



**INTERNAL OPERATIONAL GUIDELINES
FOR THE CJA ADVISORY COMMITTEE
WESTERN DISTRICT OF VIRGINIA**

Revised June 2018

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I. INTRODUCTION

These guidelines provide general and specific procedures for the internal operations of the CJA Advisory Committee. They serve to supplement the 2018 revised CJA Plan approved by the Judicial Council of the Fourth Circuit.

These guidelines have been approved by the court. Upon recommendation by the CJA Advisory Committee and with the approval of the court, these guidelines may be revised and amended as necessary.

II. ADVISORY COMMITTEE

A. Members

Pursuant to Standing Order 2013-1 and the revised 2018 CJA Plan, the Honorable Robert S. Ballou, Magistrate Judge, shall serve as the judicial representative to the CJA Advisory Committee. The members of the Advisory Committee are the Magistrate Judge, the Federal Public Defender, or designee, the Clerk of Court, or designee, the CJA Panel Attorney District Representative (PADR),¹ the CJA Advisory Committee Chairperson, and one CJA Panel member from each division of the Court. The Clerk of Court shall serve as Secretary to the Advisory Committee. The Chair of the Criminal Justice Act Committee shall be appointed by the Chief Judge upon the recommendation of the Federal Public Defender. The same person may serve as both the PADR and the Advisory Committee Chair.

1. Executive Committee. The members of the CJA Executive Committee are the Magistrate Judge, the Federal Public Defender, or designee, the Clerk of Court, or designee, and the PADR, and the Advisory Committee Chair.
2. Division Review Panels. A Review Panel for each division of the Court is established to assist the Advisory Committee. Members of each Division Review Panel are the Executive Committee members and the member of the CJA Advisory Committee from that division. Pursuant to Standing Order No. 2014-6, CJA Panels for the Abingdon and Big Stone Gap divisions of the court were consolidated, and Panels for the Danville and Lynchburg divisions

¹ The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the Chief Judge upon recommendation by the Federal Public Defender to serve as the representative of the district's CJA Panel for the national Defender Services CJA PADR program and local CJA committee.

of the court were consolidated. This consolidation, however, did not decrease membership on the CJA Advisory Committee. Each division maintains its own individual representative on the CJA Advisory Committee.

B. Appointments and Resignations

1. Selection of a New CJA Advisory Committee Chair

➤ Term limit.

The Chair may serve no more than three consecutive, three-year terms unless otherwise directed by the Chief Judge. According to the CJA Plan for this Court, the Chief Judge will appoint the Chair of the Advisory Committee upon the recommendation of the Federal Public Defender. It is expected that the Chair will be a current member of the Advisory Committee, and only practicing attorneys may be considered to serve as the Chair.

➤ The Chair may also serve as the PADR.

➤ Resignation of the Chairperson. Should the Chair of the CJA Advisory Committee wish to resign before expiration of the term of service:

- The Chair shall notify the Chief Judge of this decision before the annual meeting of the Committee and in a reasonable amount of time to allow the Chief Judge to appoint another committee member to assume the duties;
- The Chair shall also send notice to the committee members of the intent to resign; and
- The Advisory Committee may direct the Secretary to submit nominations or recommendations for designation of a new Chair to the Chief Judge.

➤ Removal of the Chair.

If the members of the Committee determine that the best interests of the Committee would be served by selection and appointment of a new Chair:

- The Committee shall direct the Secretary to convey notice to the Chief Judge; and
- The Committee by majority vote shall recommend to the Chief Judge the appointment of a particular committee member to this position.

2. Selection of a New Division Panel Representative to the Advisory Committee.

➤ Annual Appointment.

Pursuant to the CJA Plan, the Chief Judge will appoint, by order entered in January of each year, the Division Review Panel Representative for each division of court.²

➤ Resignation of a Division Review Panel Member.

Should the Representative wish to resign from the CJA Advisory Committee before expiration of his or her term:

- The Attorney shall notify the Chair of the CJA Advisory Committee of the decision in a reasonable amount of time before the annual meeting of the Advisory Committee to allow the Committee to make a recommendation to the Chief Judge as to the appointment of another committee member to the Advisory Committee;
- Provided the Chief Judge agrees, the Chair shall send notice to the other members of the of the division's CJA Panel and solicit recommendations from those attorneys as to the appointment of another panel representative to serve on the Advisory Committee;
- The Chair shall convene a meeting of the Advisory Committee, gather input from the members as to appointment of another panel member to the Advisory Committee, and prepare a recommendation for the court; and
- The Chair shall communicate that recommendation to the Chief Judge.

² For the purpose of attorney appointments, effective July 1, 2014, the court has determined that consolidation of the panels for the Abingdon and Big Stone Gap divisions and consolidation of the panels for the Danville and Lynchburg divisions are necessary in order to ensure an equitable distribution of case assignments. The court will continue to appoint a panel attorney from each division to represent the division on the CJA Advisory Committee.

