

November 5, 2015

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

RE: CJA Panel Attorney Testimony

Dear Judge Cardone and Honorable Committee Members:

Thank you for the opportunity to appear and present testimony at the Committee's public hearing regarding the structure and function of the Criminal Justice Act, the strengths and weaknesses of the program, and my experience as a panel attorney.

After serving as a law clerk and staff attorney for over six years at the Eighth Judicial District Court of Appeals in El Paso, Texas, I opened my own firm in 2004. I am licensed in Texas and New Mexico and serve on the CJA Panel for both the Western District of Texas-El Paso Division and the District of New Mexico. I have represented clients charged with everything from illegal re-entry to sex trafficking to RICO violations and drug conspiracies. Currently, about half of my practice is dedicated to CJA Panel cases.

I was recently appointed to a three-year term on the CJA Panel Committee for the District of New Mexico. This committee is tasked with reviewing the applications of attorneys seeking appointment to the CJA Panel, making recommendations to the Court for membership, reviewing disciplinary complaints, and making recommendations on the disposition of disciplinary issues. Attorneys are appointed for a term of three years to one or more of four subpanels: General Felony, Complex Case, Auxiliary, and Appeals/Habeas. Currently, the Albuquerque Panel has 100 attorneys and the Las Cruces Panel has 35 attorneys. In FY 2015, Panel Attorneys handled over 2,800 cases, a slight increase over the 2,600 cases in FY 2014.

Case assignment has changed with the implementation of the e-Voucher program and it is too soon for me to opine on the fairness of the assignment process. However, I am grateful for the appointments I do receive and I very much enjoy the challenges presented with each case. While I believe the Criminal Justice Act provides invaluable services to individuals who cannot otherwise afford legal representation, I do have some concerns with the manner in which it currently operates. I will endeavor to address the applicable issues outlined in this Committee's scope of review, and bring forth issues I, and many other Panel Attorneys, have regarding the Criminal Justice Act program.

1) Vouchers

This is the top complaint I hear from fellow Panel Attorneys. Vouchers are often reduced. In reviewing my vouchers submitted this calendar year, reductions occurred in over 60% of my cases. I concede that some of those reductions were for mathematical or technical errors, as determined by the reviewing clerk. However, many were reductions made by the reviewing judge. Without standards to govern a judge's reasonableness determination, attorneys are left with little recourse to challenge these reductions. Section 230.36 of the CJA Guidelines provides that if the court determines a claim should be reduced, appointed counsel should be provided prior notice of the proposed reduction with a brief statement of the reason(s) for it, and an opportunity to address the matter. While some judges afford this opportunity to be heard, many do not and simply reduce the claim, leaving the attorney with no recourse at all. For those who allow an attorney to address the matter, in my experience about one-half reject the explanation and reduce the claim anyway. Since there is no appeal process, attorneys are again left with no recourse.

I provide the following examples as reasons I have been given for reducing my claim in an effort to highlight the problems panel attorneys encounter:

- “Counsel spent too much time preparing for sentencing.” (Client was facing life in prison after a contentious 10+ day trial and a 90-page PSR.)
- “Counsel billed in excess of what private counsel for a co-defendant charged.” (Multi-defendant drug conspiracy case in which my client provided substantial cooperation. Requested claim was below the case maximum.)
- Telephone calls to jail administrator for the purpose of scheduling attorney-client conference calls deemed “personal in nature” and non-compensable. (Despite the fact that conference calls are preferred over paying counsel to drive to facility which is over 100 miles away.)
- “Attorneys choose where to locate their offices. If you choose to be somewhere other than walking distance to the courthouse, I will not compensate you for travel time to and from the courthouse, nor for parking expenses.”

What I have learned to do is tailor my voucher depending on who will be reviewing it. Often times, I will not bill for items which a particular judge or clerk has deemed non-compensable in the past. Or, as instructed during a recent meeting with a judge about a reduction to one of my vouchers, I now provide much more detail on entries to assure the judge that such conferences with client's family, for example, are not personal in nature but rather directly related to my representation. Some of my colleagues have balked at this suggestion, claiming such detail could potentially violate our ethical obligations to the client.

Unfortunately, Panel Attorneys must make the decision to accurately and completely bill for their services and risk reductions, or self-audit and accept less compensation to avoid the inevitable delays associated with voucher cutting, as well as, any other repercussions, such as a decline in appointments or removal from the Panel.

2) Compensation

In order to attract and retain highly skilled attorneys to represent indigent defendants, I believe the hourly rate must be increased. Many Panel Attorneys consider the work performed as form of *pro bono* service, as the current hourly rates are well below the hourly rates they charge in retained cases and, as highlighted *supra*, may not completely bill for their services. Many other attorneys do not even apply to the Panel due to the low hourly rates. For example, I no longer accept misdemeanor appointments in the Western District of Texas after a \$200.00 case maximum was established. I found I was putting in much more time than that which the judges were willing to compensate.

3) Resources

In my experience, it is often difficult to receive approval for experts and investigators for cases that have not been designated complex. In the Western District of Texas, for example, Panel Attorneys are expected to submit a budget (Form CJA 28) if it is anticipated the case will exceed the case maximums. I have found this to be an adequate process in obtaining the service providers (and ultimately, compensation) in such cases. In the District of New Mexico, once a case is declared complex, interim payments are almost always granted and the approval of service providers is somewhat easier to obtain.

Panel Attorneys are of the opinion that the judges do not, however, view the “run of the mill” cases as worthy of expending funds for such services. Yet we are expected to zealously defend against the government, with its unlimited resources. It is a disheartening task when one must tell a client that the court would not approve an expert that counsel believes is necessary to adequately defend his case. I was instructed in one multi-defendant case to “share” the investigator a co-defendant’s counsel had secured. Instead, I hired my own investigator and paid out of my own pocket. It should come as no surprise that not all Panel Attorneys are in a position to expend their own funds or that others simply will not do so. Ultimately, it is the client who suffers when such decisions are made.

Another distinction is the court’s willingness to provide interpreters to Panel Attorneys. In the District of New Mexico, contract interpreters are provided in all cases in which the client is a non-English speaker. Panel Attorneys are not required to request approval for interpreter funding. It is the polar opposite in the Western District of Texas. Non-Spanish speaking Panel Attorneys must provide their own interpreters and cannot bill the court for this expense. I believe this is a service that should be provided without question. Having a trained professional adequately and accurately explain the complex legal process is a necessary component of indigent defense and effective representation.

4) Training

I believe the Training Division of the Defender Services Office provides excellent training opportunities to Panel Attorneys, often with financial assistance to those who need it most. I have

personally attended several seminars and have found them to be extremely educational. The presenters are well-prepared and knowledgeable, and the subject matter timely. I have also taken advantage of the webinars DSO offers, which are convenient and informative. However, there is always a need for more local training. For example, it would be beneficial for attorneys new to a CJA Panel to attend a workshop on issues related to the Panel, such as vouchers, case management, resources, etc. I would also like to see the implementation of more mentoring projects to provide opportunities for young attorneys or those new to federal practice to gain experience.

In closing, I wish to again express my gratitude to the Committee for the opportunity to participate. I consider it a privilege to serve as a Panel Attorney and I look forward to answering the Committee's specific questions about my experiences.

Respectfully submitted,



Cori A. Harbour-Valdez