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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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9 In Re:

10 AMENDED CRIMINAL JUSTICE ACT
11 PLAN

GENERAL ORDER

NO. 05-19
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14 The Court hereby adopts the attached Amended Criminal Justice Act Plan for the United
15 States District Court Western District of Washington, as approved by the Judicial Council for the
16 Ninth Circuit on May 29, 2019.

17 This Amended Criminal Justice Act Plan shall take effect immediately and supersede this
18 Court's prior Plan.
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20 The Federal Public Defender is directed to supply a copy of the Plan to all members of
21 the CJA Panel.

22 DATED this 6th day of June 2019.
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25 RICARDO S. MARTINEZ
26 CHIEF UNITED STATES DISTRICT JUDGE
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United States District Court
for the Western District of Washington
Criminal Justice Act Plan
Amended March 2019

I. Authority

Under the [Criminal Justice Act \(CJA\) of 1964, as amended, 18 U.S.C. § 3006A](#), and [Guide to Judiciary Policy \(Guide\), Volume 7A](#), the judges of the United States District Court for the Western District of Washington adopt this amended Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (decodified at [18 U.S.C. § 3599](#)), the Ninth Circuit Policies and Procedures, and the *Guide*, Vol. 7A, in a way that meets the needs of this district.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

B. Compliance

1. The Court, its Court Executive, the Federal Public Defender's Office, and private attorneys appointed under the CJA must comply with the *Guide*, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, with the policies of the Ninth Circuit Judicial Council, and with this Plan.

2. The Federal Public Defender shall provide each private attorney with a current copy of this Plan upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel), and each time the Plan is revised. The Federal Public Defender shall maintain current copies of this Plan, the Western District of Washington CJA Attorney Manual, and the Ninth Circuit Policies and Procedures on its website.

III. Definitions

A. Representation

"Representation" includes counsel and investigative, expert, and other services.

B. Appointed Attorney

"Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the Federal Public Defender, and staff attorneys of the Federal Public Defender Office.

C. CJA Administrator

"CJA Administrator" is a person designated by the Federal Public Defender to administer the CJA Panel.

D. CJA Resource Counsel

"CJA Resource Counsel" (CJARC) is an attorney selected by the Federal Public Defender in consultation with the CJA Standing Committee and the Court. The CJARC reviews for recommendation to the Court selected CJA attorney requests for expert, investigator, and other services as well as requests for interim billing. The CJARC assists in training the CJA Panel and provides support for such other CJA Panel-related duties assigned by the FPD and the CJA Standing Committee.

IV. Determination of Eligibility for CJA Representation

- A. The determination of eligibility for representation under the CJA is a judicial function to be performed by a judge after making appropriate inquiries concerning the person's financial condition.

- B. In every case in which appointment of counsel pursuant to 18 U.S.C. § 3006A(a) is appropriate, it is the duty of the judge to advise the party of

his or her right to counsel. The judge shall appoint counsel promptly if it is found that the party is financially unable to obtain an attorney, unless the party waives his or her right to be represented by counsel.

V. Provision of Responsibility

A. Subject Matter Eligibility

1. Mandatory

Representation must be provided for any financially eligible person who:

- a. is charged with a felony, criminal contempt, or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in [18 U.S.C. § 5031](#);
- c. is charged with a violation of probation, supervised release, or parole, or faces a change of a term or condition of probation, supervised release, or parole (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is subject to a mental condition hearing under [18 U.S.C. chapter 313](#);
- f. is subject to being held in custody as a material witness;
- g. is charged with a capital offense or is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255. All appointments under this section shall be made pursuant to Appendix C of this Plan or Local Rule CR104(d);
- h. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under [18 U.S.C. § 4109](#);
- i. has been called as a witness before a grand jury or a court that has the power to compel testimony and there is reason to believe the witness risks self-incrimination, loss of liberty, or contempt of court;

- j. is the subject of federal law enforcement interest and faces the risk of federal charges;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

Whenever a district judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;
- c. is charged with civil contempt and faces loss of liberty;
- d. is proposed for processing under a pretrial diversion program;
- e. is held for international extradition under [18 U.S.C. chapter 209](#); or
- f. is, under 18 U.S.C. § 983(b)(1), 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 is represented by counsel appointed under [18 U.S.C. § 3006A](#) in connection with a related criminal case. See Section 210.20.40 of the *Guide*.

