

**FILED**

OCT 31 2007

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY William B. Feltner  
~~CLERK~~ CLERK

In the matter of:

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

Misc. No.

**ORDER ADOPTING CJA PLAN**

Pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended, ("the CJA"), and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes* Volume VII, *Guide to Judiciary Policies and Procedures*, the judges of the United States District Court for the Western District of Texas, San Antonio Division, adopt this Plan for furnishing representation to persons financially unable to obtain adequate representation. This Plan supplements, but does not supersede, the CJA Plan for the Western District of Texas.

**CONTENTS**

<b>I. POLICY</b>	Page 2
<b>II. THE CJA PANEL</b>	Page 2
<b>III. THE CJA PANEL COMMITTEE</b>	Page 12
<b>IV. DISCIPLINARY PROVISIONS</b>	Page 13

## **I. POLICY**

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 San Antonio 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 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. Attorneys will be appointed to the CJA Panel by the United States district judges of the San Antonio Division upon recommendation of the CJA Panel Committee established in Part III of this Plan. Appointments to the CJA Panel must be based on the individual's experience and qualifications. All CJA Panel members serve on a completely voluntary basis, at the pleasure of the Court. By participating on the CJA Panel, attorneys agree to comply with the *Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases*.
- B. Terms; Renewal; Clerk's Notice.** Attorneys are appointed to the CJA Panel for a term of three years. A member's term may be renewed one or more times. Initial terms of appointment may be adjusted so that approximately one third of the CJA

Panel is due for reapplication and reevaluation each year. Members wishing to serve another term must reapply by July 30 of the calendar year in which their term expires. The Clerk of Court will send a timely reminder notice to panel members whose terms are expiring.

**C. Application and Review.** Private attorneys wishing to participate on the CJA Panel must complete and submit an application setting forth their experience and qualifications. The application form is available upon request from the Clerk of Court. At the request of the CJA Panel Committee, applications may be distributed from time to time to all licensed or all newly licensed attorneys who reside in the San Antonio Division. Completed applications should be submitted to the Clerk and forwarded to the Chairperson of the CJA Panel Committee. 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.

**D. Qualifications; Classification.**

1. ***Basic qualifications.*** All CJA Panel members must meet the following criteria:
  - a. They must be licensed and in good standing in the State Bar of Texas and 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, current federal law (case and statutory) governing sentencing, and the local rules of this Court.

2. ***Panel categories and qualifications.*** The CJA Panel Committee will recommend attorneys for placement in one or more of the panel categories listed below. The Committee will from time to time fix the desired size of each panel category, with the goal of matching resources to demand so that each member of a panel category may be appointed in sufficient cases per year to remain proficient in federal criminal practice, taking into consideration the member's preferred maximum number of appointments.

a. ***General felony category.*** Attorneys appointed to this panel category will handle felony matters, prisoner transfer treaty cases, and extradition cases. The qualifications for members of the general felony panel category are listed below. In the discretion of the CJA Panel Committee, significant non-trial or state-court trial experience may be substituted.

i. Five years or more experience in state or federal criminal practice, or three years experience as an Assistant United States Attorney or an Assistant Federal Public Defender.

ii. Five felony trials as lead or co-counsel, at least three of which were federal felony jury trials. For purposes of this requirement, an applicant is considered to have had a jury trial in any case in which a jury was empaneled and sworn, or jeopardy otherwise attached. An applicant who has tried fewer than three federal criminal jury trials must have participated substantially in the mentoring program established under this Plan or an equivalent program approved by the CJA Panel Committee. Substantial participation means: three pretrial proceedings including a motions hearing, three sentencing hearings, and three jury trials as lead or co-counsel.

b. *Complex-case category.* The complex-case panel category is comprised of attorneys qualified for the general felony category who additionally have experience or expertise in complex or multi-defendant criminal cases. Counsel may be appointed from this category in Racketeer Influenced and Corrupt Organizations (RICO) and Continuing Criminal Enterprise (CCE) cases, and in cases determined by the Court to be unusual or complex. Appointment of an attorney from the complex-case panel category

does not constitute a finding under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(B)(ii).

- c. *Appellate category.* Attorneys assigned to the appellate panel category will handle appeals to the Fifth Circuit Court of Appeals. An attorney classified in this panel category must have appellate practice experience comparable to the trial experience required for the general felony panel category.
- d. *Non-capital habeas category.* Attorneys assigned to the non-capital habeas panel category will handle non-capital habeas corpus cases under 28 U.S.C. §§ 2241, 2254, and 2255. An attorney classified in this panel category must have habeas practice experience comparable to the trial experience required for the general felony panel category.
- e. *Auxiliary category.* Attorneys assigned to the auxiliary panel category will provide representation in misdemeanor or petty-offense cases, material-witness cases, and other non-complex cases.

**E. Reclassification.** The CJA Panel Committee may from time to time recommend attorneys for reclassification if appropriate. Reclassification may be initiated at the request of an attorney.

**F. Continuing Legal Education.** Each CJA Panel member must attend 5 or more hours of qualifying continuing legal education (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 Federal Public Defender's Office; the San Antonio Bar Association; the Texas Criminal Defense Lawyers Association; the National Association of Criminal Defense Lawyers; the Office of Defender Services Training Branch, Administrative Office of the U.S. Courts; and other CLE programs 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. These CLE requirements may be satisfied by providing equivalent hours of mentoring as described in subparagraph (II)(K) below. While low-cost or no-cost CLE may be made available to panel members, the responsibility of complying with this requirement rests with the panel member. A panel member who fails to meet this minimum CLE requirement may be suspended or removed from the CJA Panel.

