

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
2008 AUG 20 PM 2:03

UNITED STATES OF AMERICA

CASE NO.: 8:03-CR-77-T-30TBM

vs.

SAMEEH HAMMOUDEH
/

SECOND AMENDED
MOTION AND MEMORANDUM IN SUPPORT FOR INCLUSION OF
PARTICIPATION IN INVESTIGATIVE, EXPERT AND OTHER SERVICES
BY DEFENDANT NOT REPRESENTED BY CJA COUNSEL

COMES NOW, the Defendant, SAMEEH HAMMOUDEH, by and through his undersigned counsel, and moves this Honorable Court to enter an Order allowing the Defendant's counsel to participate in investigative, expert and other services arranged for the other Defendants through the office of Public Defender and as grounds would state the following:

1. The guidelines for the Administration of the Criminal Justice Act and Related Statutes promulgated by the Judicial Conference of the United States, established pursuant to 28 U.S.C. section 331. [See generally *Christian v. U.S.*, 398 F.2d 517 (10th Cir. 1968); *U.S. v. Smith*, 893 F.2d 1573 (9th Cir. 1990)] provided that persons with retained counsel who need investigative, expert or other services may obtain these services under the CJA if their financial resources are insufficient to pay for the necessary services, although they could provide them with the ability to pay a reasonable fee to an attorney. Attached to this is the financial affidavit completed by Sameeh Hammoudeh as well as a CJA21 Request Form.

2. That the undersigned counsel has consulted with the office of the Public Defender

who is representing a co-defendant in the above styled cause in relation to the expenses for the creation of a shared facility for participation in discovery, experts, and the employment of interpreters to create translations of twenty thousand hours of intercepted conversations in Arabic. The bottom line is a budget in the area of \$450,000 per year for the two years of 2004 and 2005 during the completion of this litigation which will be incurred by the Public Defender.

3. The Defendant, although able to retain counsel and pay a reasonable fee through the benefit of his friends and family, is unable to participate in such an expensive operation as the one presently contemplated by the other defendants. Nevertheless, to meet the deadline of the January 5, 2005 court date, the structure as contemplated by the Public Defender will be necessary.

4. This process will be in place for the benefit of the Public Defender's client and the other CJA lawyers and it would be unfair to deny Defendant Hammoudeh's participation. It is clear that unless this Court finds that Defendant Hammoudeh is eligible to participate in this discovery operation, he may be denied equal participation in the discovery process strictly because of his lack of funds.

5. The Defendant is not requesting that this Court allot any additional funds for his benefit but that he simply be allowed to participate in the same facility created for the benefit of the other defendants. This also would facilitate the agreement of a joint transcript among the defense parties and would streamline this important aspect of this litigation, (translation of the intercepted conversations).

6. That the Defendant was declared indigent for purposes of appointment of counsel on Thursday August 12, 2004 by Magistrate Wilson and it is asserted that he is thereby qualified for

costs as requested to be provided for as Co-Defendant's would have the Federal Public Defender and CJA counsel

WHEREFORE, the Defendant Hammoudeh requests that this Court rule that he is qualified to participate in the Public Defender and CJA shared facility for interpreters, expert and other common defense procedures in the discovery process and trial process of this unique and extraordinary litigation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to:

Walter E. Furr, Esq.
U.S. Attorney's Office
Middle District of Florida
400 North Tampa St., Suite 200
Tampa, FL 33602

Daniel W. Eckhart, Esq.
Office of the U.S. Attorney
80 N. Hughey Avenue
Suite 201
Orlando, FL 32801

M. Allison Guagliardo, Esq.
Federal Public Defender's Office
Middle District of Florida
400 N. Tampa St., Suite 2700
Tampa, FL 33602

Bruce G. Howie, Esq.
Piper, Ludin, Howie & Werner, P.A.
5720 Central Ave.
St. Petersburg, FL 33707

Terry Zitek, Esq.
U.S. Attorney's Office
Middle District of Florida
400 N. Tampa St., Suite 200
Tampa, FL 33602

