

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

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In the matter of:

PLAN FOR APPOINTMENT OF COUNSEL AND
OTHER SERVICES PURSUANT TO THE CRIMINAL
JUSTICE ACT OF 1964, AS AMENDED, 2004

Misc. No.

ORDER ADOPTING CJA PLAN

Pursuant to the Criminal Justice Act of 1964, 18 U.S. C. §3006A, as amended, (“the Act”), and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes* Volume VII, *Guide to Judiciary Policies and Procedures*, (“CJA Guidelines”), the judges of the United States District Court for the Western District of Texas, El Paso Division, adopt this plan for furnishing representation to persons financially unable to obtain adequate representation.

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POLICY

Throughout the United States, more than 40 percent of persons charged with federal crimes who are financially eligible for government -funded lawyers are represented by panel attorneys, private attorneys appointed by the court. While the United States Constitution and statutes dictate broad mandates regarding the appointment of counsel, it is the purpose of this CJA plan to develop a system to be implemented in the El Paso Division of the Western District of Texas that advances the quality of defense representation for each criminal defendant while improving monetary and other efficiencies.

1. THE CJA PANEL

- (a) **Participation** - A panel of private attorneys who are eligible 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 conditions. All attorneys who have demonstrated experience and knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the United States Sentencing Guidelines, and who are licensed and members in good standing with Western District of Texas are eligible to participate on a completely voluntary basis.
- (b) **Appointment** - Appointment to the CJA Panel will be made after recommendation by the CJA Panel Committee and approval by the United States

District Judges of the El Paso Division. All appointments to the CJA Panel shall be based on the individual's experience and qualifications with all CJA Panel members serving at the pleasure of the Court. All CJA panel attorneys, by participation in this plan, agree to sign the *Authorization to Send Orders and Judgements by Facsimile Transmission*.

- (c) **Application/Questionnaire** - Private attorneys wishing to participate on the CJA Panel must complete and submit a detailed application form setting forth their qualifications and experience. This form shall be available, upon request, from the El Paso U.S. District Clerk's Office. Any completed application should then be filed with the U.S. District Clerk's Office and forwarded to the Chairperson of the CJA Panel Committee. At the request of the CJA Panel Committee, applications may be distributed from time to time to all licensed or newly licensed attorneys who reside in the El Paso Division.
- (d) **Assignment** - The CJA Panel Committee will review all questionnaires and other information available to it and then the Committee shall assign the individual attorney to the appropriate panel as deemed qualified by reason of experience, training and ability to handle CJA appointments. On occasion, after reviewing the magnitude and complexity of a particular case, the United States District Judge or the United States Magistrate may make an appointment under the CJA without regard to panel designation. In exceptional circumstances and, as determined by the Court, the Court may assign more than one attorney to sit as 1st or 2nd chair with compensation and expenses for services in these cases to be paid to the

attorneys without duplication.

(e) **Classification and Qualifications for CJA Panel Members.**

(1) **Mandatory Qualifications** - All CJA Panel members must meet the following criteria:

A. They must be licensed and member in good standing of the United States District Court for the Western District of Texas.

B. They must have demonstrated experience and knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the United States Sentencing Guidelines and the local rules of court.

(2) **Misdemeanor Panel** - Attorneys appointed to this panel will handle misdemeanor cases before US Magistrate Judges.

(3) **Felony Panel** - Attorneys appointed to this panel will handle felony matters, Transfer Treaty cases and extradition cases. An attorney appointed to this panel must:

A. have served at least one year on the misdemeanor panel (or have commensurate experience as determined by the CJA Panel Committee); or

B. have five years experience in state or federal courts or three years experience as an Assistant United States Attorney or an Assistant Federal Public Defender.

(4) **Appellate Panel** - Attorneys appointed to this panel will handle criminal

appeals to the 5th Circuit and post conviction relief. An attorney appointed to this panel must:

- A. have five years experience in state or federal courts; or
- B. have three years experience in state or federal appellate courts; or
- C. have three years experience as AUSA or AFPD; or
- D. have equal experience as determined by the CJA Panel Committee.

