

ADDENDUM I

CRIMINAL JUSTICE ACT PLAN UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT (as amended eff. July 1, 2019)

PREAMBLE

Pursuant to the Criminal Justice Act of 1964 (hereinafter, “Act”), codified as 18 U.S.C. § 3006A(b), the Court adopts the following Criminal Justice Act Plan (hereinafter, “Plan”) for furnishing representation in criminal cases on appeal. This Plan supersedes all previous Plans adopted by the Circuit, and will take effect on July 1, 2019.

I. Establishment of the Appellate Panel

The Court has established a Panel of private attorneys (hereinafter, “Panel”) who are capable and willing to accept appointments under the Act. These attorneys, along with the Office of the Federal Public Defender for the Districts of Colorado and Wyoming, shall constitute the core group from which appointments shall be made. The Court shall approve private attorneys for membership on the Panel after receiving recommendations from the Court’s Standing Committee on the Criminal Justice Act.

II. Appointment of Counsel in the Tenth Circuit

A. *Appointment of counsel under the Act will be governed generally by the Guidelines for Administering the CJA and related statutes. See Volume 7, Guide to Judiciary Policy, Appointment and Payment of Counsel, Part A. Online at: <http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/CJAGuidelinesForms.aspx>.*

1. When requested, counsel will be appointed for every person who is entitled to representation under the Act. Absent a change in financial conditions, any determination that a person is eligible for CJA counsel made in the district court shall continue on appeal. The Court of Appeals may appoint the Office of the Federal Public Defender for the Districts of Colorado and Wyoming, another Federal Public Defender office within the Circuit, an attorney from the Court’s Criminal Justice Act Panel, or counsel from the trial court.

2. While the Court recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that trial counsel may not have the requisite skills, or the desire, to represent an individual on appeal. Because each proceeding is unique in this regard, all counsel continuing in appeals from the trial court will be required, through procedures established by the Court, to file either a motion for continued appointment or a motion to withdraw. As appropriate, and at the discretion of the Court, new counsel may be appointed from the Panel or the Office of the Federal Public Defender. The Court may also, however, authorize continued appointment of a trial attorney who is not a member of the Court's panel.
3. Trial counsel is always required to continue to represent the defendant until relieved of that duty by the Court, consistent with 10th Cir. R. 46.3 and 46.4.

III. Composition of the Panel

A. Application for Membership

Applications for membership on the Panel shall be available in the Office of the Clerk of Court and on the Circuit's website at <http://www.ca10.uscourts.gov/cja/becoming-tenth-circuit-appellate-panel-attorney>.

Completed applications must be submitted to the Clerk of Court for transmittal to the Court's Standing Committee on the Criminal Justice Act. Incomplete applications will not be considered.

B. Eligibility and Qualifications

CJA Panel members will be selected on the basis of demonstrated commitment, qualification and skill in federal criminal appellate practice.

1. To be eligible for service on the Panel, lawyers must be or become, and remain, members in good standing of the Tenth Circuit's bar. Panel attorneys must certify they have a working knowledge of this Plan, Tenth Circuit Rules, Federal Rules of Appellate Procedure, Federal Rules of Evidence, Federal Rules of Criminal Procedure, United States Sentencing Guidelines,

and relevant provisions of the United States Code. Panel members must also certify their willingness to accept at least one appellate appointment each year. Finally, applicants must also show they have an established law practice in the Tenth Circuit.

C. *Size of the Panel*

The Panel will not have a size limitation. It shall be large enough to provide an adequate number of experienced attorneys who possess the necessary skills to effectively litigate federal criminal appeals. To that end, membership shall be reserved for attorneys who meet the Court's criteria. The Panel will also be small enough that each attorney receives a sufficient number of appointments to maintain proficiency in litigating federal criminal appeals. To the extent possible, the Panel will include qualified attorneys from every judicial district within the Tenth Circuit.

1. Not every qualified applicant will be selected for Panel membership. To ensure that qualified applicants are given the opportunity to serve, Panel membership will be for three-year terms. Reapplication is required at the conclusion of each term.

D. *Membership Terms*

Panel members shall be appointed for a three-year term, but may be removed by the Court prior to the expiration of a term.

1. A Panel member will be given written notice in advance of the expiration of an existing term. To be considered for renewal, the Panel member must submit the application for renewal prior to expiration of the application deadline. Applicants are solely responsible for compliance with the application deadline.
2. Renewal applications shall be made available in the Office of the Clerk of Court and on the Circuit's website at www.ca10.uscourts.gov. Completed applications must be submitted to the Clerk of Court for transmittal to the Court's Standing Committee on the Criminal Justice Act. Renewal shall not be automatic, but may be granted at the Court's discretion, taking into account the provisions of this Plan.

E. *Removal from the Panel*

Membership on the Panel is not a property right. A Panel attorney may be removed whenever the Court, at its discretion, determines the attorney has failed to fulfill the obligations of Panel membership, including the duty to provide competent and effective representation, or has engaged in other conduct that renders inappropriate his or her continued service on the Panel. Removal may also result if a Panel attorney refuses three times to accept an appointment during the membership term.

1. The Standing Committee shall make all removal recommendations to the Court in writing. If the Court decides to accept the recommendation, counsel will be given notice of the proposed basis for removal and will be provided an opportunity to respond in writing. The Court of Appeals will make all final decisions regarding removal. An attorney who is removed will receive a written explanation of removal from the Court.
2. Attorneys who are removed from the Panel may file a renewal application no earlier than one year from the date of removal. In the application, counsel must report the earlier removal and explain why reappointment to the Panel should be granted.

