

February 17, 2016

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

Re: San Francisco Hearing, March 2-3, 2016

Dear Judge Cardone and Committee Members,

Thank you for inviting me to testify before the CJA Committee at the hearing in San Francisco, California, on Wednesday, March 3, 2016, at 4:30 p.m. I write to provide you with a summary of my thoughts regarding the matters referenced in the correspondence received from the Committee, focusing on case budgeting and mega-case issues.

By way of brief introduction, I graduated from Boston College Law School in 1988, and began my legal career as a Federal Public Defender at Federal Defenders of San Diego, Inc., headed at the time by Judy Clarke. In November of 1992, I left the office for private practice with a fellow Federal Defender and we both joined the CJA Panel. In subsequent years we welcomed several former FDSI lawyers who are also on the Panel, and with whom we share office expenses and administrative support. Since leaving Federal Defenders, my practice focuses primarily on federal criminal defense, and the bulk of my caseload consists of CJA work. In February of 2014, our District established a CJA Advisory Committee to assist the Court in evaluating applications to the Panel, as well as any other issues affecting the improvement of the Panel. I am one of the seven lawyers on this Committee.

In recent years our District has seen a huge increase in RICO prosecutions and very large, multi-defendant conspiracies, most of which involve lengthy wire-taps, and the collections of huge amounts of social media posts, and electronic data. These prosecutions present serious challenges for CJA lawyers, both in terms of providing adequate representation and receiving just compensation.

Discovery

By far the major problem with mega-cases involves the production of overwhelming amounts of discovery, which is virtually impossible to review in its entirety. In a current prosecution in the Southern District, the discovery provided to the defense is well over 500 Gigabytes of data, which includes thousands of pages of Facebook posts, jail calls, wiretaps and videos. The Giglio materials were provided to the defense 2 weeks before trial, with no indication as to what or whether evidence would be part of the government's case on rebuttal. Thus, while the defense was preparing their own exhibits, cross-examination questions, opening statements and witness preparation, the attorneys were simultaneously receiving huge dumps of data. In another current mega- case involving a mortgage fraud prosecution, the discovery consists of hundreds of thousands of pages of loan documents, over 100 hours of audiotaped interviews, and 40,000 pages of emails. The paper discovery alone filled 24 bankers boxes and the government provided an exhibit list of 2000 documents.

The Judges in our District differ in their approach to these cases; some will approve expenses for paralegals, investigators and experts and some will not. Some judges place unreasonably low caps on fees for these services, whereas others will approve reasonable expenses upon proper application. In any event, the CJA lawyer faces the herculean, virtually impossible job of trying to review and assimilate the evidence, while maintaining a relationship with the client. Defendants are often housed in solitary confinement due to danger concerns or, are separated at the request of the prosecutors; all too frequently protective orders prohibit the attorney from sharing paper discovery with the client, or, sometimes, from even disclosing the names and identities of government witnesses until shortly before trial is to begin. The San Diego MCC, for example, has very old computer equipment and their rules prohibit attorneys from bringing in their own laptops, Ipads or other electronic devices. Each situation presents different impediments to the attorney-client relationship, and deprives the lawyer of often invaluable assistance from the client in reviewing and evaluating the evidence.

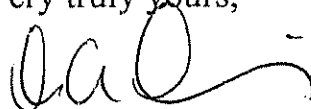
Some Judges push these cases to trial very quickly, which results in guilty pleas or requests for new counsel from frustrated and frightened defendants, frequently facing gargantuan sentences, in excess of 20 years.

Case-Budgeting

Although still infrequent, some of the Judges have experimented with case-budgeting, but the practice is not yet wide-spread. In one budgeted case I worked on, the trial judge approved expenses for a research attorney but the judge who took over the case viewed his work as more akin to that of a paralegal and reduced the research attorney's voucher, despite an order approving the voucher from the original judge. Attorneys were not fully compensated for the hours spent meeting in preparation of preparing and submitting the budget, despite the fact that it involved a great deal of work to try to predict what funds to request while discovery was still being produced and was ongoing. However, most Judges who order case-budgeting are open to amending the budget if unforeseen expenses and events occur later. Some of the more tech-savvy attorneys are very much in favor of case-budgeting, whereas others find the process intimidating and onerous. It is still an open question in this District how case-budgeting would assist the CJA Panel, although many, such as myself, believe it is a potential tool in defense of arbitrary voucher cutting, an unfortunately all-too common practice in this District and the number one complaint of CJA Panel attorneys.

Thank you for soliciting my opinion on matters related to the CJA. I look forward to meeting you and discussing these issues in more detail.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. A. DiIorio', with a stylized flourish at the end.

Debra A. DiIorio