January 8, 2016

Honorable Kathleen Cardone
Chair, Ad Hoc Committee to Review
The Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, DC 20544

Re: Testimony of Sabrina Puglisi, Director-Florida Association of Criminal Defense Lawyers

Dear Judge Cardone:

My name is Sabrina Puglisi. I am a private practitioner in the Southern District of Florida. I am a former assistant federal defender and a current member of the CJA panel for the Southern District of Florida. In addition, I am a director of the board for the Florida Association of Criminal Defense Lawyers (FACDL). We are an organization that consists of approximately 1800 members. A percentage of practicing lawyers in our organization are panel attorneys under the Criminal Justice Act. On behalf of FACDL, we appreciate the opportunity to be included in your review of the Criminal Justice Act Program.

I have no doubt that my comments will be repetitive to the commentary provided by the Federal Defenders and CJA representatives in Florida. There are many issues that can be discussed but the consensus is that the most important issues are 1) the removal of judicial involvement in the appointment, compensation and management of panel attorney, investigators and experts and 2) the compensation for panel attorneys, investigators and other experts.

- Creating an independent administrator will avoid the conflict of interest that exists in the current system.

The judiciary should not be tasked with the appointment, compensation and management of panel attorneys, investigators and experts. An individual who has experience in the practice of criminal defense is the best person to review and evaluate vouchers and requests for appointment of investigators and experts. This would best be accomplished through the Federal Defender’s Office as long as there is a way to manage conflicts of interest that could occur in a co-defendant situation. In the alternative, an administrator with the Court could be appointed, however it would be necessary to ensure that this person is an attorney with a background in criminal defense. The types of cases that Florida attorneys get appointed to differ from district to district. For example, in the Northern District, there are a large percentage of child pornography cases versus in the Southern District, there are a large percentage of fraud cases. The process of reviewing discovery has changed over the years due to the advancements in technology. The government is providing
larger quantities of discovery than previously. Even if the case turns out to be a plea, it necessitates many hours of review. The presiding judge is not the best person to review the vouchers to decide if the attorney spent the right number of hours reviewing discovery, preparing motions, research, spending time with the client, etc. Another example of increased hours spent could be in client meetings. We, as defense attorneys, know that some clients are more high maintenance than others. Another criminal defense attorney would understand the extra hours needed to hand hold the client whereas a judge may not. These are only a few examples of why an independent administrator would be better at reviewing vouchers than the presiding judge.

With respect to the request for appointment of experts and investigators. What happens if an attorney makes a request for the appointment of a forensic accountant but then decides to plea and provides no results from the review at sentencing? Will the judge be wondering if the results negatively impacted the client in the back of his/her mind at sentencing? A defense attorney should not have to disclose his defense strategy unless by choice or if required by the rules. Some attorneys are leery of requesting experts _ex-parte_ because they don’t want the Judge to be made aware of why they are hiring an expert. An independent administrator would allow panel attorneys to seek the services of investigators and experts without the possible negative impact on the client.

- Compensation for panel attorneys, investigators and experts should be raised.

The caliber of lawyers that sit on the CJA panel are, for the most part, the best in the districts. I can personally attest that in the Southern District, with the implementation of the 3 year renewal process for panel attorneys, the panel is keeping and attracting only the most effective criminal defense attorneys. Having said that, the compensation offered is very low.

Putting aside attorneys’ compensation, the amount approved for investigators and experts is woefully inadequate. The government has access to the best experts, yet the indigent defendants are unable to find the best in the field because their fees are too high for approval. In order to provide quality representation to indigent defendants, it is necessary for the compensation to be raised, at the very least for investigators and experts.

I look forward to discussing whatever matters the Committee is interested in. Thank you for the opportunity to participate.

Best Regards,

Sabrina Puglisi, esq.