

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

FILED

2011 JA -4 AM 11:06

WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE

BY: _____

DEPUTY

In the matter of:

THE APPOINTMENT OF COUNSEL
AND OTHER SERVICES PURSUANT
TO THE CRIMINAL JUSTICE ACT,
18 U.S.C. § 3006A

Misc. No.

STANDING ORDER ADOPTING CJA PLAN

Pursuant to the *Criminal Justice Act of 1964*, 18 U.S.C. § 3006A, as amended, (hereinafter the "CJA"), and the *Guidelines for the Administration of the CJA and Related Statutes* established by the Administrative Office of the U.S. Courts, the United States District Court for the Western District of Texas, Del Rio Division, adopts this Plan for furnishing representation to persons financially unable to obtain adequate representation. The Del Rio Division Plan (hereinafter the "Plan") supplements, but does not supersede, the CJA Plan for the Western District of Texas.

I. POLICY

While the United States Constitution and statutes dictate broad mandates regarding the appointment of counsel, it is the purpose of this Plan to establish a system to be implemented in the Del Rio Division of the Western District of Texas for the appointment of private attorneys to represent eligible persons that will advance the quality of defense representation while improving monetary and other efficiencies.

II. THE CJA PANEL

A. Appointment to the Panel. Private attorneys who are qualified and willing to be appointed to provide representation under this Plan will be considered for

appointment to the CJA Panel regardless of their race, color, religion, sex, age, national origin, or disabling condition. All CJA Panel members serve voluntarily and at the pleasure of the Court, notwithstanding that all attorneys regularly practicing in the Del Rio Division as determined by the district court judge shall serve on the CJA Panel. Absent good cause, “regularly practicing” will normally mean appearance in three cases within three months. CJA Panel attorneys will comply with the *Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases* and be familiar with all local standing orders concerning scheduling, discovery, and decorum.

B. Qualifications. Unless otherwise permitted by the Court, CJA Panel attorneys must be licensed and in good standing with at least one state bar and with the United States District Court for the Western District of Texas. Furthermore, they must have demonstrated knowledge of the *Federal Rules of Criminal Procedure*, the *Federal Rules of Evidence*, the *United States Sentencing Guidelines*, the current federal case and statutory law governing sentencing, and the local rules of this Court. CJA Panel attorneys in the Del Rio Division must have at least five years of experience of which one year may have been served as a law clerk to a federal district or magistrate judge. CJA Panel attorneys in the Del Rio Division must also have served as first or second chair in at least three felony jury trials in state or federal court, or be otherwise qualified as determined by the committee on admissions and approved by the senior resident district judge.

- C. Application and Membership.** While attorneys currently serving on the Del Rio Division CJA Panel as of the date of this Order will in most instances retain their status, they must by June 30, 2011, complete and submit an application setting forth their experience and qualifications. The application form is attached to this Order. Completed applications should be submitted to the Clerk and forwarded to the CJA Panel Committee described in Part III of this Plan. The CJA Panel Committee will review all applications and other available information in determining whether to recommend an attorney for membership on the CJA Panel. Current CJA Panel attorneys may be rejected by the Panel Committee for good cause shown. Regularly practicing attorneys, as described in paragraph II(A), *supra*, may be compelled to accept appointments in the absence of an application and may be required to show cause why an application has not been filed. Qualified regularly practicing attorneys who refuse to serve on the CJA panel or to accept appointments face disqualification to practice in the division.
- D. Requirements for New Applicants to the CJA Panel.** New applicants for the CJA Panel will be required to have met all the requirements of admission to the Western District of Texas and the *Standing Order Revising the Policy for Admission of Attorneys in the Del Rio Division*, as set forth in paragraph II.A *supra*, including successful completion of the Federal Court Practice seminar and participation as first or second chair in at least three felony jury trials. Toward this end, the CJA Panel Committee may conditionally admit

an applicant and appoint that applicant to sit second chair on cases which appear certain to proceed to a jury trial.