3. Ancillary Matters

Representation may also be provided for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the Court should consider whether such representation is reasonably necessary:

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;
- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under [18 U.S.C. § 983](#), [19 U.S.C. § 1602](#), [21 U.S.C. § 881](#), or similar statutes, which property, if recovered by the client, may be considered for reimbursement under [18 U.S.C. § 3006A\(f\)](#); or
- f. 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 client, may be considered for reimbursement under [18 U.S.C. § 3006A\(f\)](#).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement

- (i) Upon arrest, and where the defendant has not retained or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the CJA Administrator of the arrest of an individual in connection with a federal criminal charge.
- (ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

b. Duties of United States Attorney's Office

- (i) Upon the return or unsealing of an indictment or the filing of a criminal information, and where the defendant has not retained or waived counsel, the United States Attorney or their delegate will promptly notify, telephonically or electronically, the CJA Administrator.
- (ii) Upon issuance of a target letter, and where the individual has not retained or waived counsel, the United States Attorney or their delegate must promptly notify, telephonically or electronically, the CJA Administrator.
- (iii) Employees of the United States Attorney's Office must not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

c. Duties of CJA Administrator, the Federal Public Defender, and CJA Counsel

- (i) Immediately investigate and determine whether an actual or potential conflict exists for the Federal Public Defender or any private CJA counsel who may be appointed to represent the accused.
- (ii) In the event of an actual or potential conflict, the CJA Administrator will assign counsel who does not have an actual or potential conflict of interest.
- (iii) If a conflict which requires CJA counsel to withdraw is later discovered, counsel shall promptly notify the Court and the CJA Administrator to facilitate the timely appointment of other counsel.
- (iv) When practicable, the Federal Public Defender will discuss with the person who indicates that he or she is not financially able to secure representation of the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a [financial affidavit \(Form CJA 23\)](#), and arrange to have the affidavit promptly presented before a magistrate

judge or district judge of this Court for determination of financial eligibility and appointment of counsel.

d. Duties of Pretrial Services Office

- (i) When practicable, the pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived.
- (ii) When counsel has been appointed, the pretrial services officer will provide counsel notice and counsel will attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing, unless the defendant, on the advice of counsel, agrees to proceed with the interview in the absence of counsel.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under [18 U.S.C. § 3006A\(a\)](#) and related statutes, the Court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.
- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the Court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
- d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.

- e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person's financial eligibility should be reflected on a [financial affidavit \(Form CJA 23\)](#).
- g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may direct that any funds available to the defendant be paid as provided in [18 U.S.C. § 3006A\(f\)](#).
- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

VI. Timely Appointment of Counsel

A. Timing of Appointment

Counsel must be provided to eligible persons as soon as feasible in the following circumstances, whichever occurs earliest:

1. after they are taken into custody;
2. when they appear before a magistrate judge or district judge;
3. when they are formally charged or notified of charges if formal charges are sealed; or
4. when a magistrate judge or district judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

B. Court's Responsibility

The Court, in cooperation with the Federal Public Defender and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies to ensure timely appointment of counsel.

C. Pretrial Service Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer.

D. Retroactive Appointment of Counsel

Appointment of counsel may be made retroactive to include representation provided prior to appointment.

VII. Provision of Representational Services

A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the Federal Public Defender and for the appointment and compensation of private counsel from a CJA Panel list maintained by the CJA Administrator in cases authorized under the CJA and related statutes.

The Federal Public Defender is authorized under this Plan to initially represent all persons arrested before the first appearance and at bail hearings which take place on the date of initial appearance.

B. Administration

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the Federal Public Defender.

C. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

D. Number of Counsel

More than one attorney may be appointed in any case when it has been determined by the Court to be extremely difficult or the interests of justice require appointment of more than one attorney.

E. Capital Cases

Procedures for appointment of counsel in cases where the defendant is charged with a crime that may be punishable by death or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255, are set forth in Appendix C of this Plan.

VIII. Federal Public Defender Organization

A. Establishment

The Federal Public Defender is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

The Federal Public Defender must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).

C. Professional Conduct

The Federal Public Defender Office must conform to the highest standards of professional conduct, including but not limited to the Washington State Rules for Professional Conduct and the Code of Conduct for Federal Public Defender employees.

D. Private Practice of Law

Neither the Federal Public Defender nor any Defender employee may engage in the private practice of law except as authorized by the Federal Public Defender Code of Conduct.

E. Workload

The Federal Public Defender Office will continually monitor the workloads of its staff to ensure high quality representation for all clients.

