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Hon. Kathleen Cardone  
Chair, Ad Hoc Committee to Review  
the Criminal Justice Act  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, NE  
Washington, DC 20544

Via email: [CJAstudy@ao.uscourts.gov](mailto:CJAstudy@ao.uscourts.gov)

Dear Judge Cardone:

I am submitting these remarks on behalf of the Federal Public Defender's Office of the Western District of Virginia.

***Introduction***

Our office was established in 2006 and covers the seven divisions within the district. Geographically, our district includes the western two-thirds of the state, stretching 300 miles north to south from Winchester near the borders of Maryland, West Virginia and Pennsylvania to Bristol near the borders of North Carolina, Tennessee and West Virginia; and more than 300 miles from the furthest western point to the furthest eastern point in the district. The largest city in the district, Roanoke, has a population of fewer than 100,000. There are four active district judges and two senior judges. The Federal Public Defender's Office has three locations: the main office in Roanoke, and branch offices in Abingdon and Charlottesville. There are a total of eleven attorneys among the three offices, as well as investigators and support staff.

## ***CJA Plan***

In 2007 the District Court adopted a Criminal Justice Act Plan for the district that revised the existing plan following the establishment of the Federal Public Defender's Office. The plan places the composition, administration, and management of the CJA panel exclusively under the control of the court. A panel of CJA attorneys is selected for each division by a committee, appointed by the chief judge, composed of the Federal Public Defender, the Clerk of the Court, and a panel member from the division. CJA panel appointments are reviewed annually and recommendations for appointments or removals are made to the chief judge. CJA vouchers are submitted to the Clerk for mathematical and technical accuracy and forwarded to the presiding judge for consideration.

In 2010 the plan was amended to provide that the CJA panel members be appointed to three-year terms, staggered so that the terms of one-third of the panel members would expire each year. The Panel Selection Committee was replaced by a CJA Advisory Committee, charged with responsibility for recommending the membership of the CJA Panel, and with overall responsibility for reviewing the operation and administration of the CJA Panel and making annual recommendations to the court for any changes to the appointment process and panel management. The CJA Advisory Committee is appointed by the Chief Judge and consists of the Federal Public Defender, the Clerk, one CJA Panel member from each division, and a chairperson designated by the court. The committee is assisted by Division Review Panels, which are appointed for each division to make recommendations for appointments to the CJA Panel.

The 2010 amendments also provided for the establishment of a CJA Training Panel as a way to provide experience for attorneys seeking appointment to the CJA Panel. Under this program Training Panel members are assigned to assist CJA panel members in a "second chair" capacity.

## ***Implementation of the CJA Plan***

Between 2007 and 2015 there have been an average of 234 CJA appointments each year. Currently there are 63 CJA panel members for the district. Although the numbers vary among divisions, as a general rule most CJA attorneys accept 5 or 6 appointments each year.

The issues that arise with frequency are training and compensation. The CJA selection process has been focused, since the establishment of the Federal

Public Defender Office, on (1) reducing the size of the CJA Panel so that the attorneys can rely on getting enough appointments to make their participation financially worthwhile, and (2) improving the quality of attorney performance. Simply reducing the size of the panel improved the overall quality of attorney performance because it allowed for the elimination of those attorneys who were more or less dabbling in federal criminal practice. The remaining CJA panel members have been provided with more training opportunities, more resources, and more encouragement.

Every year the Federal Public Defender Offices from the Eastern and Western Districts of Virginia put on a two-day training session, the Frank Dunham Federal Criminal Defense Conference, which is open to all CJA panel attorneys in Virginia. Attendance by CJA attorneys is not a stated requirement, but is a significant factor that is considered when panel attorneys apply for reappointment at the end of their terms. The Federal Public Defender's Office in the Western District reaches out to the CJA panel attorneys to offer assistance and advice.

Neither the Federal Public Defender's Office nor the CJA Advisory Committee are directly involved in matters of compensation of CJA attorneys since the rates are fixed by law and the vouchers are reviewed by the court. That is not to say that the CJA attorneys are shy about expressing their opinions on compensation matters.

The sequester caused a number of problems, but those seem to have resolved with the passage of time. Nevertheless, numerous CJA attorneys complain that their vouchers have been cut for no apparent reason and without explanation. Some complain that they have been cut back to the cap maximum for the reason that "the case didn't go to trial," regardless of the amount of work required. Others complain that vouchers submitted for less than the cap maximum were cut because they exceeded the formula of three or four hours of out-of-court time for every hour of in-court time. The complaints are too frequent not to conclude that there is pressure to cut fees coming from some source.

Arbitrary fee cutting has a deleterious effect on the CJA panel. Almost all of the CJA panel attorneys are general practitioners who are in solo practice or in small partnerships. Many of them practice in rural areas, and the compensation they receive from CJA appointments is an important source of revenue. Cutting fees may be viewed as an insinuation that the attorney did not perform the work he is claiming, or that the court undervalues the work performed.

However, the CJA attorneys do report that since the Fourth Circuit appointed a Case Budgeting Attorney in 2014, the process has become more user-friendly on compensation issues, particularly excess voucher reviews.

The CJA panel includes attorneys who are regarded by the judges, prosecutors, and fellow defense attorneys as some of the best lawyers in the district. The selection process that is in effect directs younger, less experienced lawyers into the mentee program, and insures that the lawyers accepted onto the panel meet the required levels of competence and experience.

No doubt the quality of CJA representation would be improved if the panel members had better access to resources. This problem seems to be more one of failure to utilize resources than the lack of available resources. The clerk's office for our district reports that between 2007 and 2016 in a total of more than 2,000 CJA cases, experts were used in only 11% of cases, and more than half of those were interpreters. In only a handful of cases did CJA attorneys utilize investigators, mental health experts, or forensic experts. Obviously, more needs to be done to educate panel attorneys as to the availability of resources and to educate them as to how to obtain and utilize them.

### ***Recommendations***

Our office has endorsed the letter being submitted to the committee by a group composed of numerous defender offices. The main points are:

- Direct Federal Defender and CJA Panel representation on any national governing body;
- Direct Federal Defender and CJA Panel representation in the preparation and presentation of the Defender Services budget to Congress;
- A national administrative governing body that has a mission solely devoted to criminal defense with jurisdiction over all key management decisions, including budget, staffing, resource allocation, data management, and policies and procedures generally;
- An information technology system that is strictly separated from any personnel not employed by a distinct defender organization;
- A system for CJA Panel attorneys to receive payment and authorization for payment for outside services that does not involve approval by judges;
- A system for the selection of CJA Panel members and the heads of Federal and Community Defender Offices that does not involve judicial approval, with the obvious understanding that the Court always retains the ultimate

authority regarding the admission of any attorney to practice before the Court.

Thank you for the opportunity to address the Committee and to participate in this important endeavor.

Very truly yours,

s/Frederick T. Hebllich, Jr.  
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Senior Litigator Assistant  
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FTHJr

cc: Larry Shelton, Federal Public Defender  
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