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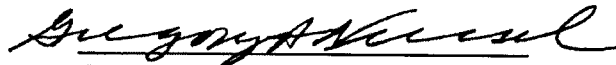
THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

REVIEWING PANEL --- CRIMINAL JUSTICE ACT PLAN

**CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY Andrew J. Starn
CH. DEPUTY CLERK**

The amended Criminal Justice Act Plan for the El Paso Division of the Western District of Texas is approved.

Entered for the Reviewing Panel at New Orleans, Louisiana, this 26th day of August, 2013.




Gregory A. Nussel
Secretary to the Judicial Council
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Carl E. Stewart
Priscilla R. Owen
Carolyn Dineen King
E. Grady Jolly
W. Eugene Davis
James L. Dennis
Edith Brown Clement
Leslie H. Southwick
James E. Graves, Jr.
Stephen A. Higginson
Mary Ann Vial Lemmon
James J. Brady
Patricia H. Minaldi
Sharion Aycock
Keith Starrett
John H. McBryde
Ricardo H. Hinojosa
Leonard E. Davis
Orlando L. Garcia

(b) United States District Judge:



Fred Biery
Chief United States District Judge
Western District of Texas

FILED

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

2013 JUL 22 PM 3: 38

**CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

BY TFH
DEPUTY

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 AMENDED 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 following plan is adopted by the judges of the United States District Court for the Western District of Texas, El Paso Division ("the Court") for the purpose of 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.

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1. THE 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.

2. 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. Attorneys who have demonstrated experience and knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the United States Sentencing Guidelines, who are licensed and members in good standing with the Western District of Texas, and meet the mandatory qualifications for CJA Panel Members in section 2.F.(1)(c), 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 Court. All appointments to the CJA Panel shall be based on the individuals' 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 comply with the *Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases*.
- C. Terms and Renewal.** Attorneys are appointed to the CJA Panel for a term of three years. Terms are automatically renewed unless advised by the panel otherwise. A member's term may be renewed one or more times.
- D. 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 United States District Clerk's Office, and may also be downloaded from the Western District of Texas website. Any completed application should then be filed with the United States 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 meet the mandatory qualifications for CJA Panel Members in section 2.F.(1)(c).

E. 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 Judge 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. A judge may appoint an attorney who is not a panel member in appropriate circumstances.

F. 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.

- (c) They must maintain an office in the El Paso Division and regularly practice in the federal courts of the El Paso Division.
- (2) Misdemeanor Panel - Attorneys appointed to this panel will handle misdemeanor or petty offense cases before United States Magistrate Judges.
- (3) General 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 (AUSA) or an Assistant Federal Public Defender (AFPD).
- (4) Complex Case Felony Panel - The complex case felony panel is comprised of attorneys qualified for the general felony panel 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 felony panel category does not constitute a finding under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(B)(ii).

- (5) **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 an AUSA or an AFPD; or
 - (d) have equal experience as determined by the CJA Panel Committee.
- (6) **Non-capital Habeas Panel 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.**
- (7) **Auxiliary Category - Attorneys assigned to the auxiliary category may provide representation in material witness cases, or other non-complex cases.**

G. 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.

H. Training/Continuing Legal Education (CLE) - Each panel member must attend four hours of CLE concerning federal criminal practice per calendar year at their own expense (including up to one hour of self-study) and provide proof of such attendance no later than January 31 of the following calendar year. Failure to comply with this requirement is grounds for removal from the CJA Panel.

I. 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.

- J. 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 United States 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.
- K. 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 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.

- L. 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 United States District Court 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*.
- M. Dispute over Compensation** - Any disputes over the amount of compensation will be 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 is considered final. If the case was exclusively before a United States Magistrate Judge, then only the magistrate judge has the discretion to reconsider the amount of compensation when appropriate.

N. 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.

3. THE CJA PANEL COMMITTEE

A. Composition of the CJA Panel Committee - A CJA Panel Committee will be established by the Court and shall consist of one district judge (chair), who will serve a staggered four year term with the magistrate judge designee; one magistrate judge, who will serve a staggered four year term with the district judge designee; the president/designee of the El Paso Federal Bar Association; a designee of the Federal Public Defender's Office; and four attorneys who will each be appointed to sit for staggered two year terms and who are appointed by the non-member district court judges; and one staff member of the United States District Court Clerk's Office who shall serve ex officio.

B. Duties of the CJA Panel Committee - The CJA Panel Committee shall:

- (1) meet at least one time per year;
- (2) review the qualifications of the applicants and recommend, for approval by the Court, those attorneys best qualified to serve on

the Misdemeanor, General Felony, Complex Case Felony, Appellate, or Non-capital Habeas panels;

- (3) recommend to the Court 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, General Felony, Complex Case Felony, Appellate or Non-capital Habeas panels.

4. 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 United States 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** - 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;
or
- (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.

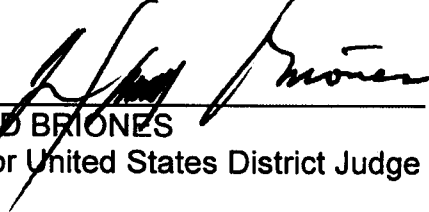
In any of these circumstances, it will be incumbent upon the CJA Panel member to immediately notify the chair of the CJA Panel Committee of the circumstances and nature of the action that has been taken against him/her.

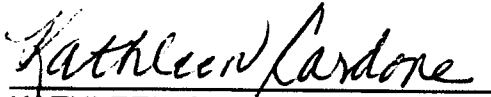
- D. **Form** - No particular form shall be required. However, it must be in writing and it must state the alleged complaint with as much specificity as possible.
- E. **Notice** - A panel attorney against whom complaint is lodged must be provided a copy of the complaint by the CJA Panel Committee.
- F. **Response** - A panel attorney against whom complaint is lodged may respond in writing or appear before the 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;**
 - (5) Referral of the matter to the Western District of Texas Disciplinary Committee, pursuant to Local Rule AT-7(c); or**
 - (6) Dismissal of the complaint.**
- J. Final Disposition by Court - The CJA Panel Committee will forward its disposition recommendation to the Court for consideration and final disposition. The Court, upon majority vote, may take any action it deems appropriate whether or not recommended by the CJA Panel Committee.**
- K. Confidentiality - Unless otherwise directed by the 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.**


PHILIP R. MARTINEZ
United States District Judge


FRANK MONTALVO
United States District Judge


DAVID BRIONES
Senior United States District Judge


KATHLEEN CARDONE
United States District Judge


DAVID GUADERRAMA
United States District Judge

Adopted and approved by the judges of this Court this 22nd day
of July, 2013.