



Chambers of
DALE S. FISCHER
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
350 West 1st St., Ste 4311
Los Angeles, CA 90012

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501

MEMORANDUM

To: CJA Trial Panel Attorneys

From: Hon. Dale S. Fischer
Chair, CJA Committee

Re: Assignment of Large Takedowns

Date: July 5, 2017

The Central District Criminal Justice Act Committee has accepted the panel's proposal – presented by your national representatives – for the assignment of large takedowns. For purposes of this policy, we have defined a “takedown” as any case (or group of related cases) in which it is anticipated that eight or more defendants will be brought in for initial appearances on the same day. The goals of this procedure are to: (1) provide the best representation for the client; (2) achieve fairness in the distribution of cases to panel members; and (3) reduce requests for continuances because a panel member has too heavy a caseload. This procedure will be followed beginning with the next takedown to occur.

In advance of each takedown, Clerk's Office staff will do two things: (1) send out an email to all active panel members asking about their availability; and (2) create a priority ranking of panel members from which assignments will be made on the day of the takedown. Each of these steps is discussed in further detail below.

I. Availability

Criminal Intake staff will send an email to all active panel members several days in advance of a takedown to solicit information regarding availability.¹ Staff will pose two questions: (a) “are you available to appear in court on the day of the takedown?”; and (b) “whether or not you can be there in person on that day, do you want to be considered for appointment on a large case at this time?” The email will provide a deadline by which responses are needed (usually the day before the takedown), and in general, if we do not receive any response from a panel member by that deadline, we will presume that the attorney is neither available nor interested. The only exception will be with regard to the Magistrate Court Team on duty the day of the takedown; attorneys on duty will be presumed available and willing, unless we hear otherwise in advance. Members of the duty team who are available to be present but are not interested in taking a large case may still be needed for smaller cases, unrelated duty matters, and to stand in for counsel interested in taking a large case who cannot be present on that particular day, so it will be important for duty team members to communicate with staff if the answer to either question is “no.”

Panel members may also respond to the Clerk’s Office inquiry by saying they are “available only if needed,” in essence communicating the desire not to be appointed unless the Clerk’s Office cannot find anyone else. **Panel members should individually assess their own availability to take on a new large takedown assignment, and should not accept a case unless they are able to handle the matter effectively through to completion.**

While waiting for panel members to provide information about their availability to take a case, staff will prepare the priority list, as explained below.

II. The Priority List

For the first takedown to occur after the adoption of this procedure, the list

¹ Exactly how far in advance of the takedown the email is sent will depend on how much notice the Court itself receives. If possible, we will try to notify the panel one week in advance of the expected takedown date. Panel members will usually have at least 4-5 days in which to indicate whether they are available to take a case.

will initially rank all panel attorneys in order from those with the fewest takedowns in the prior rolling two-year period to those with the most takedowns in that period (i.e., for a takedown on August 1, 2017, the list will include all takedown assignments made after August 1, 2015). Specifically, an attorney with no takedowns will be ranked higher than an attorney with one takedown, an attorney with one takedown will be ranked higher than an attorney with two, etc. If one or more attorneys have the same number of takedowns, the attorney with the oldest takedown date will be given preference over the attorney with the newer assignment (e.g., between two attorneys with one takedown each, attorney A, assigned to a takedown on January 1, 2017, would be given preference over attorney B, assigned to a takedown on April 1, 2017). Attorneys with the same number of takedowns whose earliest takedown occurred the same day will be ranked by case number, or by defendant number if within the same case. Attorneys with no takedowns within the prior two years will initially be listed in alphabetical order.²

A list of all panel members in each division, ranked in this order, will be saved as the “Master Takedown List.” That list, as of the date of this memo, is attached, incorporating data from takedowns in the two years prior to July 5, 2017. If a takedown were to occur on July 6, 2017, this would be the starting point for making assignments. If the next takedown does not occur for several months after the issuance of this memo, the list may be reordered before use, as older takedowns drop out of the rolling two-year window.

