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Testimony
for
Ad Hoc Committee to Review Criminal Justice Act

D. Scott Dattan
San Francisco, March 3, 2016

Thank you for the opportunity to present information on behalf of the Alaska CJA Panel regarding administration of the Criminal Justice Act. I have been defending people in the federal court since before the implementation of the Federal Sentencing Guidelines. I have been accepting federal criminal defense appointments in Alaska since 1985. I have been the Panel Attorney Representative for Alaska since February, 2013.

I believe you will also hear from Judge Timothy Burgess, Chief Judge for the District of Alaska and Richard Curtner, the Federal Defender for the District of Alaska. They are in a better position to address issues of administration of the CJA program. I will attempt to address the issues that are important to the panel attorneys who are appointed to represent indigent defendants.

I. Compensation

Of significance to all of us who accept CJA appointments is the compensation we receive for the work we do on behalf of our clients. My non-governmental hourly rate is 400.00.

The 2016 CJA rate of \$129.00 is less than one-third of that. In that I am not alone. CJA Panel Members in Alaska cannot and do not restrict their practices to CJA cases because the compensation is insufficient. Therefore, some of the best criminal defense attorneys in Alaska will not accept federal appointments.

If Gideon v. Wainwright is ever to be honored in spirit the rate of compensation for appointed counsel must at least approach that which is paid for private representation. The current compensation levels require panel attorneys to subsidize the federal government in representing criminal defendants. A portion of this can be seen as public service but the financial sacrifice cannot be made by all of us. I am fortunate to have a strong civil private practice to help me subsidize my CJA clients. I could not afford to do so otherwise.

II. Resources

While the Federal Defender in Alaska always supports the needs of panel attorneys, the fact remains that there is nothing even close to a level playing field between the U. S. Attorney's Office and a CJA panel member. The government seems to have inexhaustible resources through the U. S. Attorney, FBI, BATF, IRS, Homeland Security, Secret Service, joint task forces and other agencies.

Usually arrayed against them are solo practitioners who have to ask for authorization for the services of paralegals, investigators, and experts, all of whom must then also accept reduced compensation. There is not a lawyer in Alaska who believes this results in a fair fight, although we do our best under the circumstances.

Of particular concern in this area is the limitation on compensation for these “services other than counsel”. The use of a paralegal or investigator where the government takes these resources for granted, makes representation of our clients that much more difficult.

III. Administration

While the electronic submission of vouchers is designed to streamline the process of CJA compensation, that is not yet a reality. Part of the problem is the review process which is clearly a necessary step in order to ensure accurate accounting and honesty. However, as you have heard from others the Defender Program should be established as a separate unit within the AO so that management of and compensation for the CJA panel is no longer part of the judiciary function.

The present system puts too much emphasis on an individual attorney explaining his defense function and tactics to the judicial officer who is trying the case. The U. S. Attorney and the Federal Defender do not have to do this. A CJA panel member should not have to either.

IV. Support

Both Rich Curtner, the Federal Defender, and Debbye Minzenmayer, the CJA Panel Administrator, have been involved with and helpful to the CJA panel in Alaska.

We are fortunate here in that it is a small jurisdiction and the relationship between the U. S. Attorneys and the defense bar are for the most part collegial and cooperative.

However, there are no federal prison facilities in Alaska which makes providing discovery to our clients very difficult. Most discovery is now provided in electronic formats, but

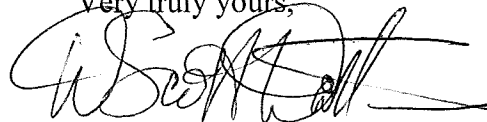
the state correctional facilities lack the hardware necessary for inmates to access any of this discovery. As a result, panel members must often provide computers for this purpose resulting in extensive hours of sitting in jails with clients or purchasing computers for this purpose if the facility will allow us to do so. Many panel members cannot afford to purchase additional hardware for this purpose and so far this has been a non-reimbursable expense similar to providing suitable clothing for clients who are going to trial.

Once again, excessive financial burdens are placed on CJA panel members. If defendants are to be represented by counsel in the courts, compensation to and support for those appointed attorneys should reflect the significance of their function.

V. Conclusion

It is an honor to be the CJA District Representative for Alaska and I have enjoyed practicing in federal court. However, the system should be adjusted to take the financial burden off the defense attorney by providing fair compensation for them and for the investigators, paralegals and experts who are so necessary for trial preparation and presentation.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Scott Dattan", written over a horizontal line.

D. Scott Dattan