F. Supervision of Defender Office

The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender Office. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that office for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

G. Administration of the Criminal Justice Act

In accordance with and subject to the provisions of this Plan and further orders of the Court, authority to administer the Criminal Justice Act is assigned and delegated to the Federal Public Defender. It shall be the responsibility of the Federal Public Defender, subject to the approval of the Court, to notify CJA Panel attorneys of an appointment and the first date of appearance.

H. Training

The Federal Public Defender will assess the training needs of Federal Public Defender staff and, in coordination with the CJA Panel Attorney District Representative,¹ the training needs of the local panel attorneys, and provide training opportunities and other educational resources. Such training will include presentations on courtroom and office technology related to the defense of federal criminal cases.

IX. CJA Panel of Private Attorneys

A. Formation of a Standing Committee to Oversee the Criminal Justice Act Panel

1. The judges of the United States District Court for the Western District of Washington authorize a Standing Committee to assist the

¹ The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the local Federal Public Defender, with acquiescence from the chief judge, to serve as the representative of the district's CJA Panel for the national Defender Services CJA PADR program and local CJA committees.

Federal Public Defender in the administration and oversight of the CJA Panel. The Committee shall consist of six attorneys, each a voting member. Four members of the Standing Committee shall be selected by a majority vote of the judges of the Court. At least one such attorney shall be from the area served by the United States District Court in Tacoma. Members of the Committee shall serve without compensation.²

2. The Federal Public Defender or his or her representative will be a permanent member of the Committee. The district's national CJA Panel representative shall serve as a member of the Committee during his or her term as district representative.
3. Membership on the Committee shall be for a term of three years. Terms may be extended by the Court for an additional three years. Members' terms shall be staggered to ensure continuity on the Committee.
4. The Committee shall meet at least four times per year or at any time the Court asks the Committee to consider an issue. In addition to reviewing CJA Panel membership, the Committee shall identify and define any operating difficulties encountered in the administration of the CJA Panel and make recommendations to the Court for appropriate changes.
5. The Committee shall act consistent with the requirements of Appendix A to this Plan in making decisions and recommendations related to participation, training, and compensation of CJA Panel lawyers.
6. The Committee shall assist and advise the Federal Public Defender in devising and presenting training programs for the CJA Panel. Such training shall include communication with CJA Panel attorneys on substantive and procedural changes in the law, local rules, administrative requirements, ethics requirements, electronic discovery, and other matters affecting the CJA Panel attorneys, and shall include regularly scheduled seminars for CJA Panel attorneys as well as the private bar.
7. The Committee will be permitted to use the staff of the Federal Public Defender for administrative and record-keeping matters.

² The Court and the Federal Public Defender should make a diligent effort to ensure that the composition of the Committee reflects the racial, ethnic, gender, and geographic diversity of the district.

However, the Committee is not authorized to make requests for services that would incur financial obligations without prior approval of the Court.

X. Prerequisites for Participation on the CJA Panel

- A. The CJA Panel shall consist of attorneys recommended by the Standing Committee and approved by a majority of the judges of the district, pursuant to the procedures outlined in Appendix A.
- B. CJA Panel attorneys must be admitted to practice and in good standing in the State of Washington, the United States District Court for the Western District of Washington, and the Ninth Circuit Court of Appeals. In addition to bar membership, CJA Panel attorneys should have prior federal and/or state criminal trial experience, experience with serious or complex criminal cases, knowledge of the Sentencing Guidelines and the Bail Reform Act, knowledge of other relevant areas of federal criminal practice, and/or clinical experience or participation in trial advocacy programs. CJA Panel attorneys must have the training and ability to conduct electronic filing, receive and manage electronic discovery, and the ability to manage and effectively utilize electronic case presentation equipment and software in the courtroom.
- C. CJA Panel attorneys must have resources and support sufficient to manage CJA assignments, including the availability of office space to meet with clients. This also includes the necessary technological resources to receive, review, organize, and otherwise manage electronic discovery and records.
- D. Each CJA Panel attorney must carry professional malpractice insurance with minimum limits of \$200,000.00 for each occurrence.

XI. Periodic Review and Removal of CJA Panel Members

- A. A majority of the judges of the district may remove a member of the CJA Panel at any time.
- B. Periodically, the Committee will review participating lawyers as described in Appendix A.