(5) Death Penalty Panel - Attorneys appointed to this panel will handle death penalty cases. Due to the complex, demanding and protracted nature of death penalty proceedings, at least 2 qualified attorneys shall be appointed:

a. Lead counsel - An attorney appointed to be lead counsel on a death penalty case must:

- i. be an experienced and active trial practitioner with at least five years criminal litigation experience;
- ii. have prior experience as lead counsel in no fewer than nine complex criminal jury trials tried to completion;
- iii. have prior experience as lead counsel in at least one case which involved a charge of homicide, in which the penalty of death/life imprisonment were sought;
- iv. be familiar with federal practice and procedure of the criminal courts of this jurisdiction;
- v. be familiar with and experienced in the utilization

of expert witnesses and evidence including but not limited to, psychiatric and forensic evidence;

- vi. have completed 14 hours approved CLE in the defense of capital cases in the preceding 2 years before trial (at least 2 hours focusing on recent developments in capital litigation and 2 hours focusing on federal death penalty developments); and
- vii. demonstrated proficiency of representation and commitment required by a capital case.

b. An attorney appointed to be second chair in a death penalty case must:

- i. be an experienced and active trial practitioner with at least 5 years criminal litigation experience;
- ii. had prior experience as lead counsel or co-counsel in no fewer than 3 serious or complex felony jury trials tried to completion;
- iii. had prior experience as lead counsel in at least one case which involved a charge of homicide, in which the penalty of death/life imprisonment were sought;
- iv. be familiar with federal practice and procedure of the criminal courts of this jurisdiction;

- v. have 14 hours approved CLE in the defense of capital cases in the preceding 2 years before trial (at least 2 hours focusing on recent developments in capital litigation and 2 hours focusing on federal death penalty developments); and
- vi. have a demonstrated proficiency of representation and commitment required by a capital case.

(f) Duties of Appointed Counsel - Actual services rendered must be commensurate with those rendered if counsel were privately retained and all CJA Panel attorneys must conform to the highest standards of conduct.

(1) No Receipt of Other Payment - CJA counsel may not require, request or accept any payment or promise of payment or any other valuable compensation for representation provided unless such payment is approved by the Court

(2) Continuing Representation - Once appointed, CJA counsel shall continue representation until the matter, including appeals or review by certiorari, is closed by the court; until an order allowing or requiring the person to proceed pro se is entered; or until the appointment is terminated by the court

(g) Training/CLE - Each panel member must attend four hours of CLE concerning federal criminal practice per calendar year at their own expense and provide proof of such attendance within 30 days of the individual's yearly birth date anniversary.

Failure to comply with this requirement is grounds for removal from CJA panel.

- (h) **Reclassification** - A record of all CJA appointments and assignments will be kept. The CJA Panel Committee will review those records, along with other information, and may reclassify attorneys from time to time, when appropriate. Reclassification may also be initiated at the request of an attorney.
- (i) **CJA Panel List** - The Clerk of the Court shall maintain a current list of all attorneys qualified for participation on the panel with current office address, telephone and fax number, e-mail address as well as qualifications and experience. The Clerk of the Court shall furnish a copy of the current list of eligible CJA Panel members to each United States District Judge and Magistrate Judge. A copy shall be available for the public. The Clerk of the Court shall maintain a public record of assignments to private counsel and, when appropriate, statistical data reflecting proration of appointments between the Federal Public Defender's Office and the CJA Panel.
- (j) **Method for Selection** - Attorneys shall be selected to serve on a case on a rotating basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an individual's experience and geographical or language considerations. A record shall be kept of all attorneys who have been contacted but are unavailable to serve for whatever reason. If an attorney is unavailable or declines service, then the next name on the list will be selected subject to the aforementioned criteria. The goal is a balanced distribution of appointments and compensation with quality representation for CJA defendants.

When the Court has determined the need for appointment of an attorney from the CJA list, the Clerk of the Court shall advise the judge or magistrate judge of the name of the next panel member on the list who is available for appointment. In the event of an emergency, a judge or magistrate judge may appoint any attorney from the list but shall, at earliest possible convenience, advise the Clerk as to the name of the attorney and the date of the appointment.

- (k) **Compensation** - Persons appointed under the CJA plan may not seek or obtain any payment from the criminal defendant or any third person absent prior court approval. Claims for compensation must be **timely** submitted (within 30 days of completion of work unless extended for good cause) on an appropriate CJA form to the U. S. District Clerk's office. The Clerk of the Court shall review the form for mathematical and technical accuracy and conformity with CJA guidelines and, if correct, forward the claim for consideration to the presiding judge. To the extent permitted by law, matters relating to compensation shall be heard *in camera*.
- (l) **Dispute over compensation** - Any disputes over the amount of compensation shall be handled as follows: any dispute over amount of compensation shall be first brought to the attention of the judicial officer who presided over that case for resolution. Any decision of a U.S. District Judge is final. However, if the amount of compensation that was set by the U.S. Magistrate remains in dispute, the claimant shall have the right to appeal the disputed amount to the chair of the CJA Panel Committee. Any decision made by the Chair of the CJA Panel Committee

shall be final.

