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December 22, 2015

Via Email

Autumn Dickman

Project Manager, CJA Review

CJAStudy@ao.uscourts.gov

Re: Comments and Biography for CJA Public Hearing in Miami

Ms. Dickman,

Please find enclosed as directed in your December 17<sup>th</sup> email the comments on the four key areas here, as well as an additional comment on screening voucher cuts at the District Court level, and finally, a brief biography as you requested.

By copy of this email I am notifying Jessica Salvini, and you should receive her comments and summations by separate email. Thank you for your help and I hope you and your family have a pleasant Christmas and New Year.

Sincerely,



David P. McCann

DPM:scm

Enclosures: As stated

Cc: Jessica Salvini (via Email)

### Multi Defendant Cases

In the district of South Carolina, cases overall have been down for an excess of three years. Many of the cases that are coming out are single defendant cases which, absent a conflict, go to the Federal Defender's Office. Understand that this is not an uncommon trend in other parts of the US

What multiple defendant cases we do get, are generally drug related or involving groups of people engaged in fraud via counterfeit funds, credit cards, and the like. The problem that arises in these multi defendant cases, as limited as they are, oftentimes is that some courts tend to look at all of the vouchers before they pay a single one, and then average out what the fees and expenses are and come up with a number that should be paid to everyone who enters a plea. I know this issue will be addressed in some other fashion at the conference. The issue is, among other things, success is not rewarded, and success often comes with extra hours and getting a better offer for the government and doing a better job for your client.

### E-Discovery

E-discovery is getting better. The glitches remain with certain programs and formats that the government uses which are hard to convert. The solution seems to be that upon filing an initial set of discovery motions, if you get E-discovery that you cannot read, or it is not properly indexed or cataloged, bringing it to the court's attention by way of a more elaborate and detailed motion for discovery citing the problems that the government is giving us, seems to get the trick done. The court would then be available at the first Bar or Roster meeting on the case and often would address the issue before counsel has to bring it up. The local rule does not allow discovery material to be disseminated or left with the client if they are in custody, or given to them if they are not in custody. They can review it with the lawyer present. There has been some advance in allowing people in confinement to use a common computer at the jail to view discovery. This is in its infancy and I am not quite sure how it is going to work out.

### Extra-territorial Discovery

Not applicable to this district.

### Use of Experts in Criminal Cases

A long standing trend has been for defense lawyers not to move the court for expenses for funds to pay for experts, whether it be an investigator or any more specialized help. I am not quite sure why the reluctance is there. I have urged to the members of the panel, stressed at seminars and meetings with lawyers at Bar calls and roster meetings, and again I am not quite sure why there is this reluctance. The rule is pretty clear, the money is there, courts have shown they will approve it with proper basis to the judge, explaining that this individual has been used before, the prices are competitive, and was helpful in prior cases before the court and the court has approved fees for this expert in the past. If you don't have that, then you are just going to have to break the ice and get the court to look at someone new.

#### Voucher Review

At the last panel conference I was surprised to learn that some districts, through their CJA committee, or other mechanism, review vouchers that are contested by the submitting lawyer. This would seem to be a fair approach to some of the disparities we are seeing and how the vouchers are approved or cut in various parts of the country. Such a committee or mechanism does not exist in the District of South Carolina but I think it would be a subject that would generate some interest at the Miami meeting.