XII. Qualifications and Membership on the CJA Panel

A. Application

Application forms for membership on the CJA Panel are available from the Federal Public Defender.

B. Equal Opportunity and Diversity

The CJA Standing Committee encourages all qualified attorneys to apply for appointment to the Western Washington panels. The CJA Standing Committee will utilize all available resources to encourage diversity and inclusiveness in recruitment for its mentorship program and in its recommendations to the Court for appointing new panel members, including guidance from the Defender Services Office of the Administrative Office of the U.S. Courts for recruiting, interviewing, and selecting panel members.

C. Eligibility

1. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Ninth Circuit Court of Appeals.
2. Applicants must maintain a primary, satellite, or shared office in this district.
3. Applicants must possess strong litigation skills and demonstrate proficiency with the United States Sentencing Guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.
4. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.
5. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the Standing Committee's consideration.

D. Appointment to CJA Panel

After considering the recommendations of the CJA Standing Committee, the chief judge will appoint or reappoint attorneys to the CJA Panel. Due to the highly complex and demanding nature of

capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. See Appendix C of this Plan.

E. Mentoring Program

The Federal Public Defender, in conjunction with the Standing Committee, shall have a mentoring program to increase the pool of qualified candidates for our CJA Panel.

XIII. Obligations of CJA Panel Members

A. In addition to meeting the training, qualifications, facilities, and technology requirements established by the Standing Committee, CJA Panel members are expected to:

1. have an office procedure in place that facilitates the prompt receipt of information concerning appointment in a CJA case;
2. be qualified to represent an assigned client through the appellate process and ancillary matters appropriate to the proceedings unless or until relieved by order of the Court;
3. promptly notify the Standing Committee, in writing, in the event any action is taken by any court or bar affecting the standing of the attorney to practice before such court or bar;
4. participate actively in the representation of eligible individuals;
5. comply with the requirements of electronic filing and have sufficient knowledge and technological capability to effectively and efficiently manage assigned cases;
6. participate in training related to the filing of CJA vouchers, know and abide by procedures related to requests for services under the CJA, and be willing to undertake cost effectiveness measures recommended by the Committee;
7. conform to the highest standards of professional conduct.

B. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.

- C. If at any time after appointment counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the client's representation, and the source of the attorney's information is not confidential or privileged, counsel will promptly advise the Court.
- D. In multi-defendant cases where multiple CJA attorneys are appointed, counsel must make all reasonable efforts to coordinate with each other to reduce costs, including coordinating and sharing discovery to the extent possible and making joint applications for funding for investigators and other services.
- E. Appointed counsel are encouraged to use lower-billing associates, contract lawyers, law clerks, investigators, paralegals, or other means to minimize costs where lead attorney expertise may not be required, such as for legal research and file review.

An appointed counsel may claim compensation for services furnished by a partner or associate or, with prior authorization by the Court, counsel who is not a partner or associate, within the maximum compensation guidelines set forth in the Ninth Circuit Policies and Procedures, separately identifying the provider of each service.

XIV. Assignment of Cases to the CJA Panel

- A. The Federal Public Defender shall be responsible for overseeing the assignment of cases to CJA Panel attorneys. This function will be performed by the CJA Administrator within the Federal Public Defender Office.
- B. Attorneys will be assigned to one of two primary panels, one providing service for the United States District Court in Tacoma and the second providing service for the United States District Court in Seattle. If the CJA Administrator is unable to locate counsel from the list maintained in one city, assignment will be made to the next available CJA Panel attorney on the list maintained for the other city.
- C. In addition to the two primary panels, the Federal Public Defender shall maintain lists of attorneys who will provide representation for individuals who appear before judges in outlying places that hold court located within the district. Attorneys assigned to those lists shall be selected by the Standing Committee in accordance with the procedures and requirements of this Plan. Consistent with the terms and requirements of Appendix B

and Appendix C, the Federal Public Defender shall maintain lists of attorneys for assignment to appeals and capital cases.