**G. Maintenance of CJA Panel Lists.** The Clerk of Court will maintain a current list of all qualified attorneys in each panel category, with current office address, telephone and fax number, and e-mail address. The Clerk will furnish a copy of the current list of eligible CJA Panel members to each United States District

Judge and Magistrate Judge. The Clerk must maintain a public record of assignments to CJA Panel members and, when appropriate, statistical data reflecting proration of appointments between the Federal Public Defender's Office and the CJA Panel.

**H. Appointment of CJA Panel Members.**

1. ***Rotating appointments.*** CJA Panel members in each panel category 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 or declines service, then the next name on the list will be selected. A record must be kept of all attorneys who have been contacted but are unavailable to serve for whatever reason.
2. ***Special circumstances.*** 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 or panel category classification. 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.

3. ***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 category 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.
4. ***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 required or appropriate under rule, statute, or the Constitution.
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, on direct appeal in the court of appeals, and on review by certiorari to the Supreme Court. The services rendered by CJA Panel members must be commensurate with those that would be rendered if counsel were privately retained. All CJA Panel members must conform to the highest standards of conduct.

**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 Policies and Procedures* Ch. 2, Part C (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 judicial officer who presided over that case. 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 U.S. district judge, the decision on reconsideration is final. If the judicial officer is a U.S. magistrate judge, the claimant may appeal the disputed amount to the district judge serving as chair of the CJA Panel Committee. The chair's decision is final.

**K. Mentoring Program.**

1. ***Service as a Mentor.*** On request of the CJA Panel Committee, a panel member may serve as a mentor to an applicant for the panel who does not meet experience requirements. Panel members are expected to agree to reasonable mentoring requests unless a compelling reason excuses participation at a particular time or in a particular case.
2. ***Forms of Mentoring.*** The mentoring attorney should allow the applicant to participate in as many aspects of a federal criminal case as possible, such as client conferences, strategy determination, motion practice, trial preparation, and court appearances. The mentoring attorney should involve the applicant as fully as possible in the substance of the representation, consistent the needs of the client.

3. **Reimbursement.** The panel applicant receiving mentoring may claim reimbursement when formally appointed as co-counsel in the case under the CJA.

### III. THE CJA PANEL COMMITTEE.

- A. **Appointment; Composition.** The district judges of the San Antonio Division in active service will appoint the members of the CJA Panel Committee. The Committee consists of one district judge (who serves as chair); one magistrate judge; a designee of the Federal Public Defender; and four or more private attorneys in the San Antonio Division who are knowledgeable in federal criminal practice.
- B. **Terms.** Each attorney member of the CJA Panel Committee will serve a staggered 3-year term. Any term may be renewed by the Court.
- C. **Quorum.** A majority of CJA Panel Committee members constitutes a quorum. Members may appear in person or remotely by electronic means.
- D. **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 recommend to the Court whether to admit the applicant to the panel, and , if so, to which panel category or categories;
  3. periodically review the qualifications and performance of panel members;

4. review and make recommendations on matters of attorney discipline, as authorized by Part IV of this Plan;
5. recommend to the division's judges 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 that may be referred to it by the Court.

#### **IV. DISCIPLINARY PROVISIONS**

##### **A. Disbarment, Suspension, or Other Disciplinary Sanction by Another**

**Licensing Body.** Any CJA panel member who is disbarred by the State Bar of Texas or by the U.S. District Court for the Western District of Texas must be removed from the panel and may not reapply for it until readmitted to practice by the Court, the State Bar, or both. Any CJA panel member who is suspended by the State Bar is likewise suspended from the panel for the duration of, and under the same terms as, the State Bar suspension. 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 on recommendation of the CJA Panel Committee and 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 Chair of the CJA Panel Committee of the circumstances and nature of the action that has been taken against him or her.

**D. Complaints.**

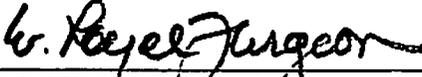
1. **Initiation.** A complaint against a panel member may be initiated by the CJA Panel Committee, or by a judge, opposing counsel, another panel member, a member of the Federal Public Defender's Office, a client, or any other concerned person. Any complaint should be directed to the CJA Panel Committee.
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 recommend:
  - a. Removing the attorney from the panel, or reassigning the attorney to a different panel category;
  - b. Limiting the attorney's participation to a particular type or category of cases;
  - c. Requiring the attorney to complete specific CLE requirements before receiving further panel appointments;
  - d. Limiting the attorney's participation to handling cases with direct supervision and oversight of another panel member or other experienced practitioner;
  - e. Any other appropriate remedial action; or
  - f. Dismissal of the complaint.
7. ***Final disposition by Court.*** The CJA Panel Committee will forward its recommendation to the Court for consideration and final disposition. The

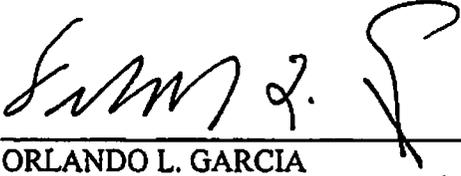
Court may take any action it deems appropriate, whether or not recommended by the CJA Panel Committee.

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.

This Plan will take effect upon the approval by all judges of the United States District Court for the Western District of Texas, San Antonio Division, and the filing with the Clerk of this Court.

  
\_\_\_\_\_  
W. ROYAL FURGESON  
United States District Judge

  
\_\_\_\_\_  
FRED BIERY  
United States District Judge

  
\_\_\_\_\_  
ORLANDO L. GARCIA  
United States District Judge

  
\_\_\_\_\_  
XAVIER RODRIGUEZ  
United States District Judge

Adopted and approved by the judges of this Court this 31 day of October, 2007.