E. Terms and Renewal. Attorneys are appointed to the CJA Panel for a term of three years. A member's term may be renewed one or more times, unless the Court orders otherwise.

F. Maintenance of CJA Panel Lists.

1. The Clerk of Court will maintain four current lists of attorneys appointed to the CJA Panel. One list will include attorneys available for appointment for all Del Rio Division cases; another list will include attorneys available for appointment on appeal; a third list will include attorneys who will only be available for felonies; and a fourth list will include attorneys who will be available exclusively for 8 U.S.C. § 1325 (a)(1) ("Operation Streamline") cases. An attorney may be included on more than one list when appropriate, and may request to be removed from any list at any time. The lists will include a current office address, telephone and fax number, and e-mail address for each attorney. As described in paragraph II(A), *supra*, regularly practicing attorneys, as determined by the district court judge, will be included on the appropriate list whether or not they have applied for admission.
2. The Clerk will furnish a copy of the current lists of eligible CJA Panel members to the United States district judge and magistrate judges.
3. The Clerk must maintain a public record of assignments of CJA Panel members.

G. Continuing Legal Education (CLE). Each CJA Panel member must attend 5 or more hours of qualifying CLE concerning federal criminal practice each calendar year. The panel member must provide proof of compliance with this requirement to the CJA Panel Committee no later than January 31 of the following calendar year. Eligible federal criminal practice programs include, but are not limited to, pertinent seminars sponsored by: the Western District of Texas Panel Training Project; St. Mary's Law School; University of Texas Law School; the Federal Public Defender's Office; the Office of Defender Services Training Branch; Administrative Office of the U.S. Courts; the Texas Criminal Defense Lawyers Association; the National Association of Criminal Defense Lawyers; the Del Rio Association of Federal Attorneys; and other CLE programs as approved by the CJA Panel Committee. Programs that are used to satisfy state bar CLE requirements may also be used to satisfy this Plan's CLE requirements. While low-cost or no-cost CLE may be made available to panel members, the responsibility of complying with this Plan's CLE requirements rests with each panel member. A panel member who fails to meet this minimum CLE requirement may be suspended or removed from the CJA Panel.

H. Appointment of CJA Panel Members.

1. ***Rotating Appointments.*** CJA Panel members will ordinarily be assigned to cases on a rotating basis, so as to achieve the goals of balanced distribution of appointments and compensation and quality representation for all persons represented under the CJA. If an attorney is unavailable for or declines service, then the next name on the

applicable list will be selected.. The Court may, from time to time, adjust the ratio of Del Rio and San Antonio Division attorneys on the panel to respond to the divisional caseload or needs of the Court docket.

2. ***Procedure.*** When the Court has determined the need for appointment of an attorney from the CJA Panel, the Clerk of Court will advise the appointing judicial officer of the name of the next CJA Panel member from the appropriate panel list who is available for appointment. In the event of an emergency, a judicial officer may appoint any attorney from the CJA Panel without contacting the Clerk, but should, at the earliest possible convenience, advise the Clerk of the name of the attorney and the date of the appointment.
3. ***Time for Appointment.*** Counsel will be provided to an eligible person at the earliest of the following times:
 - a. As soon as feasible after the person is taken into custody;
 - b. When the person first appears before a judicial officer;
 - c. When the person is informed of formal charges; or
 - d. Whenever a judicial officer otherwise considers appointment of counsel to be required or appropriate under an applicable rule or statute, or the Constitution.
4. ***Special Circumstances; Multiple Counsel.*** The Court retains discretion to make exceptions to rotating appointments based on the nature and complexity of the case, an attorney's experience, and

geographical, language, or other relevant considerations. When necessary in the interests of justice, the Court may appoint counsel under the CJA without regard to CJA Panel membership. In exceptional circumstances, the Court may assign an additional attorney to sit as lead or co-counsel. In such a case, each attorney is eligible to receive compensation for services and reimbursement for expenses as appropriate.

