of a Federal Defender's Office.

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Thank you for soliciting my opinion on this very important topic. I look forward to meeting you and answering your questions.

Kind regards,



Amy Lee Copeland

ALC/mp