

FILED

AUG 26 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA AND PECOS DIVISIONS

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

In the matter of:

PLAN FOR APPOINTMENT OF COUNSEL AND
OTHER SERVICES PURSUANT TO THE CRIMINAL Misc. No.
JUSTICE ACT, AS AMENDED, 18 U.S.C. § 3006A

ORDER ADOPTING AMENDED 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 United States District Court for the Western District of Texas, Midland/Odessa and Pecos Divisions, adopts 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.

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 establish a system to be implemented in the Midland/Odessa and Pecos Divisions 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. Participation. A panel of 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 race, color, religion, sex, age, national origin or disabling condition. Attorneys who have demonstrated knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the United States Sentencing Guidelines, the Local Rules of this Court, who are licensed and members in good standing with the Western District and meet the mandatory qualifications for CJA Panel Members in Section II.B are eligible to participate on a voluntary basis.

B. Qualifications. To qualify for and maintain CJA Panel membership, an attorney must meet the following criteria:

1. Applicants must be members in good standing with the federal bar of this District, and when applicable, the U.S. Court of Appeals for the Fifth Circuit.
2. Unless otherwise authorized by the Court, applicants must maintain an office in the Midland/Odessa or Pecos Division, unless authorized by the Court.
3. Applicants must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.

4. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack financial means for legal representation.

5. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience may apply and set forth in writing the details of that experience for consideration by the CJA Panel Committee.

C. Application and Review. Private attorneys wishing to participate on the CJA Panel must complete and submit an application form setting forth their experience and qualifications. The form shall be available from the U. S. District Clerk's Office in the respective division, from the magistrate judge's office in that division, or may be downloaded from the District website. Completed applications should be filed with the U. S. District Clerk and a copy forwarded to the magistrate judge serving as a member of the CJA Panel Committee described in Part III of this Plan. The magistrate judge may forward the applications and other available information to the CJA Panel Committee for review and comments regarding recommendation for the CJA Panel membership.

D. Appointment. Appointment to the CJA Panel will be made after recommendation by the CJA Panel Committee and approved by the Court. All appointments to the CJA Panel shall be based on the individual's experience and qualification; all CJA Panel members serve 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*.

E. Terms. Attorneys are appointed to the CJA Panel for a term of three years. Terms are automatically renewed, unless the Court orders otherwise or the attorney requests removal from the CJA Panel.

F. Maintenance of CJA Panel Lists.

1. The Court will maintain, for each division, a current list of all attorneys included on the CJA Panel, with current office addresses, telephone and fax numbers, and email addresses. For each respective division, the list will include attorneys available for appointment to that division's general felony cases and attorneys available for appointment on appeal. An attorney may be included on the list for both divisions and in more than one category.
2. A copy of the current lists of eligible CJA Panel members for each division will be furnished to the United States District Judge and United States Magistrate Judges, respectively.
3. The Clerk of the Court shall file through CM/ECF an Order Appointing Counsel when so ordered.

G. Continuing Legal Education (CLE). Each CJA Panel member must attend 6 or more hours of qualifying CLE concerning federal criminal practice annually. Attorneys appointed to the CJA Panel are expected to attend training on federal

criminal practice sponsored by the Court and the Federal Public Defender's Office. 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 for timely compliance with the CLE requirements of this Plan 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.
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.
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 is 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 interest 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.

1. Standards of Professional Conduct.

- a. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. *See Polk Cnty. v. Dodson*, 454 U.S. at 318. (“Once a lawyer

has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice § 4-3.9 (2d ed. 1980)).

b. Attorneys appointed under the CJA must conform to the highest standards of professional conduct as set out in the Texas Disciplinary Rules of Professional Conduct which have been adopted by the Western District of Texas as the standards of professional conduct. This specification is not exhaustive of the standards of professional conduct. For matters not covered by the Texas rules, the American Bar Association's Model Rules of Professional Conduct should be consulted.

c. A CJA panel member must notify the Divisional CJA Panel Committee immediately, or as soon as possible if there exists good cause for delay, (i) when charged with or convicted of a felony, or any other serious crime as defined in Texas Rule of Disciplinary Procedure 1.06(AA), or (ii) when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

2. Facilities and Technology Requirements.

a. CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.

b. CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.

c. CJA panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

3. Continuing Representation.

Once counsel is appointed under the CJA, counsel will continue representation until (1) the matter, including appeals or review by certiorari, is closed; (2) substitute counsel has been approved by the Court, and a notice of appearance has been entered; or (3) the appointment is terminated by Court order.