3. Removal/Death of Division Review Panel Representative.

If the members of the Advisory Committee or the Division Review Panel determine that the best interests of the Committee would be served by the selection and appointment of a new Division Panel Representative to serve on the Advisory Committee, or in the event of the death of the Representative:

- The Chair shall direct the Secretary to send notice to the Chief Judge; and
- The Chair and Committee will follow the procedures in section 1, above, in order to make a recommendation to the Chief Judge for the appointment of a new Division Review Panel member to the Advisory Committee.

C. Administrative Matters

1. Meeting Schedule.

- The Advisory Committee will meet at least once a year to address administration of the CJA Plan and other matters requiring the attention of the court. This meeting will coincide with or follow the Federal Public Defender's annual Frank Dunham Conference. The Advisory Committee, through the Executive Committee, will submit an after-action report of this annual meeting to the Chief Judge prior to June 1 of each year.
- The Executive Committee will meet at least twice a year and at any time the court asks the Committee to consider an issue. The Committee will submit its Panel appointment recommendations to the Chief Judge prior to the Spring/Summer meeting of the judges of the Western District of Virginia. All action on the applications will be concluded before July 1 of each year.
- The Division Review Panels will meet in between April 1 and May 15 of each year to advise the Executive Committee as to appointments to the divisional CJA Panels. The Review Panels may also meet when necessary to alert the Advisory Committee to any new or recurring issues or matters requiring the court's attention.
- The meetings may be conducted via conference call or in person.

2. Secretary's Responsibilities.

- The Secretary will assist the Chair in scheduling meetings and conference calls;
- The Secretary will assist the Chair with correspondence to the Court, the Committee members and the applicants;
- The Secretary will prepare and distribute the applications to the Committee members; and
- The Secretary will compile and distribute to the Committee members statistics that show:
 - The total number of CJA appointments made during the preceding year in each division;
 - The number of cases each applicant accepted for appointment; and
 - The number of cases declined by the applicant and, when available, the reason for the declination.

3. Applications.

- CJA Panel.

Applications are accepted from January 1 until March 31 each year. Late applications by first-time applicants will be brought to the attention of the Executive Committee and, in the discretion of the Committee, may be included in the review process. Attorneys applying for admission to the regular CJA Panel may also be considered by the Advisory Committee for admission to the Court's CJA Training Panel Program if they do not possess the requisite experience for admission to the CJA Panel.

- CJA Training Panel

Applications for admission to the Court's CJA Training Panel Program are accepted from January 1 until March 31 of each year. These applications will be considered by the Advisory Committee at the same time as the applications for admission to the CJA Panel. Guidelines for the Training

Program are attached as Appendix B to the Court's revised 2018 CJA Plan.

III. PROTOCOL FOR REVIEW OF CJA APPLICATIONS

A. Technical Analysis of the Applications

Upon receipt of an application, the Clerk of Court will review the application to determine if the application is timely and contains all required information.

B. Courtesy Contact with Expiring Panel Members

- In the event an attorney whose term is expiring has failed to submit a timely application for reappointment, the Clerk upon direction by the Chair, the Federal Public Defender, or the Division Review Panel Representative shall contact the attorney in order to find out if the attorney desires to submit an application for reappointment.
- If the attorney desires to submit an application outside the time set forth in the CJA Plan, the Advisory Committee shall accept that application for reappointment.

C. Solicitation of Opinions and Information

1. The Legal Community

- Prior to the annual meeting, the Committee members will contact attorneys who practice in federal court to solicit feedback regarding the performance and character of the attorneys who have applied for appointment to the CJA panel and the CJA Training Panel. Additionally, committee members may seek the advice and opinions of others in the community who may be familiar with the applicant and who may have relevant information about the applicant's fitness to serve on the Panel.
- Specific feedback from the United States Attorney's Office and Federal Public Defender's Office will be sought.
- This information will be shared during the annual meeting and the meetings of the Division Review Panels.

2. **Federal Judges**

- The Clerk of Court will contact the judges in the Western District to solicit feedback.
- The Clerk will relay that information to the Committee prior to the annual and division review panel meetings.

D. **Discussion and Review of Applications**

1. **Meeting of the Advisory Committee**

- The Chair will prepare the agenda and the Secretary will distribute it to the members.
- The annual meeting will coincide with or follow the annual Frank Dunham Conference.
- The Chair will determine whether the meeting will take place in person or via a conference call. The Chair will prepare a report of the annual meeting and deliver the report to the Chief Judge in time for any issues or matters to be placed on the agenda for the Spring/Summer meeting of the District Judges and Magistrate Judges.
- The Chair will determine whether the meeting of the Division Review Panels will take place prior to the full committee meeting. If the review panel meetings precede the full committee meeting, the Chair will communicate the results of those meetings to the full committee.
- The Secretary will ensure that all Committee members have copies of the applications and all statistical materials prior to the meetings of each Division Review Panel.
- The committee members will review each of the applications and all relevant information before meeting.
- The Chairperson will prepare a letter setting forth the Advisory Committee's recommendation regarding each applicant and will send the letter to the Chief Judge.