Linda G. Moreno, Esq.
Law Office of Linda Moreno
1718 E. 7th Avenue
Suite 201
Tampa, FL 33605

William B. Moffitt, Esq.
Asbill Moffitt & Boss, Chtd.
The Pacific House
1615 New Hampshire Ave. N.W.
Washington, DC 20009

Kevin T. Beck, Esq.
Federal Public Defender's Office
Middle District of Florida
400 N. Tampa Street., Suite 2700
Tampa, FL 33602

Wadie E. Said, Esq.
Federal Public Defender's Office
Middle District of Florida
400 N. Tampa Street, Suite 2700
Tampa, FL 33602

by regular U.S. mail delivery on this 24 date of August, 2004.

LAW OFFICES OF STEPHEN N. BERNSTEIN



STEPHEN N. BERNSTEIN
Post Office Box 1642
Gainesville, Florida 32602
Florida Bar Number 145799
Counsel for Defendant Hammoudeh
(352) 373-9555
Facsimile (352) 373-5277

FINANCIAL AFFIDAVIT

C-JA-23
(REV. 5/98)

IN SUPPORT OF REQUEST FOR ATTORNEY EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES MAGISTRATE DISTRICT APPEALS COURT or OTHER PANEL (Specify below)

IN THE CASE OF

FOR

AT

VS.

LOCATION NUMBER

DOCKET NUMBERS
Magistrate
District Court
Court of Appeals

PERSON REPRESENTED (Show your full name)

Sameeh Taha Hammoudeh

CHARGE/OFFENSE (describe if applicable & check box →) Felony Misdemeanor

- 1 Defendant - Adult
- 2 Defendant - Juvenile
- 3 Appellant
- 4 Probation Violator
- 5 Parole Violator
- 6 Habeas Petitioner
- 7 2255 Petitioner
- 8 Material Witness
- 9 Other (Specify) _____

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

ASSETS	EMPLOYMENT	Are you now employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self Employed
		Name and address of employer: _____
		IF YES, how much do you earn per month? \$ _____ IF NO, give month and year of last employment _____ How much did you earn per month? \$ _____
		If married is your Spouse employed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		IF YES, how much does your Spouse earn per month? \$ <u>169200</u> <i>See her affidavit</i> IF NO, what is your Parents or Guardian's approximate monthly income? \$ _____
	OTHER INCOME	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		RECEIVED _____ SOURCES _____
		IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES _____
	CASH	Have you any cash on hand or money in savings or checking account <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, state total amount \$ _____
	PROPERTY	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		IF YES, GIVE THE VALUE AND DESCRIBE IT
		VALUE <u>156,000</u> DESCRIPTION <u>Home</u> <u>90</u>

OBLIGATIONS & DEBTS	DEPENDENTS	MARITAL STATUS <input type="checkbox"/> SINGLE <input checked="" type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR DIVORCED	Total No. of Dependents <u>6</u>	List persons you actually support and your relationship to them <u>Nadia Hammoudeh, weeam,</u> <u>Doaa, Hanan, Nour, Alaa,</u> <u>and Muhammad.</u>
	DEBTS & MONTHLY BILLS <small>(LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)</small>	APARTMENT OR HOME: <u>Home</u>	Creditors <u>Chase Bank</u>	Total Debt <u>\$ 122,000</u>

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date) 8/19/04

SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED)

[Handwritten Signature]

**QUESTIONNAIRE AND APPLICATION FOR MEMBERSHIP
IN THE CRIMINAL JUSTICE ACT PANEL
FOR THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA**

The following Questionnaire and Application is to be completed by attorneys requesting to represent defendants under the provisions of the Criminal Justice Act in the United States District Court for the Middle District of Florida:

THE APPLICANT IS HEREWITH APPLYING FOR APPOINTMENT AS A CJA PANEL ATTORNEY.