- D. The Federal Public Defender may create an emeritus CJA Panel. Attorneys will be eligible for inclusion on the emeritus panel when they have served with distinction on the active panels or have otherwise demonstrated excellence in the practice of federal criminal defense and wish to be active in CJA matters but are not able or willing to accept appointments on a rotational basis due to other significant constraints on their time. Members of the emeritus panel who are unable to take cases in a given year are expected to contribute in other ways, such as serving as mentors for other CJA Panel members and/or presenting at training seminars. The Federal Public Defender shall review the emeritus panel at least annually to ensure that all members remain capable and eligible for inclusion.
- E. Location of attorneys for individual cases shall be undertaken by the CJA Administrator. To facilitate this process, the appropriate court agency shall notify the CJA Administrator of the need for counsel as soon as possible. The CJA Administrator shall locate counsel by contacting attorneys from the appropriate list in rotational order. The CJA Administrator, in cooperation with the Federal Public Defender, shall develop a method of contacting attorneys that is most likely to reach them quickly.
- F. Appointments should be made in a manner that results in both a balanced and equitable distribution of appointments among members of the CJA Panel, and quality representation for each CJA defendant. At the direction of the Court or the Federal Public Defender, an attorney may be assigned out of order for a case which requires particular expertise, is of particular complexity or severity, or involves a client with unusual needs. If the distribution of cases over the course of a year becomes unbalanced or inequitable, the CJA Administrator, in conjunction with the Federal Public Defender, may on occasion deviate from the rotational system by skipping an attorney or attorneys to achieve a more balanced and equitable distribution of assignments. Such deviation from the rotational order shall be documented in CJA records.
- G. Attorneys on the emeritus panel may be called for cases which require particular expertise, are of particular complexity or severity, or involve clients with unusual needs.
- H. In the interests of justice, where continuity of representation is a factor or other special circumstances exist, the Court may appoint an attorney who is not on the CJA Panel. Such attorneys shall possess the experience and character as would qualify them for admission to the district's CJA Panel in the ordinary course.

- I. Assignment and compensation of counsel for new representations (e.g., revocation proceedings, mental condition hearings) and hybrid representations (e.g., standby counsel) shall be made in accordance with the requirements of the *Guide*, Vol 7A, § 220.20-.55.
- J. The CJA Administrator shall maintain master lists of CJA appointments, which will include the date of each appointment, the case name and the date of each refusal (“pass”) by a CJA Panel attorney, and statistical information reflecting the respective percentages of cases assigned to the Federal Public Defender and the CJA Panel.

XV. Duties of CJA Panel Members

A. Standards and Professional Conduct

1. CJA Panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Washington State Rules for Professional Conduct.
3. A CJA Panel member must notify within 30 days the CJA Administrator and the Federal Public Defender, as chair of the CJA Standing Committee, when any licensing authority, grievance committee, or administrative body has acted against the panel member, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

B. Training and Continuing Legal Education

1. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.

2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender, including training on the use of technology and electronic discovery.
3. Attorneys on the CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations. A copy of these standards shall be posted on the Federal Public Defender website.
4. CJA Panel members must attend continuing legal education programs relevant to federal criminal practice and training relevant to the management of electronic discovery and technology in the courtroom during the three-year period preceding their review for continued participation on the Panel.
5. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

1. CJA Panel attorneys must have facilities, resources, and technological capabilities to effectively and efficiently manage assigned cases and participate in regular training with respect to the effective use of such technology.
2. CJA Panel attorneys must comply with the requirements of electronic filing and CJA eVoucher.
3. CJA Panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

D. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals or review by certiorari, is closed; or until substitute counsel has filed a notice of appearance; or until an order is entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order. If trial counsel prefers to withdraw in favor of new counsel for the appeal, trial counsel should move to withdraw in the Court of Appeals and ask for the appointment of

substitute counsel but only after filing the notice of appeal in the district court and preserving the client's rights in the appeal.

E. Case Budgeting

In non-capital representations of unusual complexity that are likely to generate claims for compensation in excess of 300 times the prevailing CJA Panel attorney non-capital hourly rate, rounded up to the nearest thousand, the Court should require development of a case budget consistent with the policy of the Ninth Circuit Judicial Council and the *Guide* § 230.26.10-20. Counsel must notify the Court as soon as possible if they anticipate that this 300-hour threshold will be reached. *Guide*, Vol. 7A, Ch. 2, §§ 230.26.10–20; Ninth Circuit CJA Policies and Procedures, § III.C.

Representations that are anticipated to exceed \$100,000 should be referred at the earliest opportunity to the circuit Case Managing Attorney (CMA).

