



Written Submission in Advance of Testimony

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to:

CJAstudy

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From: Robert Scola/FLSD/11/USCOURTS

To: CJAstudy@ao.uscourts.gov

History: This message has been replied to and forwarded.

Pursuant to your request, I am submitting these written comments in advance of my anticipated testimony on January 11, 2016 in Miami, Florida. I am writing in my capacity as a United States District Judge for the past four years and as the Southern District of Florida Court's Liaison to the CJA Panel Committee for that same time period. Prior to becoming a federal judge, I practiced as a criminal defense attorney for over nine years and had significant experience in the federal courts.

One of the downsides of being in South Florida is that we are among the leaders in the nation in cases of Medicare Fraud, Aggravated Identity Theft, Tax Fraud, Mortgage Fraud, major narcotics cases and other complex criminal cases. Our Court is among the leading courts in the nation in handling and trying these cases. But, one of the collateral consequences of having all these cases is that we are blessed in the Southern District of Florida to have an abundance of highly qualified, skilled, experienced and fearless criminal defense attorneys. I believe the overall quality of representation criminal defendants receive in our District from our Federal Defender's Office and from our CJA Panel attorneys is unrivaled in this country.

Our District is fully committed to providing our criminal defendants with the highest quality of representation and has taken significant steps in the past few years to ensure that only the most qualified and committed attorneys are allowed to participate on the CJA Panel.

Our Panel consists of 165 attorneys. Up until 2012, although members were selected for a two-year term, they were automatically kept on the Panel unless some disciplinary action was taken to remove them. And, until 2012, there was no formal procedure in place to follow when an attorney was not performing up to the standards we expect.

When I took the bench in 2011, I was sometimes disappointed to see that a few of the CJA attorneys did not possess the enthusiasm one would expect or did not show compassion for their clients that one would expect. While these attorneys were highly experienced and met the standard of competent counsel, they did not meet the higher standards we set for our CJA Panel attorneys. Thus, our Court amended our CJA Plan to established a three year term for each member of the Panel. The terms are staggered to allow one-third of the Panel's terms to expire each year. And, upon expiration of the term, the member is required to submit an application for re-admission to the Panel. The complete description of the Amendment to the Plan, adopted by Administrative Order in 2012 is set forth below:

The Court's Amended CJA Panel Plan, adopted on January 13, 1993, has been amended by the Judges of this Court. Paragraph A, on page three, under the heading "Administrative Organization" is amended to read as follows:

A. **CJA PANEL**

The Court shall establish a panel of private attorneys (the CJA Panel) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the CJA Panel after receiving recommendations from the Panel Selection Committee established pursuant to paragraph B, of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.

Each panel member shall serve for a term of three years, except that the panel in existence at the time when this section is first implemented shall serve staggered terms as follows: one-third of the members of the panel shall serve for one year, another one-third shall serve for two years, and the remaining one-third shall serve for three years. The existing panel shall be randomly divided into three groups by separate administrative order.

A panel member whose conduct or representation does not meet the high standards expected of members may be removed by the Conduct Review Panel prior to the expiration of his or her term as provided in paragraph F of this Plan.

Whenever the term of a CJA Panel member expires, he or she may apply for a new term. In filling the vacancies of members whose terms have expired, the Panel Selection Committee shall first consider any Renewal Applications from members whose terms are expiring. If, after considering all Renewal Applications, there are still open positions to be filled, only then shall the Panel Selection Committee solicit and review applications from new applicants.

Our CJA Panel Committee, which is Chaired by Federal Defender Michael Caruso and comprised of 12 local attorneys, reviews the re-application forms and makes recommendations to the Court of who should be re-admitted and who should not. Through this re-application process, our Court did not approve the re-applications of 11 members in 2013, 7 members in 2014 and 5 members in 2015.

Once the openings on the Panel were created by this process (as well as from retirement or voluntary resignation from the Panel) applications for membership on the Panel were considered by the Committee and the Court. In 2013, the first year of this process, we received 81 applications for those 11 vacancies on the Panel. We were able to fill the vacancies with highly qualified candidates who were selected based upon their experience, knowledge and skill and with a further goal of achieving more racial, gender, ethnic and geographic diversity.

Our Committee and Court also established a formal procedure for resolving complaints about the performance of CJA Panel members during their 3-year-terms. By Administrative Order in 2012, the CJA Panel Plan was amended to set forth the following procedure:

Paragraph F of the Amended CJA Plan, on page six, under the heading "Administrative Organization" is amended to read as follows:

F. Removal And Conduct Review Of Panel Members

Membership on the CJA Panel is an honor and a privilege and members are expected to provide representation at a level that exceeds mere competent representation. A member of the CJA Panel may be removed from the Panel prior to the expiration of his or her term whenever the Court determines that the member has failed to fulfill the obligations of Panel membership or has engaged in other conduct which renders it inappropriate that he or she be continued as a Panel member.

All complaints concerning the conduct of a CJA Panel member shall be forwarded to the United States District Court Judge, who is designated as the Liaison to the Court's CJA Panel Committee. If the Liaison determines that a complaint alleges facts that, if true, would warrant consideration of removal of the CJA Panel member, the Liaison may direct the Chairperson of the Committee to review the complaint, and make such inquiry as he or she deems appropriate.

The Chief Judge of the District shall appoint a second United States District Court Judge who, with the Liaison, will constitute a Conduct Review Panel to consider all complaints, and to determine what action, if any, should be taken. If the two Conduct Review Panel members, after consultation with the Chairperson of the Committee, unanimously agree on a course of action, then their decision is final. If the two members of the Conduct Review Panel do not agree, then the Chief Judge will determine the course of action. The Court, either through the Conduct Review Panel, or by decision of the Chief Judge, has the authority to remove an attorney from the CJA Panel at any time, or to take such other action as it deems appropriate.

It is solely within the discretion of the Conduct Review Panel as to how a complaint should be investigated, heard and determined.

At the present time, U.S. District Judge Marcia Cooke and I constitute the Conduct Review Panel in consultation with our Federal Defender, Michael Caruso. To date, we have conducted investigations of complaints of 4 CJA members resulting in one voluntary resignation, one removal from the Panel, one 6 month suspension from receiving new CJA appointments, and one private reprimand.

My understanding is that the Ad Hoc Committee has concerns about the judiciary's role in approving the budgets of the Federal Defenders and CJA attorneys' fees and expert fees. I cannot provide any meaningful information relating to budgeting of the Federal Defenders and my knowledge of the Court's review of attorney's fees and expert fees is limited to the past four years.

While there may be problems in other Districts, I have not seen (or heard) of systemic problems in this process in our District. We are committed as a Court to providing the best legal representation and providing the attorneys with reasonable expenses to properly prepare their defenses. I think we judges are in the best position to make these

determinations. I previously served as a Florida state court trial judge for 16 years and the judges reviewed any disputed billing issues there as well.

I hope this information helps you in some way and look forward to seeing you on January 11th.

Robert N. Scola, Jr.
United States District Court Judge