1. Name: STEPHEN N. BERNSTEIN
Firm Name: _____
Office Address: P.O. Box 1642
GAINESVILLE, FL 32602
E-Mail Address: snblaw@atlantic.net
Office Phone: 352-873-9555
Fax Number: 852-873-5277
Home Phone: 352-876-7721

2. **Education and Bar Admissions:**

Graduated from University of Florida School of Law.

Year: 1972

Admitted to practice in the State of Florida on: Oct. 6, 1972

Admitted to practice in the United States District Court for the Middle District of Florida on: April 8, 1983

Admitted to practice in the United States Court of Appeals for the Eleventh Circuit on: Aug. 26, 1982

Admitted to practice in the United States Supreme Court on: Aug. 18, 1978

Others:

Jurisdiction or Court

Location

Date

Dist. Ct. for Northern Dist.

GAINESVILLE

1972

Have you attended a continuing legal education seminar on the topic of the Federal Sentencing Guidelines, and their application, within the twelve months prior to this application? If so, have you certified your compliance with this requirement with the Federal Public Defender?

Yes



No



Have you attended and completed a continuing legal education seminar on federal court criminal practice within the twelve months prior to this application? If so, have you certified your compliance with this requirement with the Federal Public Defender?

Yes



No



Alternatively, have you reviewed the video presentation concerning criminal practice in the Middle District of Florida (which is on file in the Federal Public Defender Office in each division of this District) within the twelve months prior to this application?

Yes



No



Have you participated as counsel of record, either as prosecutor or defense attorney, in at least one criminal jury trial in any federal court?

Yes



No



If not, have you participated in the District's "second chair" counsel program? If so, please attach to this application a letter from the member of the division's "CJA Mentor Panel" verifying that you have completed the program.

Yes



No



Are you Board Certified in any area of law?

Yes No

If so, in what state(s) are you Board certified?

If so, are you Board Certified in (check appropriate box):

Criminal Trial _____ Appellate _____

Civil Trial _____ Other _____

3. **Disciplinary Actions:**

Have you ever been disciplined by a court or by The Florida Bar or any other state agency regulating attorneys?

Yes No

Are you the subject of any pending disciplinary action by the Bar of any jurisdiction or by any Court?

Yes No

If so, please explain in detail on a separate sheet of paper bearing your name and address what the discipline was and the nature of the conduct that led to the disciplinary action.

4. **Practice Background (give dates by years):**

Served as federal defender _____

Served as state defender 1974-1979

Served as federal prosecutor _____

Served as state prosecutor _____

Served in private practice 1980-present

Served as a Law Clerk _____

Other: (please describe) _____

5. Have you at any time been a member of the CJA Panel for this Court?

Yes No

For any other Court? (Please give court title) Yes No

If so, please give names and dates: Northern District of Florida 1972 - present

5a. Have you ever been removed from this or any other court-appointed attorney panel for disciplinary reasons? No If yes, please explain on a separate sheet.

6. Trial Experience:

Approximately how many criminal cases have you tried to verdict?

United States District Court: 20

Florida State Court: 300

Other State Court: _____

Approximately how many pleas and sentencings have you handled in federal district court?

100

6a. Appellate Experience:

Approximately how many appellate briefs have you filed in the last five years?

United States Circuit Court: 12

United States Supreme Court: 4

Florida Court of Appeals: 20

Florida Supreme Court: 4

Other State Courts: _____

How many oral arguments have you participated in over the last five years?

United States Circuit Court: 2

United States Supreme Court: 0

Florida Court of Appeals: 10

6b. Please briefly describe your amount of experience with federal habeas corpus proceedings:

none

6c. Please list the most significant appellate matter you have handled including the case name and number, whether oral argument was granted and the disposition of the case. If you are applying for appointment to APPEALS only, you MUST SUBMIT A WRITING SAMPLE WITH THE APPLICATION.

6d. Please list the last three trials that you have had. (attach additional sheet if necessary): Describe the type of case and the name of the Judge.

