

FEDERAL PUBLIC DEFENDER

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March 25, 2016

Honorable Kathleen Cardone
United States District Judge
Western District of Texas
525 Magoffin Avenue
El Paso, TX 79901

Re: *Reformation of the CJA Program*

Dear Judge Cardone:

We write to provide the CJA Study Committee with the views of the Federal and Community Defender Offices regarding necessary reforms for the CJA Program. We are grateful for the extraordinary amount of time and energy you and your colleagues have devoted to studying our system of federal public defense. We know that you have heard from many individual federal public defenders in private and in public hearings about our views on the system. Although we all have our own perspectives about what problems exist and how they might best be solved, a significant majority agree on a number of fundamental principles that we believe are necessary to maintain the integrity of the defense function and to build upon a high quality program deserving of public confidence. We hope that the views we share will be useful to your committee in completing its work.

We will not go into great detail here. You have already received voluminous submissions on all of these topics. The point of this letter to share those broad principles upon which there is broad agreement. After several meetings in person and after taking an online poll of defenders in which 94 percent of the heads of all FDOs and CDOs responded,¹ we can report that 84 percent who responded believe that regardless of what form the structure of federal public defense takes, at a minimum, it must contain the following features:

- Direct Federal Defender and CJA Panel representation on any national governing body;
- Direct Federal Defender and CJA Panel representation in the preparation and presentation of the Defender Services budget to Congress;

¹ See Exhibit A (containing survey results)

- A national administrative governing body that has a mission solely devoted to criminal defense with jurisdiction over all key management decisions, including budget, staffing, resource allocation, data management, and policies and procedures generally;
- An information technology system that is strictly separated from any personnel not employed by a distinct defender organization;
- A system for CJA Panel attorneys to receive payment and authorization for payment for outside services that does not involve approval by judges;
- A system for the selection of CJA Panel members and the heads of Federal and Community Defender Offices that does not involve judicial approval, with the obvious understanding that the Court always retains the ultimate authority regarding the admission of any attorney to practice before the Court.²

These features may be achieved by any number of different structures, but based on the same poll noted above, 79 percent of the heads of FDOs and CDOs believe the most straightforward and viable means for doing so requires the separation of the CJA program from the direct oversight of the Administrative Office of the U.S. Courts.³ Possible alternative structures include an independent agency within the Judiciary or a congressionally chartered independent organization with its own board of directors entirely outside of the Judiciary. Whether your committee recommends one of these options or some other structure, the vast majority of us agree that fundamental change is necessary.

We believe much good has come from our long affiliation with the Judiciary, and we are grateful to the many individual judges who have devoted a substantial portion of their professional lives to the improvement of the CJA program. We hope whatever structural change comes from this study will be one that fosters a mutual interest in a defense function that has the resources and independence to fulfill its Sixth Amendment responsibilities with integrity.

Sincerely,



Jon M. Sands
Federal Public Defender
District of Arizona, and
Chair, Defender Services Advisory Group

s/ Leigh Skipper

Leigh Skipper
Chief Federal Defender
Eastern District of Pennsylvania, and
President of the National Assoc. of
Federal Defenders

² *Id.*

³ *Id.*