MAGISTRATE JUDGE CAROLYN K. DELANEY

EASTERN DISTRICT OF CALIFORNIA

REMARKS BEFORE THE COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT PROGRAM

SAN FRANCISCO, CALIFORNIA

MARCH 2-3, 2016

I thank the Committee for this opportunity to speak regarding the ways we can improve our systems to ensure that we are delivering the highest quality of representation to our indigent defendants under the Criminal Justice Act. My name is Carolyn Delaney, and I am a United States Magistrate Judge in the Eastern District of California. I am honored to serve in one of the largest, and most judicially-impacted, districts in the country.

As you may know, the Eastern District of California covers 87,010 square miles, or roughly 55 percent of California's total landmass. In fact, if the Eastern District of California were a state, it would rank as the ninth largest state in the country. The Eastern District of California encompasses 34 counties, stretching from Kern County in the south to Siskyou County in the north, and between the eastern slope of the coastal range on the west and the California/Nevada border on the east. The district is divided into two divisions: Sacramento and Fresno, and is home to nineteen of California's thirty-three state prisons, as well as four prisons which house federal prisoners. Additionally, within the bounds of the Eastern District of California there are 188 federal buildings, 13 national forests (comprising 77% of the state's national forest land), nine national parks, and 923,000 acres of military land.

Despite being a very large district, the Eastern District of California is woefully understaffed with Article III judges. There are currently nine District Judges who sit in the District Court (four active and two senior in the Sacramento division, and two active and one senior in the Fresno division).[1] The crisis facing this District has long been recognized by the Judicial Conference of the United States (JCUS), which has recommended at least an additional six permanent judgeships for this district since 2011. We are still waiting. Thus at the end of June, 2015, the Eastern District of California carried 930 weighted case filings per authorized Article III judgeship. Therefore, our district has the 4th highest caseload per District Judge among the nation's district courts, and our weighted caseload exceeds more than twice the Judicial Conference standard of 430 per judgeship. Nonetheless, our District Judges are doing their best, and our weighted terminations per authorized judgeship stand at 1,011, ranking this district 3rd in the nation.

[1] There are also twelve full-time magistrate judges in the Eastern District: five in the Sacramento Division, four in the Fresno division, and one each in Yosemite National Park, Bakersfield, and Redding. Further, we currently have three recalled magistrate judges currently serving in the district.

All of this may explain why I am here representing our district, rather than one of my Article III colleagues.

And now to the topic at hand: the Criminal Justice Act. At the outset, let me say that we believe that the Eastern District of California is blessed with an excellent Federal Defender's Office, and an equally excellent panel of Criminal Justice Act attorneys. Our Federal Defender's Office, run by Heather Williams, delivers consistently high quality representation to its clients. Additionally, the FD's Office does a superb job soliciting, training, and monitoring our CJA Panel. I know that Ms. Williams and our panel representative, Scott Cameron, will be submitting their own remarks, so I leave it to them to address any issues they have identified.

I do want the Committee to know, however, that the Federal Defender's Office for the Eastern District of California has been a pioneer in the eVoucher system, and we have been delighted with the results. Our experience is that eVoucher allows for a quick and easy review of a CJA attorney's billings, and have expedited analysis and payment. In our district, an employee of the Federal Defender's Office performs the technical review of the vouchers (e.g. mathematical calculations, necessary attachments, etc.), then forwards the vouchers electronically to the judges for a reasonableness review and signature. My understanding is that given the quality of our panel the overwhelming majority of the vouchers are reviewed and signed without incident.

Now, having said that, I continue to be mindful of the awkwardness, and some might say conflict, inherent in a process wherein we have our judges conduct a reasonableness review of payment vouchers, necessarily implicating the tactical (and therefore financial) decisions made by our panel attorneys.

In preparing for this Committee, I reviewed the remarks made during your previous hearings, and I was struck by District of Arizona Chief Judge Raner Collins' remarks concerning judicial involvement in deciding "what fees are paid, what expert witnesses can and cannot be hired, what investigators can and cannot be hired." As he opined, these are not decisions that should be made by the judge, particularly the judge presiding over the very same case:

> Judges do not necessarily know at the time of appointment or request of services how complicated a case is or is not. Judges do not know how difficult a client is or is not…CJA lawyers have very different ways of how they do things. Some read every line on every page. Some skim, some only look at where their client's name appears in a paragraph or sentence. Some people visit their client once, some three, four, five, or six times. It is very difficult for a judge to know if this is a one time or two time visit client, or a five or six. Lawyers should not have to determine how much work they put into a case based upon their view of whether or not a judge is going to pay them for the work they do.
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> …

> Too often judges have to rely on their instincts about whether something is reasonable or necessary. There are no guidelines about how many hours a particular case should take, and the difficulty of the case. These make the current system of the judges determining how much lawyers get paid, and whether or not they get experts for their cases, fraught with peril.

I agree with Chief Judge Collins' assessment, and continue to feel a sense of unease in deciding how an attorney, specifically selected for CJA panel appointment based on his or her expertise in handling criminal cases, will be allowed to handle the case he or she has agreed to accept, and/or whether he or she should get paid after the fact as requested.

I know that this Committee is tasked with many difficult problems, and I count the CJA voucher authorization system as among the most troubling. While it is, in my view, necessary and wise for the Federal Defenders and CJA attorneys to remain under the funding umbrella of the judiciary (as I fear that if they were to stand alone, their budgeting would suffer dramatically), ideally other options for the processing of vouchers should be investigated and considered.

First, however, let me rule out several undesirable options: 1) I emphatically do not suggest a system of flat fees, as that would simply make a difficult situation worse; 2) I do not suggest that the voucher review process be conducted by the Administrative Office or modified to a one-size-fits all model. I firmly believe that one of the many strengths of our current CJA program is that our panel's vouchers reflect the talent of our panel attorneys, handling the cases brought in this district. And, as no doubt this Committee is fully aware from your travels around the country, the cases and problems of one district rarely reflect those of other districts, even in adjoining districts or states.

Now that I have identified the problem of voucher review, one might suggest that it would be up to me to find a solution to this problem. After years on the bench, however, I have learned that it is best left to others to proffer competing solutions, and I am best suited to simply opine on the merits of one solution over another. Therefore, I look forward to hearing from the Committee regarding its thoughts on this difficult issue.

This Committee has also requested that I address mega-case budgeting. We have had limited experience with mega-cases, so I leave it to others more knowledgeable than I to provide input on that topic. I will note that the process we have in place with the Ninth Circuit for death penalty case budgeting appears to be working very well, and I do not recommend changing that process at all.

And so I conclude my remarks, acknowledging that I have identified problems and offered no solutions. I hope, however, that my thoughts have contributed to the picture you are forming of the challenges we face in implementing the Criminal Justice Act and assuring our indigent defendants quality representation. I thank the Committee for its service.