2. **The CJA Panel Committee**

A CJA Panel Committee will be established by the Court and shall consist of one district judge (chair), one magistrate judge, the president/designee of the FBA; a designee of the Federal Public Defender's office; and three attorneys who will each be appointed to sit for staggered 2 year terms and who are appointed by the non-member district court judges.

- (a) **Duties of the CJA Panel Committee** - The CJA Panel Committee shall:
- (1) meet at least one time per year;
 - (2) shall review the qualifications of the applicants and recommend, for approval by the Court, those attorneys best qualified to serve on the Misdemeanor, Felony, Appellate, or Death Penalty Panel;
 - (3) recommend to the judges any changes deemed necessary regarding the appointment process; and
 - (4) provide at least once each year, information on the panel of attorneys approved for the Misdemeanor, Felony, Appellate or Death Penalty Panels.

3. **Disciplinary Provisions**

- (a) **Suspension** - Any CJA panel attorney who is suspended or disbarred by the Supreme Court of the State of Texas or by the U.S. District Court for the Western District of Texas must be removed from the CJA Panel and may reapply for the Panel only upon readmission to practice before the Court that imposed the

suspension or disbarment.

(b) **Complaint Procedure**

1. **Initiation** - A complaint against a CJA panel attorney may be initiated by a judge, a member of the Federal Public Defender's office, a client, the CJA Panel Committee or any other concerned person. Any complaint should be directed to the CJA Panel Committee (or a disciplinary subcommittee thereof).

(c) **Automatic Review** - There will be an automatic review of any CJA Panel member for any of the following causes:

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

In any of these circumstances, it will be incumbent upon the CJA panel member to immediately notify the Chair of the CJA Panel Committee of the circumstances and nature of the action that has been taken against him/her. Failure to do so by the CJA panel member within 72 hours of notice shall result in the immediate suspension of that attorney's ability to practice until reinstated by the CJA Panel Committee.

(d) **Form** - No particular form shall be required. However, it must be in writing and it must state the alleged complaint with as much specificity as possible

- (e) **Notice** - A panel attorney against whom complaint is lodged must be provided a copy of the complaint by the CJA Panel Committee.
- (f) **Response** - A panel attorney against whom complaint is lodged may respond in writing or appear before CJA Panel Committee as directed.
- (g) **Review**- The CJA Panel Committee must review each complaint, the response and any other relevant materials. Action must be by a majority of the CJA Panel Committee.
- (h) **Protective Action** - Prior to disposition of any complaint, the CJA Panel Committee may recommend temporary removal of the attorney from any pending case.
- (i) **Disposition Recommendations** - The CJA Panel Committee may *recommend*:
 - 1. Removal of the attorney from the CJA Panel;
 - 2. Limiting the attorney's participation in a particular type of case;
 - 3. Requiring the attorney to complete specific CLE requirements prior to further CJA Panel participation;
 - 4. Limiting the attorney's participation to handling cases with direct supervision/oversight of a CJA Panel member or other experienced practitioner for a specified period of time; and/or
 - 5. Dismissal of the complaint.
- (i) **Final Disposition by Court** - The CJA Panel Committee will forward its disposition recommendation to the District Court judges for consideration and final disposition. The District Court, upon majority vote of all judges, may take

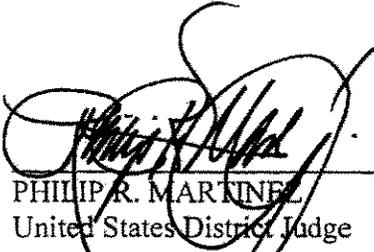
any action it deems appropriate whether/not recommended by the CJA Panel
Committee

- (j) **Confidentiality** - Unless otherwise directed by the District Court, a complaint and all proceedings conducted in connection therewith are confidential.

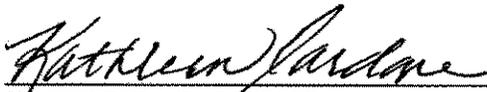
This plan will take effect immediately upon the approval by all judges of the El Paso Division of the United States District Court for the Western District of Texas and the filing with the Clerk of this Court.



DAVID BRIONES
United States District Judge



PHILIP R. MARTINEZ
United States District Judge



KATHLEEN CARDONE
United States District Judge



FRANK MONTALVO
United States District Judge

Adopted and approved by the judges of this Court this 12th day of December, 2005.