XVI. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA Panel attorneys must be compensated for time expended in court and time reasonably expended out of court and reimbursed for expenses reasonably incurred.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. Any reductions in a voucher submitted by a CJA attorney should be limited to mathematical errors, instances in which work billed was not compensable or was not undertaken or completed, and instances in which the hours billed were clearly in excess of what was reasonably required to complete the task.
4. The CJA Administrator or their designee will review the claim for mathematical errors and technical reasons, including whether the work billed is compensable under the Judiciary *Guide*, Vol. 7A, and,

if correct and compensable, will forward the claim for consideration and action by the presiding judge.

5. For claims which are substantially in excess of the statutory limit, the CJA Resource Counsel (CJARC) will also review the voucher for reasonableness and make a recommendation to the Court. The recommendation shall be included with the submission in the eVoucher system for consideration and action by the presiding judge.
6. Absent extraordinary circumstances, the Court should act on CJA compensation claims within 14 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
7. Except in cases involving mathematical and other technical reasons, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.
8. The Court, when contemplating reduction of a CJA voucher for other than mathematical or technical reasons, will notify counsel before cutting a request for compensation. At the request of CJA counsel, the Court will refer the voucher to the Standing Committee for review and recommendation before taking final action.
9. Notwithstanding the procedure described above, the Court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation.

XVII. Investigative, Expert, and Other Services

A. Financial Eligibility

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request such services in an *ex parte* application to the Court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the Court must authorize counsel to obtain the services.

B. Applications

Requests for authorization of funds for investigative, expert, and other services must be submitted to the CJARC *via* CJA eVoucher for review and recommendation to the judge designated to review these requests and will not be reviewed by the presiding judge until the conclusion of the proceedings when the final request(s) for payment are made by counsel and the experts. Such funding requests are *ex parte* and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

C. Compliance

Counsel must comply with Judicial Conference policies set forth in the *Guide*, Vol. 7A, Ch. 3, and with the policies of the Judicial Council of the Ninth Circuit.

D. Review of the Rejection of Requests for Services

In the event that a judge indicates an intention not to approve, in whole or in part, for services requested or rendered under this paragraph, counsel may request review and recommendation by the Standing Committee pursuant to the procedures set forth in Appendix A.


XVIII. Appointment of Counsel and Case Management in CJA Capital Cases

The appointment of counsel and case management in capital cases is set forth in Appendix C to this Plan, and must be read in conjunction with [18 U.S.C. §§ 3005, 3006A](#), and [3599](#), the [Guide, Vol. 7A, Ch. 6](#), and the Criminal Justice Act Policies and Procedures for the Ninth Circuit adopted on October 20, 2016.

XIX. Effective Date

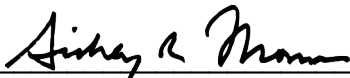
This Plan will become effective when approved by the Judicial Council of the Ninth Circuit.

ADOPTED BY THE JUDGES OF THE WESTERN DISTRICT OF WASHINGTON



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON MAY 29, 2019



CHIEF JUDGE, COURT OF APPEALS

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

APPENDIX A
OPERATION OF THE
CJA STANDING COMMITTEE
AMENDED MARCH 2019

I. RESPONSIBILITIES OF THE CJA STANDING COMMITTEE

A. The Standing Committee shall solicit applications for the CJA panels from interested members of the bar of the Western District of Washington. The Standing Committee shall promote participation on the panels in a manner which facilitates and encourages racial, ethnic, and gender diversity, geographic balance, and the inclusion of panel members who speak Spanish and other languages typically spoken by residents of this district. The Committee shall consult the Defender Services (DSO) Best Practices in devising a system for recruiting, interviewing, and selecting panel members in order to achieve the goal of having a diverse CJA panel.

B. The Standing Committee shall compile all applications submitted by attorneys wishing to participate on a CJA panel and shall periodically meet, at least annually, to review the applications. For attorneys meeting the qualification standards for inclusion on the panel, the Committee shall conduct such additional investigation as is necessary to assure the Committee that the applicant has the requisite character, standing in the bar, skill, and commitment to vigorous representation of the accused to merit inclusion on the panel. Applicants who the Committee believes should be added to a panel shall be referred to the Court with a recommendation specifying which panel the Committee believes the applicant should be assigned to.

C. The Court may request the Standing Committee conduct additional investigation of an applicant and the Committee shall act in accordance with directions from the Court. Final decisions regarding inclusion on or removal from the panel will be made by a majority of the judges of the district.

D. The Standing Committee shall ensure that the Tacoma panel includes not less than twelve members and the Seattle panel includes not less than fifty members. The emeritus, appellate, and capital case panels will have no size restriction.