Once a takedown has been scheduled and the Master Takedown List updated for the appropriate two-year period, a takedown-specific list will be created. The members of the Magistrate Court Team already scheduled for duty the day of the takedown will be pulled up to the top of the list regardless of their previous position on the list. Panel members’ responses to the availability email will be added: any attorney who indicated a willingness to be assigned a large takedown case will be highlighted in green (with a note if that attorney needs a stand-in for the day of the takedown), and attorneys who indicated that they were available “only if needed” will be highlighted in yellow. On the morning of the

² In practice, based on what we have seen in recent takedowns, attorneys with no prior takedowns listed who indicate that they are available to take one have a high likelihood of getting a case.

takedown, Criminal Intake staff will call attorneys highlighted in green in the order listed, skipping over any attorneys who are not highlighted in green.³ If all attorneys highlighted in green have received cases and additional attorneys are still needed, staff will begin calling attorneys highlighted in yellow, in the order listed.

After all takedown assignments have been made, the Master Takedown List will be updated with the new assignments. All attorneys who received a case on the day of the takedown will be rotated to the bottom of the list (unless the takedown was for an out-of-district case, which will not affect the rankings). Going forward, all attorneys who receive an assignment from the same takedown day will be grouped together at the bottom of the list, ordered within that group according to the same rules detailed above (i.e., attorneys with one takedown, then attorneys with two, etc.). However, the entire group will be below everyone else on the list, including attorneys who already have four or five older takedowns.

The revised Master Takedown List will then be posted on the Court's website so that all attorneys can determine at any time where they stand on the list. Adjustments can be made to the list. If you believe that your ranking is incorrect, please let the CJA Office know, and specify why you believe a correction should be made. In addition, please let the CJA Office know if you are listed as having received a takedown case, but ended up substituting out of the case before billing more than \$500. Cases in which you were substituted out that early should not affect your ranking, but early substitutions can only be taken into account if you inform the CJA Office. Staff will update the list with assignments made on the day of a takedown, but will not subsequently monitor every case to track whether

³ If you indicate that you are available to be present in court the day of the takedown and are interested in taking a case, please try to remain reachable the morning of the takedown. Criminal Intake staff cannot "save" you a case; if they try to call you multiple times that morning and are unsuccessful in reaching you, and don't hear back from you within a reasonable amount of time, they will have to move on to the next available attorney on the list. If you realize that you may not be easily reachable the morning of a takedown, but are still interested in taking a case, please let Criminal Intake staff know that you can take a case but will need a stand-in, or will not be reachable in the morning but will definitely be available to appear in the afternoon.

anyone later substitutes out.

Please note that an attorney's ranking on the list will not be impacted by the number of hours an attorney has billed. Further, attorneys who respond for one takedown that they are not available or prefer not to be assigned will not lose their place on the list, and such a response will not impact their assignment to other matters.⁴

If an attorney has been assigned to a case without having been given the option to decline, and is too busy to handle the case effectively through to completion, he or she should immediately contact the CJA Office to arrange for another attorney to be appointed. If the attorney has not billed more than \$500, the attorney will not be rotated to the bottom of the list.⁵

As the list is updated for future takedowns, and older takedowns drop out of the two-year tracking window, some attorneys may rotate back up to a higher spot on the list. That is, an attorney may have one takedown on the current list, but six months from now may not have any. That attorney would then be rotated back up to be grouped with other attorneys having no takedowns. However, attorneys rotated back up will be listed at the bottom of the new group. Thus, attorneys rejoining the "zero takedowns" group will not be listed in alphabetical order with attorneys who never had any takedowns listed, but rather at the bottom of that group based on the date rotated back up.

Please direct any questions or concerns about the procedure to your national representatives. Thank you for your service on the panel.

⁴ Attorneys who are temporarily too busy to take any new assignments should make a request through the CJA Office to be placed on the Do Not Call list.

⁵ Panel members who know now that they do not wish to be assigned to large takedowns for the foreseeable future should advise the CJA Office. They can return to the large takedown list at any time.