2. **Meeting of the Division Review Panels**

- The committee members will review each of the applications for the division panel and all relevant information regarding the applicants before reaching a decision on each of the applications.
- The Chair will report back to the Advisory Committee the results of the analysis and discussion held by the review panels, and will distribute to the members the recommendation regarding appointments to the division panels.

3. **Analysis of Statistics**

- The Secretary shall compile statistics and prepare a report for the Advisory Committee that shows the following:
 - Total CJA appointments for each division during the preceding year;
 - The total number of CJA appointments for each panel member;
 - The number of CJA appointments offered but declined by an attorney;
 - The reasons, if available, for declination of a case; and
 - The current panel list for each division.
- The Division Review Panels will review the number of CJA appointments made in each division and consider whether the total number of panel members in each division is too large or too small. Recommendations regarding panel size will be made to the Advisory Committee by the Executive Committee.
- Based on consideration of the statistical evidence compared to the number of attorneys on a division's panel, the Committee shall establish an appropriate number of attorneys (i.e., a quota) to serve each division of court for the coming year. The quota for each division panel shall be determined on an annual basis.
 - Should the Committee determine that the panel members are not being appointed an adequate number of cases to maintain their proficiency in

federal criminal-defense work, the Committee will recommend to the court that the number of members on the panel be reduced.

- Should the Committee determine that a division panel contains an insufficient number of attorneys to provide adequate CJA representation, the Committee will recommend to the court that steps be taken to add attorneys to the panel.
- The Committee will also review the appointments to ascertain the reasons why non-division panel attorneys are being appointed to CJA cases in a division. Where it appears the non-panel appointments are numerous and an adequate explanation is not found, the Chair will contact the Chief Judge.
- Generally, the Committee will not recommend appointment of an attorney to multiple panels. In filling the quota that has been determined for each division panel, the Advisory Committee shall first select attorneys from the division. If there is not a sufficient number of applicants for that division to fill the quota for the division, the Committee may choose applicants from other divisions of the court who have also requested assignment to multiple panels.
- In those situations where the number of applications received is fewer than the number of expiring terms, the Chair and Committee members may reach out to well-qualified attorneys in the division, i.e., those who are experienced in representing federal criminal defendants, to ascertain interest in applying for appointment to the CJA Panel. The Chief Judge shall be notified of this situation by the Chair.

E. Confidentiality of the Process

In order to promote full, fair and open discussion of an applicant's suitability to serve on the CJA Panel and to ensure the Committee recommends the most qualified attorneys for appointment to the CJA Panel, the discussions held during the review and recommendation process are confidential in nature. The information received by the members of the Advisory Committee and Division Review Panels is non-public information.

- Each member of the Advisory Committee shall hold in confidence any and all discussions relating to the review and recommendation of attorneys for appointment to the district's CJA Panel.

- Disclosure of this confidential information will be brought to the attention of the Chair and the Chief Judge.
- The Chief Judge will determine whether it is necessary and advisable to take action to address this breach of confidentiality.

F. Submission of the Committee's Recommendations

- The Advisory Committee will recommend appointment of the most qualified attorneys for each division's panel. The Advisory Committee will also prepare a recommendation for appointment of attorneys to the Court's CJA Training Panel.
- The Chair with the assistance of the Secretary, if needed, will prepare a letter for the Chief Judge setting forth the recommendations of the Advisory Committee regarding each application.
 - This letter may also include any other issues identified by the Committee that need action or attention by the court.
 - The letter to the Chief Judge will be sent prior to the Spring/Summer meeting of the judges of the Western District of Virginia and prior to July 1 of each year.

G. Review of the Advisory Committee's Actions and Recommendations

- Having had the opportunity to make comments about the attorneys making application for appointment to the CJA Panel during the beginning of the evaluation process, it is expected that the judges will adopt the Advisory Committee's recommendations regarding appointment of attorneys to the CJA Panel and Training Panel, except in extraordinary circumstances. Ultimately, the judges of the court are responsible for the composition of the CJA Panel.
- The Chair will respond directly to any requests for reconsideration made by attorneys regarding the Committee's recommendations. Attorneys who are aggrieved by a response from the Chair may request review of the decision by the Chief Judge. The Chair shall direct the attorney to contact the Chief Judge.

- Committee members who receive questions from CJA applicants will forward the questions to the Chair.