IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**Criminal Action No. 5:24-cr-00106**
	)	
RYAN BAILEY,	)	**Civil Action No. 5:24-cv-00456**
	)	
Defendant.	)	
	)	

ORDER

On September 24, 2024, the Court conducted a ***Status Conference*** (ECF No. 39) regarding the Defendant's eligibility for court appointed counsel. The Court directed the Defendant and his tentatively appointed CJA Panel Attorney, Todd Houck, to complete a more thorough financial disclosure of income and expenses for the Court to decide on the Defendant's eligibility for appointed counsel. On October 24, 2024, the Court received a detailed ***Personal Cash Flow Worksheet*** by the Defendant.[1] During that said ***Status Conference***, counsel for the Defendant also inquired of the Court as to the eligibility for the Defendant to have representation in an auxiliary matter styled: ***United States of America v. $66,506.26 Seized from Truist, Account Number XX6412 et al*** Case No. 5:23-cv-00406 which is directly related to the pending criminal matter.

Upon review of the detailed ***Personal Cash Flow Worksheet*** as well as the ***Financial Affidavit*** submitted by the Defendant on August 14, 2024 (ECF Doc. 23) , the Court **FINDS** that the Defendant is eligible for representation by appointed counsel and to the extent that Mr. Houck was tentatively appointed herein, the Court fully appoints Mr. Houck to represent the Defendant in this criminal matter.

[1] The Clerk is **ORDERED** to file the said ***Personal Cash Flow Worksheet*** under **SEAL**.

As to the request for appointment to the auxiliary matter of ***United States of America v. $66,506.26 Seized from Truist, Account Number XX6412 et al*** Case No. 5:23-cv-00406, the Court **FINDS** the Defendant qualifies for court-appointed counsel pursuant to Guide to Judiciary Policy Vol. 7A, Ch. 2 §§ 210.20.30 and 210.20.40 which provides as follows:

> **§ 210.20.30 Ancillary Matters**
>
> (a) Representation may be furnished for financially eligible persons in "ancillary matters appropriate to the proceedings" under 18 U.S.C. § 3006A(c).
>
> (b) In determining whether a matter is ancillary to the proceedings, the court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal criminal charge.
>
> (c) In determining whether representation in an ancillary matter is appropriate to the proceedings, the court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives:
>
> > (1) to protect a Constitutional right;
> >
> > (2) to contribute in some significant way to the defense of the principal criminal charge;
> >
> > (3) to aid in preparation for the trial or disposition of the principal criminal charge;
> >
> > (4) to enforce the terms of a plea agreement in the principal criminal charge;
> >
> > (5) to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding under 21 U.S.C. § 881, 19 U.S.C. § 1602 or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under 18 U.S.C. § 3006A(f) and Guide, Vol. 7A, § 210.40.30; or
> >
> > (6) to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the CJA client, may be considered for reimbursement under 18 U.S.C. § 3006A(f) and Guide, Vol. 7A, § 210.40.30.

(d) The scope of representation in the ancillary matter should extend only to the part of the ancillary matter that relates to the principal criminal charge and to the **correlative objective sought** to be achieved in providing the representation (e.g., a CJA defendant in a criminal stock fraud case should be represented by CJA counsel at the defendant's deposition in a parallel civil fraud action for the limited purpose of advising the defendant concerning the defendant's Fifth Amendment rights).

(e) Representation in an ancillary matter is compensable as part of the representation in the principal matter for which counsel has been appointed and is not considered a separate appointment for which a separate compensation maximum would be applicable under § 230.23.10(g).

(f) A private panel attorney appointed under the CJA may obtain, through an *ex parte* application to the court, a preliminary determination that the representation to be provided in an ancillary matter is appropriate to the principal criminal proceeding and compensable under 18 U.S.C. § 3006A(c) and this guideline. However, failure to obtain such a preliminary determination does not bar the court from approving compensation for representation in an ancillary matter provided that the services and compensation related thereto are justified in a memorandum submitted by the attorney to the court at the conclusion of the principal criminal matter and the presiding judicial officer finds that such representation was appropriate.

§ 210.20.40 Civil Forfeiture Proceedings

(a) Under 18 U.S.C. § 983(b)(1), if a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under 18 U.S.C. § 3006A in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(b) In determining whether to authorize counsel to represent a person in a judicial civil forfeiture proceeding under a civil forfeiture statute, the court must take into account such factors as:

• the person's standing to contest the forfeiture; and

• whether the claim appears to be made in good faith.

The undersigned **FINDS** that the ancillary civil matter is so intertwined with the criminal matter that representation by appointed counsel in the civil matter is reasonably necessary to accomplish the objectives as outlined in Guide to Judiciary Policy Vol. 7A, Ch. 2 §210.20.30 and/or §210.20.40. Therefore, it is **ORDERED** G. Todd Houck, CJA Panel Attorney, is **APPOINTED** to represent the Defendant in **Criminal Action No. 5:24-cr-106** and **Civil Action No. 5:24-cv-00456**.[2]

The Clerk is **DIRECTED** to forward a copy of this Order to all counsel of record in both cases, but that such financial documents submitted herein shall remain under **SEAL** and not be disclosed to opposing counsel. The Clerk is further **DIRECTED** to provide a copy of this Order to Meagan McClure, Esq., Attorney Advisor of the CJA Plan for the SDWV.

ENTERED: **October 24, 2024.**

Omar J. Aboulhosn
United States Magistrate Judge

[2] Should the Defendant be successful and recover the funds in the civil forfeiture matter, the Court reserves the right to determine if he should reimburse the CJA plan for the services of his appointed CJA Panel Attorney.