

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CHAMBERS OF
SUE L. ROBINSON
U.S. DISTRICT JUDGE



U.S. COURTHOUSE
844 N. KING STREET Unit 31
WILMINGTON, DELAWARE 19801-3568
302 573-6310

March 24, 2016

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

Dear Judge Cardone,

At the request of Chief Judge Leonard P. Stark, I respectfully submit the Report of the United States District Court for the District of Delaware to the Committee to Review the Criminal Justice Act Program. As reflected in the Report, the stakeholders in Delaware's CJA Program have long been accustomed to doing more with less through cooperation and a mutual commitment to provide constitutionally adequate representation to indigent defendants. I am available to respond to any questions or address any concerns in this regard.

Cordially,


Sue L. Robinson

**REPORT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Submitted to:

The Committee to Review the Criminal Justice Act Program

This report is submitted pursuant to the February 25, 2016 letter invitation to submit written comments on the structure and organization of the Criminal Justice Act Program ("CJA Program") as it is implemented in the District of Delaware ("the District"). By most comparables, the District's CJA Program is efficient and effective, albeit for a numerically limited population. More specifically, for calendar year 2015-2016, the District had 67 criminal cases, with 101 named defendants; as of March 18, 2016, 34 criminal cases had been filed, with 43 named defendants. For calendar year 2015-2016, there were 55 CJA appointments, of which 43 continue to be active. The District has 23 CJA Panel ("the Panel") attorneys. The Federal Public Defender's Office in Delaware ("the Defender's Office") has nine attorneys, including Mr. Bostic (Delaware's Federal Public Defender); of these, only five represent defendants in federal criminal cases (as opposed to representing defendants in federal habeas proceedings).

The Panel attorneys are drawn from members of the Delaware bar, as well as from the Pennsylvania and New Jersey bars. The composition of the Panel (kept on a "Master List") is reviewed on an annual basis by the Court and the Defender's Office, with applications that have been received during the year considered at that time. The ministerial act of appointing a Panel attorney is performed through members of the Court's Clerk's Office. In this regard, after a Magistrate Judge determines the need for appointment of counsel at the initial appearance (generally, in matters involving multiple

defendants or when the Defender's Office otherwise has a conflict), the assigned courtroom deputy reaches out to the attorneys on the Master List to secure representation. The courtroom deputy to the Chief Magistrate Judge also helps secure representation from the Master List, e.g., for individuals who are designated as targets of investigations or are Grand Jury witnesses, or at the request of the District Judges upon more exigent circumstances related to trial testimony or the withdrawal of counsel. The financial deputies in the Clerk's Office forward the appointment letters and voucher packages to the appointed Panel attorneys, and handle further inquiries relating to payment. The District Judges, of course, manage the need for extra resources such as investigators, experts, and other service providers, and review the final vouchers submitted in their individual cases.

Having surveyed the stakeholders in the District,¹ there is no indication that the organizational structure described above has not worked in a timely and effective manner to provide constitutionally adequate representation for all those individuals in need thereof. As a small district, Delaware has had to make limited resources work even in its larger criminal cases, and the District has done so through a concerted effort at coordination and cooperation among the various stakeholders, from the beginning of

¹The Court's Judges, Clerk's Office and Probation Office, as well as the District's Defender's Office, United States Attorney's Office, and the Panel through its representative.

the process² through sentencing.³

With respect to the quality of representation, the District needs to draw from the surrounding jurisdictions because the criminal defense bar in Delaware is small. Despite coming from diverse jurisdictions with different court cultures, CJA panel members are viewed by the Court as being responsive, respectful, and competent.⁴ The District has devoted resources to maintaining the quality of representation, primarily through training by the Defender's Office, and is making concerted efforts to: (1) update the District's "Criminal Justice Act Plan" to, inter alia, require a minimal number of hours of CLE; (2) expand the scope of available training through the auspices of the District's Federal Bar Association; (3) establish a "second chair" program to encourage more Panel participation by less experienced members of the Delaware bar; (4) provide training in the use of technology in courtroom presentations, an area of need identified by the Panel representative; and (5) adequately compensate

²Including the provision of services or funds to financially eligible arrested but unconvicted persons for non-custodial transportation and subsistence expenses.

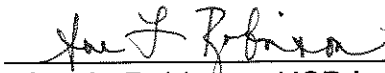
³It has been noted by the District's Panel representative that the District faces the perhaps unique challenge of maintaining a large enough Panel to meet the needs for representation outlined above, even during periods when the number of criminal cases (and the number of referrals) is relatively low. According to the Panel representative, to maintain sufficient competency for federal practice, the Panel attorneys should be getting no less than 3 or 4 referrals per year, which may not happen every year, a concern the District will address through additional training, discussed *infra*.

⁴Although some of the District's stakeholders have had a different experience in terms of Panel attorneys being responsive (the United States Attorney's Office) and timely in their submissions (the Probation Office vis a vis sentencing papers), these individual experiences can and will be addressed through more focused training.

(to the extent provided by law) the Panel attorneys for the important services rendered.⁵

In sum, the District recognizes and appreciates the magnitude of the obligation to provide constitutionally adequate representation to indigent defendants. Despite the tension created by the financial constraints imposed on the various stakeholders,⁶ the District's CJA Program has operated efficiently and effectively, with a template for future improvement based on the historic cooperation of all concerned.

Respectfully submitted, on behalf of the Court:



Sue L. Robinson, USDJ
March 24, 2016

⁵In this regard, the District will need to provide training as it transitions to the use of E-vouchers.

⁶Perhaps in the interests of economy, the Third Circuit has taken the position that a Panel attorney who represents a defendant at trial must continue representation on appeal. It has been noted by the Panel representative, however, that a defendant who is convicted at trial sometimes blames trial counsel for the loss, thus leading to a strained relationship between the attorney and client which may affect the quality of representation at that level.