Judge	Court*	Case Name & Number	Date of Trial	Federal	
<u>Hon. Maurice M. Boul</u>	<u>Northern Dist. of FL</u>	<u>USA v. Eric Duncan</u>	<u>1:03 CR-43</u>	<u>11/5/03</u>	<u>Federal drug</u>
<u>Hon. Joseph Smith</u>	<u>8th judicial circuit STATE OF FLORIDA</u>	<u>STATE vs Ronald Richey</u>	<u>2001-4-117-A</u>	<u>2/23/04</u>	<u>Murder First Dg</u>
<u>Hon. Peter Sieg</u>	<u>8th judicial circuit STATE OF FLORIDA</u>	<u>STATE vs MARKEZIG MAZON</u>	<u>2002-CF 001538-B</u>	<u>2/10/03</u>	<u>Attempted Murder</u>

* If a state court trial, please identify the county. If a federal trial outside the Middle District of Florida, please identify the district.

7. List your Continuing Legal Education (CLE) experience as a participant or lecturer in a criminal or trial advocacy program within the last three years.

<u>C.J.A. Panel training in Boston, Ma</u>	<u>May 20-22, 2004</u>	<u>(participant)</u>
<u>FAEDL Annual meeting in St. Augustine, FL</u>	<u>June 2-6, 2004</u>	<u>(participant)</u>
<u>Gerald Bennet training for Public Defenders + State Attys</u>	<u>U.F. LAW SCHOOL</u>	<u>AUG 6-13, 2004 (lecturer)</u>

8. Please briefly describe any other activity or experience which you have had which bears on your qualification to serve as CJA counsel (i.e., other teaching, bar activities, writing).

President of Eighth Judicial Circuit Bar Association 2004-05;
Guest lecturer for trial practice UF Law School 1995-present; C.J.A. Counsel in Northern Dist. of FL

9. Describe briefly the nature of your present practice:

Criminal defense, state and federal in northern Florida

10. Are you fluent in any foreign languages? Yes No

Which ones? _____

11. It is likely that most appointment will be made to CJA lawyers who will rotate "duty" weeks in magistrates' court. Would you, as one of the duty attorney's for a given week, be able to be in court within two hours of notification by the appointing judge's chambers?

Yes No

12. In which of the following categories of cases will you accept appointment (check boxes):

A. 0 - 12 trial days

B. 13 or more trial days

13. Are you willing to handle "cold record" appeals (appeals from trials in which you were not trial counsel)?

Yes No

14. Are you willing to handle *habeas corpus* cases?

Yes No

It is your responsibility to notify the Federal Public Defender, in writing, if any of the above information changes.

I HEREBY CERTIFY that the aforesaid information is true and correct and that I have carefully read the provisions of 18 U.S.C. §3006A(d) and (e). I request that I be considered for appointment to the panel for representation of defendants under the Plan approved in accordance with the Criminal Justice Act of 1964, as amended by the CJA Revision of 1986.

Date: _____

Aug 10, 2004

Signature: _____

Stephen M Bernstein

**RETURN YOUR ORIGINAL APPLICATION, THE NUMBER OF COPIES SPECIFIED
AND ANY OTHER ATTACHMENTS TO EACH DIVISION IN WHICH YOU WISH TO
SERVE AT THE ADDRESSES LISTED BELOW**

USDC Clerk's Office
Jacksonville Division
300 North Hogan Street - Rm 5-304
Jacksonville, FL 32202
Attn: Magistrate Judge Thomas E. Morris
send original and one copy

USDC Clerk's Office
Tampa Division
801 North Florida Avenue
Tampa, FL 33602-3800
Attn: Magistrate Judge Mark A. Pizzo
send original and one copy

USDC Clerk's Office
Ocala Division
207 NW Second Street
Ocala, FL 34475
Attn: Magistrate Judge Gary R. Jones
send original only and one copy to FPD Orlando Division

USDC Clerk's Office
Fort Myers Division
2110 First Street, Room 2-194
Fort Myers, FL 33901
Attn: Ms. Leslie Gatto
send original only and copy to FPD Orlando Division

Federal Public Defender
80 North Hughey Avenue, Rm. 417
Orlando, FL 32801
Attn: CJA Program
send original and one copy