5. *Appointment in a Capital Case.* In a capital prosecution or capital habeas proceeding, counsel will be appointed in compliance with the experience and qualifications requirements of 18 U.S.C. § 3599, after considering the recommendation of the Federal Public Defender as required by 18 U.S.C. § 3005.

I. Duties of Appointed Counsel. Unless permitted to withdraw or otherwise ordered by the Court, an attorney appointed under this Plan must continue representation throughout proceedings in the district court and until a notice of appeal has been filed. All CJA Panel members must conform to the highest standards of conduct and be familiar with all local standing orders concerning decorum and discovery. It is the Court's expectation that an attorney appointed under this Order will normally communicate with the defendant within 36 hours of the appointment and no later than 24 hours prior to any scheduled hearing. Waivers of preliminary or detention hearings, or any motion to continue such hearing, must be communicated to the appropriate courtroom deputy no later than 3:00 p.m. on the workday prior to the scheduled hearing, and must be followed by an appropriately filed document.

Failure to do so will preclude compensation for related travel or court time absent good cause shown.

J. Compensation.

1. **Payment.** Attorneys appointed under this Plan will be compensated by the Court as authorized by the CJA. *See VII Guide to Judiciary Policy, § 230 et seq. (Compensation and Expenses of Appointed Counsel).* Attorneys may not seek or accept any payment from the client, or from any third person on the client's behalf, absent prior Court approval. Unless the deadline is extended for good cause, claims for compensation must be submitted to the Clerk of Court on the appropriate CJA form within 45 days after completion of work. The Clerk will review the form for mathematical and technical accuracy and conformity with CJA guidelines and, if correct, forward the claim for consideration to the resident judges. To the extent permitted by law, matters relating to compensation must be heard *ex parte* and *in camera*.
2. **Disputes.** Any disputes over the amount of compensation must be first brought to the attention of the presiding judicial officer for resolution. The judicial officer has the discretion to reconsider the amount of compensation when appropriate. If the judicial officer is a United States district judge, the decision on reconsideration is final. If the judicial officer is a United States magistrate judge, the claimant may appeal the disputed amount to the district judge. The district judge's decision is final.

III. THE CJA PANEL COMMITTEE.

A. **Appointment; Composition.** The Court will appoint the members of the CJA Panel Committee. The Committee consists of one magistrate judge who serves as chair; an attorney from the Federal Public Defender's Office; a member of the Del Rio Division Committee on Admission of Attorneys; two additional private federal practitioners from the Del Rio Division who are members of the CJA Panel; and one non-attorney member who is employed within the court unit.

B. **Duties.** The CJA Panel Committee will:

1. Meet at least once per year;
2. Review the qualifications of the applicants for membership on the CJA Panel and determine whether to admit the applicant to the panel;
3. Periodically review the qualifications and performance of panel members;
4. Review and act on matters of attorney discipline, as authorized by Part IV of this Plan;
5. Implement any changes in this Plan or practices under it that would improve the quality or efficiency of criminal defense services; and
6. Perform any additional task related to the administration of this Plan or the CJA.

IV. DISCIPLINARY PROVISIONS

A. **Disbarment, Suspension, or Other Disciplinary Sanction by Another Licensing Body.** Any CJA panel member who is disbarred by a state bar or

other licensing agency, or by the U.S. District Court for the Western District of Texas, must be removed from the panel and may not reapply to it until readmitted to practice by the Court, the bar or other licensing agency, or both. Any CJA panel member who is suspended by a state bar or other licensing agency is likewise suspended from the panel for the same time period, and under the same terms. A panel member who is serving a period of suspension or deferral of disciplinary action, but who is authorized to engage in limited practice of law, may continue to serve on the panel with approval of the Court.

