

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CHAMBERS OF
FEDERICO A. MORENO
U.S. DISTRICT JUDGE
UNITED STATES COURTHOUSE
THIRTEENTH FLOOR
400 NORTH MIAMI AVENUE
MIAMI, FLORIDA 33128

January 6, 2016

Judge Kathleen Cardone
Chair of the Judicial Conference Committee to
Review the Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Miami Hearing January 12, 2016

Dear Judge Cardone:

Thank you for inviting me to testify before your Committee about the delivery of indigent defense in the federal criminal system. My comments to you and the other members of the Committee are based upon my experience as a U.S. District Judge for more than 25 years, 7 years as the Chief Judge in the Southern District of Florida, 6 years as a member of the Judicial Conference Committee on Defender Services, 4 years as a former State of Florida Judge, 2 years as a former Assistant Federal Public Defender, and 5 years as a private criminal defense attorney, including being a member of the Southern District of Florida's Criminal Justice Act Panel.

First, I must reiterate what is probably well known already, and that is that the CJA Panel in the Southern District of Florida is composed of a large number of experienced lawyers who are well qualified and provide exceptional representation to the defendants to whom they have been appointed. In fact, our Panel consists of 165 attorneys, with a waiting list of many talented lawyers who are competing to enter that select group of CJA lawyers, screened by a committee of criminal defense lawyers and appointed by our judges after that screening process. I am confident that part of the reason that our CJA Panel is superb is due to the monitoring done by former Federal Public Defender, now U.S. District Judge, Kathy Williams and her successor as Federal Public Defender, Michael Caruso. They are great leaders and I would recommend to every district to use the Federal Public Defender, appointed by the Judges of the individual Circuit Court of Appeals, to oversee the CJA Panels.

In addition to having high quality of attorneys on our CJA Panel, I believe that they are adequately compensated through a fair approval process done by members of the independent judicial branch. We have come a long way from my days as a CJA lawyer being paid \$20 per hour for out-of-court-time and \$30 per hour for in-court time! I still remember a voucher for a \$120 total reduced to \$100 by a judge who would become my colleague a few years later upon my appointment to the federal bench in 1990. Thanks to the efforts of members of the judiciary, along with staff from the Administrative Office of the Courts, court appointed lawyers are now compensated at today's rate of \$127 to \$129 per hour and \$181 to \$183 per hour for capital work. The success of Congressional approval for those rates is due exclusively to the efforts of the federal judges who were persistent and persuasive with members of Congress. It is difficult to imagine that private criminal defense lawyers or Federal Public Defenders would be more effective with Congress in today's political climate than judges who have been confirmed by the United States Senate.

This leads to the issue of the fairness of voucher review of both attorneys and experts and the role of judges in the appointment of counsel. First, it is unfair to criticize the fact that judges appoint lawyers and oversee the payment of the taxpayer funds to compensate them. After all, federal judges routinely appoint class counsel and approve their fees as well as approve fees in many other civil cases when they represent prevailing parties. Should we not trust the same federal judges to be fair in the context of taxpayers money in criminal cases? To replace those judges with a "judicial administrator", probably a fellow criminal defense attorney, would lead to cronyism and increase bureaucratic costs.

The fact that there is basically a long waiting list of superb lawyers hoping to be included in our CJA Panel is further proof of the adequacy and fairness of the compensation of those attorneys in our district. In addition, I am attaching the "1000 Hours Report" from our district which is consistent with the yearly reports that I saw as a Chief Judge. I have deleted names of those 20 lawyers who were compensated from \$120,000 to \$250,000 from October 1, 2013 through September 30, 2104. The lawyers obviously deserve the compensation and we are grateful for their service. Nevertheless, we should all be reminded that the Criminal Justice Act is for the benefit of indigent defendants and not for the benefit of the lawyers seeking to be appointed. We should continue to trust the members of the independent judiciary in their role that they have played in the past. Federal Judges are the strongest advocates of the independent function of the defense bar .

I thank you for allowing me to share these comments and look forward to welcoming you to Miami and answering any of your questions next week.

Sincerely,

A handwritten signature in black ink, appearing to read 'Federico A. Moreno', written in a cursive style.

FEDERICO A. MORENO
U.S. District Judge

cc. Judge Edward C. Prado
Judge Dale S. Fischer
Judge John M. Gerrard
Judge Mitchell S. Goldberg
Judge Reggie B. Walton
Autumn Dickman, Project Manager CJA Review

Criminal Justice Act -- Panel Attorney Hours and Compensation by Court

**Summary of Payments to Panel Attorneys with Cumulative CJA National Billings in Excess of 1,000 Hours
From October 1, 2013 Through September 30, 2014**

Reporting Court: Florida (Southern)

| <u>Attorney</u> | <u>Number of Cases</u> | <u>Attorney Hours</u> | <u>Compensation</u> |
|-----------------|----------------------------|---------------------------|---------------------|
| | 9 | 1,640.6 | \$218,725 |
| | 17 | 1,719.9 | \$205,642 |
| | 9 | 1,141.3 | \$154,935 |
| | 6 | 1,005.4 | \$120,174 |
| | 13 | 1,633.5 | \$208,847 |
| | 20 | 1,149.5 | \$122,586 |
| | 13 | 1,095.0 | \$131,470 |
| | 13 | 1,543.6 | \$187,054 |
| | 13 | 1,559.2 | \$192,426 |
| | 7 | 829.4 | \$125,929 |
| | 10 | 1,295.7 | \$154,623 |
| | 7 | 1,617.6 | \$188,209 |
| | 13 | 2,048.9 | \$249,796 |
| | 8 | 1,244.9 | \$148,077 |
| | 7 | 1,346.1 | \$176,033 |
| | 11 | 1,621.0 | \$206,080 |
| | 10 | 998.5 | \$120,826 |
| | 13 | 1,681.9 | \$197,712 |
| | 15 | 1,118.5 | \$133,781 |
| | 10 | 1,182.9 | \$139,674 |
| total: | 224 | 27,473.4 | \$3,382,599 |