

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:10-cr-00162-06-W-FJG
	)	
MYLIN SMITH,	)	
Defendant.	)	

**MOTION TO DECLARE CASE EXTENDED AND COMPLEX**

COMES NOW the undersigned, appointed CJA counsel for defendant, and moves this Court on behalf of all defendants represented by counsel appointed pursuant to the Criminal Justice Act in this case, for an entry of an Order (1) declaring this case “extended” and “complex” pursuant to Section 2.22(B)(3) of the CJA Guidelines and 18 U.S.C. 3006A(d)(3); (2) authorizing compensation for CJA counsel in excess of the statutory case compensation maximum; and (3) authorizing submission of interim vouchers by CJA counsel. In support of this motion, defendant states as follows:

**Governing Law**

1. Paragraph 2.22C(2) of the Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines), Volume VII, Guide to Judiciary Policies and Procedures, provides as follows:

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel’s claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation.

2. Paragraph 2.22B(3) of the CJA Guidelines states that a case is complex if the “legal or factual issues ... are unusual, thus requiring the expenditure of more time, skill and effort by the

lawyer than would normally be required in an average case,” and that a case is extended if “more time is reasonably required for total processing than the average case.”

3. 18 U.S.C. § 3006A(d)(3) provides: “Payment in excess of [the normal CJA cap] may be made for extended or complex representation whenever the court in which the representation was rendered ... certifies that the amount of excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.”

4. Paragraph 2.22B(3) of the CJA Guidelines lists the following criteria as useful in determining fair compensation in extended or complex cases: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel’s practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

#### **Application to the Instant Representation**

1. On May 26, 2010, the Grand Jury sitting in the Western District of Missouri returned a seventeen (17) count superseding indictment charging the defendant along with 22 co-defendants with conspiracy to distribute over five kilograms of cocaine and over fifty grams of crack, from on or about July 1, 2009 through May 26, 2010.
2. First appearance by this defendant on the superseding indictment was on June 9, 2010. Arraignment was held on June 14, 2010. At the scheduling conference held on July 7, 2010 the matter was set on the Joint Criminal Trial Docket scheduled to commence February 14, 2011.
3. On December 14, 2010 a motion to continue the trial setting was filed requesting the trial be moved to the August, 2011 docket. The court granted the motion and continued the

trial to August 1, 2011.

4. The present indictment was based on a one year long investigation undertaken by ATF, ICE, KCPD and FBI and including numerous wiretaps and extension orders, searches and seizures, controlled purchases, informants and unindicted co-conspirators.
5. Accordingly the discovery produced by the government initially consisted of seven disks which contained over 10,000 pages of written documentation to include investigative reports, transcripts of wiretaps, surveillance photographs, and other discoverable information. In addition, audio recordings are available for review at the United States Attorney's office that contain hundreds of hours of intercepted telephone calls of the defendants. This includes more than one hundred telephone calls of defendant Smith. As of the date of this motion, counsel has received new discovery in the case that would raise the overall amount to more than 11,000 pages.
6. Counsel will be required to expend an unusually large amount of time in order to review the discovery in this case. In addition, the time needed to research and consider possible legal motions, assess the relative culpability (or lack thereof) of individual defendants, engage in plea negotiations if appropriate will also be unusually extensive, as will the time required for trial preparation if necessary. Trial of this matter would almost certainly take several weeks.
7. In light of the foregoing, this case will clearly require substantial investment of time by defense counsel, far beyond that required in the average case. The complexity and extended duration of the charged conspiracy, large number of defendants and related cases and investigations, multiple legal issues, and sheer volume of discovery qualify this case as both "extended" and "complex" pursuant to Section 2.22(B)(3) of the CJA Guidelines and 18 U.S.C. § 3006A(d)(3). Counsel therefore requests that the Court make

these findings and authorize submission of interim vouchers by CJA counsel and payment in excess of the normal CJA maximum.

8. The undersigned has attempted to contact all other appointed defense counsel in this case and has been authorized to state that the following defendants represented by CJA-appointed counsel join in this motion, including 1) Alfonso Velo (D-1), by counsel Melanie Morgan; 2) Shawn Hampton (D-3), by counsel Daniel Ross; 3) Delbert Roberson (D-5), by counsel Phillip Gibson; 4) Ray Johnson (D-9), by counsel Susan Hunt; 5) Justin Campbell (D-11), by counsel John Osgood; 6) Antar Roberts (D-12), by counsel Lisa Nouri; 7) Gregory Young (D-13), by counsel Al White; 8) Ronnell A. Brown (D-14), by counsel Eugene Harrison; 9) Andrey Jones (D-17), by counsel Nickalaus Seacord; 10) Sterling Byndom (D-18), by counsel Ron Partee; 11) Marcus Gay (D-19), by counsel Dana Altieri; 12) Keiyatie White (D-20), by counsel Lance Sandage; 13) Dorothea Cain (D-21), by counsel David Johnson; and 14) Adrian Barrett (D-22), by counsel Katrina Robertson. The undersigned has been unable to reach 1) Laine Cardarella counsel for Naricco Scott (D-6); 2) Kurt Marquart counsel for Calah Johnson (D-7); or 3) Michael Walker counsel for Theodore Wiggins (D-16).
9. The undersigned has attempted to contact all retained counsel in this case, and has been authorized to state that this motion is not opposed by 1) Brice Hale (D-4), by counsel Joel J. Schwartz; and 3) Jason Carter (D-10), by counsel Trey Pettlon. The undersigned has been unable to reach 1) Carl Cornwell counsel for Ricardo Nevarez (D-2); or 2) John Duma counsel for Alejandro Holguin-Bonilla (D-23).
10. The undersigned has contacted government counsel, Brent Venneman, and has been authorized to state that the government does not oppose this motion.

WHEREFORE, for the foregoing reasons, defendant requests that the Court issue a written Order finding that this case qualifies as “extended” and “complex” pursuant to Section 2.22(B)(3) of the CJA Guidelines and 18 U.S.C. 3006A(d)(3); authorizing submission of interim vouchers by appointed counsel; and authorizing payment to counsel in excess of the normal CJA maximum. Further, defendant requests that the Court’s Order be made applicable to all defendants represented by CJA-appointed counsel in this case.

Respectfully submitted,

s/ Alex McCauley  
Alex McCauley, MO Bar No. 52632  
JENAB & MCCAULEY, LLP  
110 South Cherry Street, Suite 200  
Olathe, Kansas 66061  
(913) 390-5023 Office  
(913) 764-5539 Fax  
[alexmccauley@everestkc.net](mailto:alexmccauley@everestkc.net)  
ATTORNEY FOR MYLIN SMITH

Certificate of Service

I certify that on May 20, 2011, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record in this case.

s/ Alex McCauley  
Alex McCauley, MO Bar No. 52632