J. Compensation.

1. Policy.

Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in court and time reasonably expended out of court and reimbursed for expenses reasonably incurred.

2. Payment Procedures.

a. Claims for compensation must be submitted on the appropriate CJA form through the judiciary's national voucher payment system, eVoucher.

b. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.

c. All vouchers shall be submitted electronically through eVoucher. The voucher is then audited by the CJA Clerk of the Western District of Texas' Finance Department, who will then submit to the presiding judge for approval/disapproval.

d. Except in cases involving mathematical or technical corrections, no claim for compensation submitted for services provided under the CJA may be reduced without affording counsel notice and the opportunity to be heard.

e. Notwithstanding the procedure described above, the Court may directly contact appointed counsel regarding questions or concerns with a claim for compensation.

III. THE CJA PANEL COMMITTEE

A. Appointment and Composition. The Court will appoint the members of the CJA Panel Committee for the Midland/Odessa and Pecos Divisions. Permanent members of the CJA Committee shall consist of the district judge (who serves as chair) and the magistrate judge. Additional committee members in the Midland/Odessa Division shall consist of two criminal defense attorneys who are members of the panel and

regularly practice in the Midland/Odessa Division. Additional committee members in the Pecos Division shall consist of one attorney from the Federal Public Defender's Office and one criminal defense attorney who is a member of the panel and regularly practices in the Pecos Division. The Federal Public Defender representative shall constitute a permanent member of the CJA Panel Committee. The criminal defense attorney members will serve three-year terms that may be renewed by the Court.

B. Duties. The CJA Panel Committee will:

1. review the qualifications of the applicants for membership on the CJA Panel and determine whether to admit the applicant to the panel;
2. periodically review the qualifications and performance of panel members;
3. review and act on matters of attorney discipline, as authorized by this Plan;
4. implement any changes in this Plan or practices under it that would improve the quality or efficiency of criminal defense services; and
5. 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 until readmitted to practice by the Court, the bar or other licensing agency, or both, at the discretion of the CJA

Panel Committee. 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 when:

1. a public reprimand has been issued for the panel member by any licensing agency;
2. a probationary period has been imposed upon the panel member by any licensing agency; or
3. 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 any pending complaint or action taken against the member.

D. Complaints.

1. ***Initiation.*** A complaint against a panel member may be initiated by anyone, including but not limited to, a concerned person, the CJA Panel Committee, a judge, an opposing counsel, another panel member, or a client. Any complaint should be directed to the CJA Panel Committee.

2. **Form.** A complaint need not follow any particular form, but 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 any complaint, the response, and any other relevant materials, the Divisional CJA Panel Committee may recommend:
 - a. removal from the panel;
 - b. limiting participation on the panel, possibly with direct supervision and oversight by another practitioner;
 - c. requiring specific additional CLE requirements;
 - d. referral of the matter to the District Disciplinary Committee pursuant to Western District of Texas Rule AT-7(c);

- e. taking any other appropriate remedial action; and/or
- f. dismissal of the complaint.

7. ***Final Disposition by the Court.*** The Divisional CJA Panel will forward its recommendation to the presiding U.S. District Judge for the division for consideration, determination, and final disposition. 8.

Confidentiality. Unless otherwise directed by the Court, all information acquired concerning any possible disciplinary action is and shall remain confidential, including any complaint and proceedings concerning it, within the discretion of the Committee.

9. ***No Property Interest.*** None of these procedures create a property interest in membership on the CJA panel.

Adopted and approved by the Court on this 26th day of August, 2019.



DAVID COUNTS
UNITED STATES DISTRICT JUDGE