



Federal Bar Association

May 16, 2007

The Honorable Richard Durbin
Chairman
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

The Honorable Sam Brownback
Ranking Minority Member
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

Re: Support for Increase in CJA Panel Attorney Compensation

Dear Chairman Durbin and Senator Brownback:

I write on behalf of the Federal Bar Association to support the Federal Judiciary's fiscal year 2008 funding request for an increase in the CJA panel attorney compensation. We urge the Subcommittee to provide sufficient resources to ensure representation of financially-eligible criminal defendants in federal court, pursuant to the Sixth Amendment and the Criminal Justice Act (CJA). We endorse the Judiciary's request for \$22 million to increase the non-capital panel attorney rate to \$113 per hour, effective January 2008. The Federal Judiciary has requested funding to satisfy a non-capital panel attorney \$113 rate since fiscal year 2002.

As you know, a CJA panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court to provide representation to criminal defendants who cannot afford to retain their own counsel. These panel attorneys are currently compensated at an hourly rate of \$94 for non-capital cases and up to \$163 for capital cases. The requested increase to \$113 per hour reflects the minimum amount the Judicial Conference believes is necessary to attract qualified panel attorneys. The Federal Bar Association, the foremost organization of lawyers who practice in the federal courts, concurs in the Judicial Conference's assessment. Indeed, \$113 is the level that the Judiciary was seeking in 2002 when Congress increased the rate to \$90. It is well below the \$133 rate authorized by the CJA.

The current hourly rate significantly hampers the ability of courts to recruit competent attorneys. A 2004 survey of federal judges disclosed that over half of those surveyed believed that their courts were currently encountering difficulty in identifying enough qualified and experienced panel attorneys to accept appointments in non-capital cases. A subsequent nationwide survey in 2005 of individual CJA panel attorneys found that nearly four out of every ten attorneys declined to accept a non-capital CJA appointment.

May 17, 2007

The ability of the federal courts to attract and retain qualified attorneys to serve on their CJA panels critically depends upon on an hourly rate that assures the compensation paid to panel attorneys, many of whom are solo practitioners. To put the \$113 rate request into perspective, it is useful to note that since May 2002, the Department of Justice has been paying \$200 per hour to retain private attorneys with at least five years of experience to represent current or former federal employees in civil, congressional, or criminal proceedings. In fact, after offsetting overhead costs, the net pre-tax income for non-capital CJA representations amounts to only \$26 per compensated hour, according to an estimate by the Administrative Conference of the United States.

We realize that the Subcommittee faces hard choices in outlining spending priorities among limited resources. However, the delivery of court-appointed counsel to indigent criminal defendants is mandated by the Sixth Amendment and reinforced by countless court decisions since *Gideon v. Wainwright*. The maintenance of a panel attorney compensation rate at the \$113 level is vital to sustain the willingness and ability of attorneys to provide essential representation to these defendants.

For these reasons, the Federal Bar Association urges you to give the Federal Judiciary's rate increase request your strongest consideration.

Sincerely yours,

A handwritten signature in black ink, reading "Bill LaForge". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the left.

William N. LaForge
National President