

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

FILED

DEC 15 2008

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

In the matter of:

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

**STANDING 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 United States District Court for the Western District of Texas, Waco Division, 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 Waco 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.

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## 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 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. **Qualifications.** To qualify for and maintain CJA Panel membership, an attorney must be licensed and in good standing in the State Bar of Texas (unless otherwise permitted by the Court) and in the United States District Court for the Western District of Texas, and must have demonstrated knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the United States Sentencing Guidelines, the current federal law (case and statutory) governing sentencing, and the local rules of this Court.
- 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 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.

**D. 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, unless the Court orders otherwise.

**E. Maintenance of CJA Panel Lists.**

1. The Clerk of Court will maintain three current lists of attorneys appointed to the CJA Panel. One list will include attorneys available for appointment for Waco cases; another list other will include attorneys available for appointment in Ft. Hood cases; and a third list will include attorneys available for appointment on appeal. 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.
2. The Clerk will furnish a copy of the current lists of eligible CJA Panel members to the United States District Judge and Magistrate Judge.
3. The Clerk must maintain a public record, such as a CJA 20, of assignments to CJA Panel members.

**F. 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; Baylor 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; 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.

**G. 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.
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 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 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.

**H. 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. All CJA Panel members must conform to the highest standards of conduct. 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.

**I. 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. The district judge's decision is final.

### **III. THE CJA PANEL COMMITTEE.**

- A. **Appointment; Composition.** The District Court will appoint the members of the CJA Panel Committee. The Committee consists of the district judge (who serves as chair); the magistrate judge; and one or more attorneys in the Waco Division who are knowledgeable in federal criminal practice.
- 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; or
  - f. Dismiss the complaint.
  
7. **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.

Adopted and approved by the Court on this 15<sup>th</sup> day of December, 2008

  
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WALTER S. SMITH, JR.  
Chief United States District Judge