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

Dear Judge Cardone:

Thank you for the invitation to testify before the Ad Hoc Committee to Review the Criminal Justice Act Program, which is charged with conducting a review of the delivery of indigent defense services in the federal criminal system. These written comments are offered in anticipation of my testimony in Philadelphia, Pennsylvania next month.

By way of background, I began my practice as an assistant attorney general for the Commonwealth of Virginia and subsequently served as a staff attorney for the U.S. Department of Commerce. After starting a solo practice, I joined the CJA panels for the Eastern District of Virginia and the District of Columbia in 1991 and 1993, respectively. I serve on the CJA court committees in both jurisdictions and, since 2004, have been the CJA panel representative for the District of Columbia. I am a member of the Virginia State Bar Disciplinary Board and have served as its chair. I have also served on the Committee on Grievances, which investigates unethical conduct by counsel admitted to practice in the U.S. District Court for the District of Columbia.

District of Columbia. In the District of Columbia, the CJA appointment process and voucher review are administered by the Federal Public Defender. Mr. Kramer's office makes the appointments and reviews attorney vouchers for mathematical errors and reasonableness. I have reviewed Mr. Kramer's written comments and agree with his assessment of the state of affairs in the District of Columbia. The legal community in the District of Columbia is among the most talented in the nation, and the competition for inclusion on the CJA panel is intense. Our panel members routinely obtain the services of investigators and other expert witnesses in the course of providing quality representation. The panel is diverse in both background and breadth of life experience.

Attorney Compensation. I am unaware of any reduction in vouchers at the district court level. I am also not aware of "excess" vouchers which have been approved by a

district court judge being reduced by the designated circuit judge. That said, it is regrettable that the Judiciary has not requested from Congress the higher rates for CJA panel attorneys which have already been statutorily authorized and recommended by the Defender Services Committee. Because of overhead costs and the quality of legal talent of the panel, a minimum hourly rate of \$175 for non-capital cases should be sought from Congress.

Expert Compensation. In the District of Columbia, panel attorneys do not have difficulties obtaining court approval for expert services. Based on information gathered at national meetings of panel attorney representatives, our experience in the District of Columbia is not unique. Yet there appears to be a significant number of districts where expert services are not sought because of the perception (or the reality) that district judges will not approve them. The federal public and community defenders do not need court approval to retain expert services and panel attorneys enjoy that same discretion up to an amount not exceeding \$800. One way to expand the utilization of experts would be to raise the limit within which panel attorneys may obtain expert services without prior authorization of the district court.

Structure and Organization. Currently, the defender organizations and the CJA panel attorney program are placed within the Defender Services Office ("DSO"). The sequestration of 2013, and resulting budget and staffing cuts to federal defenders, hourly reductions in pay for panel attorneys and demotion of DSO laid bare the internal conflicts of interests in the judicial budgeting process. It is difficult to assess how these consequences impacted the quality of representation for indigent defendants throughout the country. That is especially true since the Department of Justice did not seem to experience a corresponding reduction in resources.

If the defense function is to remain in the Administrative Office of U.S. Courts ("AO"), the interests of indigent clients must be protected by elevating DSO to a level where defenders and panel attorneys do not compete for the same resources as court administration, probation officers and courthouse facilities. Possible suggestions to protect the defense function within the Judiciary would be to include defender and panel attorney representation on the Budget Committee and the Defender Services Committee. Another option would be the formulation of an independent agency within the Judiciary, like the one contemplated in Prado Report. Such a model would protect the defense function within the Third Branch while providing the necessary budgetary autonomy needed to secure the uninterrupted provision of legal services to the poor.

Thank you for the opportunity to provide this written statement and to testify before the Committee. I look forward to sharing the thoughts and concerns of my fellow panel members with you in Philadelphia and hope we can contribute to the Committee's important mandate.

Sincerely,

Pleasant Brodnax

Pleasant S. Brodnax, III