

**Ad Hoc Committee to Review the Criminal Justice Act
Public Hearing: Regional and National Organizations
Santa Fe, New Mexico
November 17, 2015**

Good afternoon. My name is Theresa Duncan. I am a member of the New Mexico Criminal Defense Lawyers Association and a member of the CJA Panel for the District of New Mexico. I am here today as a representative of the New Mexico Criminal Defense Lawyers Association, also known as NMCDLA.

NMCDLA is a voluntary professional association of public and private criminal defense lawyers, law students, legal assistants and other criminal defense team members who stand together in their commitment to safeguard the constitutional guarantees of fairness in the criminal justice process. NMCDLA has approximately 600 members from throughout New Mexico. We provide support, education, and training for attorneys who represent persons accused of crime. NMCDLA also advocates fair and effective criminal justice in the courts, the legislature and in the community.

I would like to touch briefly on CJA administration generally and then discuss the issues identified as focal points for this hearing.

CJA Administration Generally

In preparing for this hearing, we spoke with several NMCDLA members who are also CJA Panel members about what they felt was working well and not so well in New Mexico. Members' experiences were too diverse—and sometimes contradictory—to be easily summarized here. For example, some panel members have reported having their requests for compensation for certain tasks denied, whereas other panel members report having similar requests granted. Practitioners also report differences in the Court's handling of similar expert requests. Although some of these differences may be attributable to distinctions in the cases for which the requests are being made, others appear to be based on misunderstandings between counsel and the Court. Our take away from reviewing those experiences is that CJA Panel members would benefit from training on CJA-related issues and informal, but organized, communication with the Court regarding those issues.

CJA practitioners also expressed interest in learning about the progress of other criminal cases in the District of New Mexico. Our Federal Public Defender does a great job of informing panel members of Tenth Circuit decisions, important cases from other circuits, and training opportunities. However, panel members are also interested in decisions of our District Court and issues being litigated by other criminal defense practitioners. Sharing such information with the panel might also reduce CJA costs by alerting counsel to pleadings that could be used as a model when litigating similar issues.

NMCDLA recommends providing practitioners with additional training in CJA funding and billing, and creating a mechanism for counsel to discuss with the Court funding and billing concerns that extend beyond an individual case.

Cases Involving Native American Defendants

Cases involving Native American defendants offer good examples of the complexity of issues impacting the delivery of indigent defense in the federal criminal system. New Mexico has 22 distinct tribal communities: 19 pueblos, 2 Apache tribes and the Navajo nation. These communities are located throughout the State, some in very rural areas. These cases often require CJA practitioners and their expert investigators to travel to remote locations to view the scene and interview eyewitnesses. Because some communities are spread out over large areas (such as the Navajo nation), CJA practitioners and investigators frequently make multiple trips to complete their investigations. Even in smaller communities, counsel occasionally must make several trips to develop the trust and rapport necessary to gather information critical to the defense. Funding must be adequate to permit a full investigation of potential defenses and/or potential mitigation of sentence in these cases.

CJA practitioners report a shortage of qualified Navajo and other indigenous language interpreters and a need for more investigators with experience working with the various tribal communities, ideally investigators from within those communities. And virtually every CJA practitioner with whom we spoke identified the need for additional training for attorneys and investigators in Native American culture and cultural differences. Such training should include live presentations (such as CLEs) as well as the development of written materials identifying cultural issues important to the different communities with which CJA practitioners work.

Some practitioners have consulted with cultural experts in individual cases, but report that those experts are not always compensated for their time. In some instances, a cultural consultant may be necessary in order to fully understand the facts of the case, communicate effectively with the client and the witnesses whose primary language is not English, and collect mitigating evidence to be used at sentencing. Compensating cultural experts for their work is not only fair, but also necessary to maintain access to their critical expertise for future defendants.

NMCDLA recommends training for attorneys and investigators in cultural issues unique to Native American communities, the creation of written materials introducing practitioners to those issues, and the appointment of cultural experts where necessary to an effective defense. NMCDLA also encourages practitioners and the Court to work together to ensure sufficient defense funding and to identify investigators and other service providers from within Native American communities.

Border Cases

Cases involving the border typically require expertise possessed by a small subset of CJA practitioners in New Mexico: fluency in Spanish (or ready access to an interpreter), familiarity with the “fast track” system, and an understanding of immigration law. Some CJA practitioners report not having sufficient expertise in the area of immigration law to properly evaluate the evidence and prepare defenses in illegal re-entry cases. Those practitioners seek additional training in immigration law and funding for the appointment of immigration specialists to consult in their cases. In the instances where CJA practitioners have obtained a consulting expert in immigration law, it was reported as beneficial and necessary.

NMCDLA recommends increased training in immigration law and the legal issues particular to illegal re-entry for CJA practitioners accepting those cases.

Thank you for your time.

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