F. *Maintaining the Panel List and eVoucher User Profile*

The Clerk of Court and/or the Court's Panel administrator shall maintain the roster of Panel members, including current names, physical business addresses, business emails, and business telephone numbers. The Panel roster shall be public information.

1. The Panel attorney shall be solely responsible for prompt notification to the Clerk and/or Panel administrator of any changes in business address, business telephone number, or email address.
2. The Panel attorney shall be solely responsible for promptly updating his or her eVoucher User Profile regarding any change of firm association, physical business address, taxpayer

identification number, email address, telephone number, and IRS Form W-9.

IV. Standing Committee on the Criminal Justice Act

A. Membership and Structure

The Chief Judge, or the Chief Judge's delegate, shall appoint the Standing Committee. The Federal Public Defender for the Districts of Colorado and Wyoming shall be a permanent member of the Standing Committee. The remaining membership shall consist of two lawyers from Oklahoma, and one lawyer from the remaining states in the Circuit. At least one of these positions must be filled with one of the other Federal Public Defenders from the Circuit. Two of the other positions must be filled with attorneys who are not current members of the Panel.

The Chief Judge may also appoint a liaison to the Committee from the Court's legal staff. That person will not be a Committee member, but will be available to both the Court and members for support and consultation. The liaison may attend, but shall not participate in, the Committee's deliberations.

B. Duties of the Committee

The Standing Committee shall meet in person at least once per year. Additional meetings may be convened by the Chair.

The Committee shall review the qualifications of applicants for membership on the Panel, conduct further inquiries as necessary, and make recommendations to the Court for placement or removal. The Standing Committee shall also review the operation of the Panel on a periodic basis and shall make recommendations to the Court regarding any suggested changes. At the Court's discretion, the Standing Committee may also investigate complaints concerning deficient performance by Panel members and report its findings and recommendations to the Court. The Standing Committee's written recommendations to the Court on any issue shall remain confidential.

V. Change in Financial Conditions Affecting Representation on Appeal

A person previously represented by private counsel in the district court who becomes financially unable to employ counsel on appeal, must first obtain an order

in the district court finding that he or she qualifies for court-appointed appellate counsel. Trial counsel is responsible for filing the application for court-appointed counsel in the district court, and must comply with all other provisions of 10th Cir. R.46.3 and 46.4. This Court may, at any time, review the financial status of the defendant. If the Court finds that the defendant has become financially able to obtain counsel or make partial payments for representation, the Court may deny or terminate an appointment pursuant to subsection (c) of the Act or require partial payment to be made pursuant to subsection (f) of the Act.

VI. Death Penalty Cases

Pursuant to the Guidelines for Administering the Criminal Justice Act (CJA Guidelines), the Court may, in an appropriate death penalty case, appoint and compensate under the Act an attorney or attorneys from a state or local public defender organization or from a legal aid agency or other non-profit organization.

VII. Petition For Writ of Certiorari

Counsel's appointment does not terminate until, if the person loses the appeal, counsel informs the person of his or her right to petition for certiorari in the United States Supreme Court and the deadline for filing the petition. Additionally, counsel must prepare and file the petition if the person requests it and there are reasonable grounds for counsel properly to do so (*see* Rule 10 of the Rules of the Supreme Court of the United States).

If counsel determines that there are no reasonable grounds for filing a petition and declines the person's request to file a petition, counsel shall inform the person and, after entry of judgment, shall move to withdraw under 10th Cir. R. 46.4. Upon entry of an order terminating the appointment, counsel shall promptly notify the represented person and advise the person of his or her right to file a pro se petition for certiorari.

VIII. Compensation

A. Claims

All claims for compensation and expenses must be submitted through the eVoucher case management and voucher review system. *See* <http://www.ca10.uscourts.gov/cja>. All claims must be supported as required by the

CJA Guidelines and the Court's *Advice to CJA Counsel* letter(s), found at <https://www.ca10.uscourts.gov/cja/vouchers-and-instructions-attorneys>.

Counsel appointed in direct criminal appeals and non-death penalty 28 U.S.C. §§ 2254 and 2255 matters should review the Court's general *Advice to CJA Counsel* letter for detailed information and guidelines regarding compensation issues, found at <http://www.ca10.uscourts.gov/sites/default/files/adv20-mod.pdf>. Counsel appointed in death penalty matters should review the Court's separate *Advice to CJA Counsel Regarding Death Penalty and Capital Habeas Matters* letter, found at <http://www.ca10.uscourts.gov/sites/default/files/adv30-mod.pdf>.

B. Authorization of Payments in Excess of Statutory Case Compensation Maximums.

Payments in excess of statutory compensation limits may be approved to provide fair compensation where deemed appropriate by the Chief Judge of the Circuit or by a circuit judge in regular active service to whom excess compensation approval authority has been delegated.

C. Disallowance or Reduction of a Claim

The Court recognizes that the compensation afforded often does not reflect the true value of the services rendered. Consequently, it is the Court's policy not to cut or reduce claims which are reasonable and necessary. If the Court intends to reduce a claim for compensation, it will provide the attorney prior notice of the proposed reduction with a brief statement of reasons, and will provide an opportunity to address the matter pursuant to procedures adopted by the Judicial Conference. Notice will not be given where the reduction is based on mathematical or technical errors.

D. Other Payments

Except as authorized or directed by the Court, no appointed attorney and no person or organization authorized by the Court to furnish representation under the Act may request or accept any payment or promise of payment for representation of a defendant.