B. Automatic Disciplinary Review. There will be an automatic disciplinary review of any CJA Panel member in any of the following circumstances:

1. When a public reprimand has been issued for the panel member by any licensing agency;
2. When a probationary period has been imposed upon the panel member by any licensing agency; or
3. When a finding of contempt or a reprimand has been issued against the panel member by any state or federal court.

C. Notice. In any of the circumstances in Part IV(A) or (B), the CJA Panel member must immediately notify the CJA Panel Committee of the circumstances and nature of the action that has been taken against him or her.

D. Complaints.

1. **Initiation.** A complaint against a panel member may be initiated by the CJA Panel Committee, or by a judge, opposing counsel, another panel

member, a client, or any other concerned person. Any complaint should be directed to the CJA Panel Committee.

2. **Form.** A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity.
3. **Notice.** A panel member against whom a complaint is lodged must be provided a copy of the complaint, unless the Court orders otherwise.
4. **Response.** A panel member against whom a complaint is lodged may respond in writing or appear before the CJA Panel Committee as directed.
5. **Protective Action.** Prior to disposition of any complaint, the CJA Panel Committee may recommend temporary removal of the attorney from any pending case, or any other protective action that is in the best interest of the client or the administration of this Plan.
6. **Review and Recommendation.** After review of the complaint, the response and any other relevant materials, the CJA Panel Committee may:
 - a. Remove the attorney from the panel;
 - b. Limit the attorney's participation to a particular type or category of cases;
 - c. Require the attorney to complete specific CLE requirements before receiving further panel appointments;

- d. Limit the attorney's participation to handling cases with direct supervision and oversight of another panel member or other experienced practitioner;
- e. Take any other appropriate remedial action;
- f. Dismiss the complaint; or
- g. Refer the matter to the District Disciplinary Committee, pursuant to Western District of Texas Local Rule AT-7(c).

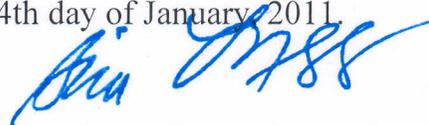
7. ***Final Disposition by Court.*** The CJA Panel Committee will forward its recommendation to the district court judge for consideration and final disposition. The district court judge may take any action it deems appropriate, whether or not recommended by the CJA Panel Committee.

8. ***Confidentiality.*** Unless otherwise directed by the Court, any information acquired concerning any possible disciplinary action is confidential, including any complaint and any proceedings concerning it.

9. ***Priority.*** This Plan supplements, but does not supersede, any disciplinary rule or procedure of the United States District Court for the Western District of Texas or the Fifth Circuit Court of Appeals .

V. **EFFECTIVE DATE:** This Plan shall become effective on March 1, 2011.

Adopted and approved by the Court on this 4th day of January 2011.



ALIA MOSES
United States District Judge

Indicate your **CIVIL TRIAL** experience by providing approximate totals in the following categories:

Jury Trials	Federal Court: _____	State Court: _____
Bench Trials	Federal Court: _____	State Court: _____
Other Court Hearings	Federal Court: _____	State Court: _____

Indicate any other legal experience which qualifies you for membership on the panel (including experience in a prosecutor's or public defender's office or as a judicial law clerk):

List the names and phone numbers of three lawyers who would recommend you for practice in Federal Court:

ATTORNEYS:

1. _____
2. _____
3. _____

Have you ever been disciplined by, or are you the subject of a pending disciplinary complaint before any bar association or court? _____ Yes _____ No

If so, describe the facts concerning the discipline or the pending disciplinary complaint:

Are you fluent in any language other than English to the extent that you can represent a client who speaks only that language **without** an interpreter? _____ Yes _____ No

If so, please list language(s): _____

Are you capable of representing non-English speakers by making your own arrangements? _____

Please select which types of appointments you would like to receive: (More than one can be selected)

FELONIES: _____ APPEALS: _____ OPERATION STREAMLINE _____

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.

Signature: _____ Dated: _____