

# ZOBY, BROCCOLETTI & NORMILE, PC

ATTORNEYS AND COUNSELORS AT LAW

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March 25, 2016

The Honorable Kathleen Cardone  
Chair, Ad Hoc Committee to Review the CJA Program  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, DC 20544

Re: Philadelphia Hearing April 11-13, 2016

Dear Judge Cardone and Committee Members:

Thank you for the invitation to testify before the Ad Hoc Committee to preview the Criminal Justice Act in Philadelphia.

Currently, I serve as the CJA Panel Representative for the Eastern District of Virginia since 2012. I am also the Fourth Circuit Representative to the Practitioner's Advisory Group for the United States Sentencing Commission. I have been in practice since 1978, initially as a State prosecutor and then in private practice. My affiliation with the CJA Panel dates back to the mid 1980's when I began accepting appointments in the Federal courts. Since then I have had the opportunity to travel to Guantanamo Bay, Afghanistan, and Djibouti, as a panel member on appointed cases.

My District is comprised of four districts, Alexandria, Richmond, Norfolk and Newport News. We have well over 200 attorneys on the panel and because of multi defendant cases or conflicts with the Federal Defender, the attorneys receive appointments through the year. Those numbers have been dropping in the last few years though.

There has been an explosion in mega multi defendant cases. These cases have yielded huge volumes of discovery, both by way of discs and hard drives. Trials take 4-6 weeks, which challenges the CJA lawyers and their staff. Jail house calls, emails, social media posts, wire taps are a bit of sampling of the issues we confront. How to handle their complexity and yet to be compensated fairly are truly monumental issues. As long as the government continues to bring these cases, these issues will continue and the CJA lawyer has to rely upon the Court to protect

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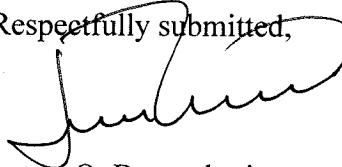
them from financial ruin. Too often that protection falls short. As a result, experienced attorneys are now shying away from accepting these appointments. I see this a major impediment to competent representation.

Too often the trial court has little to no experience in criminal defense. That results in the Judge not fully understanding the type of work claimed, the motions filed, the amount of hours claimed. It is not that the Judges are ill tempered; it is more a matter of an unfamiliarity with the efforts of the defense attorney in preparing a case. Also, the role of the attorney in handling the difficult client is an overlooked fact.

At the CJA Conference in San Francisco we were asked if we would start over, we were asked what type of system would you envision? I think its imperative to remove vouchers and expert fees from the jurisdiction of the trial Judge. It is fraught with too many conflicts and confrontations. The Judge ruling on motions, arguments and trial issues should not be in control of the budget of the adversary appearing in front of him or her. The Court does not control the expenditures of the United States attorneys, why should it control the defense? The government already has an enormous advantage; why make the playing fields even more uneven. Remove the payment authority from the Court and vest it in an independent entity, such as the case budget director that some of the circuits have established. I would think the district court Judges would welcome the change as well.

I look forward to appearing before the panel and expanding on these issues.

Respectfully submitted,



James O. Broccoletti

JOB/mls