E. The Standing Committee shall monitor the size and operation of the panels to assure that they meet the needs of current case load requirements. In addition, the Committee, in conjunction with the CJA Administrator, shall monitor the level of participation in training and case assignments of lawyers on the panels. It is the expectation of the Court and Committee that panel lawyers actively participate in training and accept appointments in numbers sufficient to remain current in the law.

F. Every year, the Committee will review a third of the members of the panel, so that the entire CJA panel is reviewed every three years. During the review, participating lawyers will be asked if they wish to remain on the panel. For those attorneys wishing to remain on the CJA panel, the Committee shall solicit input from the Court concerning the quality of representation provided by those lawyers. The Committee will also consider whether the CJA panel member has declined cases during the review period, how many cases the member has accepted and declined, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in the Plan and its appendices. If a lawyer has been accepting appointments in sufficient numbers and has consistently provided high quality representation, he or she will likely remain on the panel.

G. If the Court or Committee has reservations concerning the quality of representation provided by a panel lawyer, the Court may direct the Committee to take such action as is necessary to remedy any perceived deficiency. If the Court determines a panel lawyer has not demonstrated the skill or character necessary to participate on the panel, it may direct that the lawyer be removed.

II. TRAINING REQUIREMENTS AND MENTORSHIP

A. The Standing Committee shall, in conjunction with the Federal Public Defender and the CJA Resource Counsel (CJARC), provide regularly scheduled and on-going training for members of the CJA panels. The Standing Committee should establish training requirements and monitor compliance of panel members.

B. Attorneys new to the CJA panel will be assigned mentors by the Standing Committee unless the attorney has significant and exemplary federal criminal defense experience. Mentors will be lawyers from the panel or the Federal Public Defender's Office. Mentorship will continue for not less than one year. During that time, the mentor will assist and monitor the new panel lawyer and report to the Committee concerning his or her progress and ability. Input received may be used to assess training needs and/or continued participation on the panel.

III. VOUCHER REVIEW

Whenever the Court is considering reducing a claim for compensation for non-mathematical or non-technical reasons appointed counsel will be notified, afforded the opportunity to comment and the option of referring the matter to the CJA Standing Committee for review and preparation of a report and recommendation to the presiding judge. The Committee shall meet as soon as practicable to review the questioned claim. The Committee will review documentation related to the claim, the record of the proceedings, and such other materials as necessary to assess the reasonableness of the claim. The Committee shall submit a written recommendation to the Court and counsel within thirty days of the request for review. The Committee's recommendation shall be guided by policies and standards for compensation as

described in the *Guide* published by the Administrative Offices of the United States Courts and this CJA Plan. In addition, the Committee shall consider, among other factors, the following:

1. Whether the case goes to trial or ends with a guilty plea.
2. The number of defendants in the case.
3. Unusual characteristics of the defendant (unable to speak English, mental health issues, particularly uncooperative).
4. Location of the defendant (e.g., amount of travel required for counsel to meet with the defendant) and whether the defendant is in custody.
5. Type and number of crimes charged.
6. Complexity or novelty of legal issues (requiring unusually great amount of legal research).
7. Number of witnesses presented by all parties at the trial or hearing.
8. Amount of pretrial discovery and investigation required, number of documents, open or closed file case.
9. Number of motions in the case, number and length of hearings on motions and other hearings, nature of hearings (evidentiary or mere argument).
10. Amount of trial preparation required.
11. Length of trial.
12. Length and complexity of sentencing hearing and severity of potential sentence.

Following receipt of the Standing Committee's report and recommendation, the judge may request additional information from counsel or the Committee. The Court should act promptly in finally certifying payment.

IV. COST EFFECTIVENESS MEASURES

A. The Standing Committee shall explore and develop cost effectiveness measures for CJA representations. The Committee shall identify and provide to CJA lawyers strategies including:

1. Use of a pool of experts and investigators who have agreed, in nonspecialized cases, to provide their services at a discounted or most reasonable cost.

2. Use of a brief bank developed by the Federal Public Defender and made available to panel attorneys.
3. Use of the internet and websites to facilitate information sharing, briefing, and training.
4. Identification of paralegals and document technicians to provide assistance in summarizing transcripts and organizing documents in complex litigation cases in a cost efficient manner.
5. Assistance to panel lawyers in identifying “government rates” for transportation and travel related expenses for attorneys, witnesses, and experts through the panel administration team in the Federal Public Defender’s Office.
6. Strategies for contact with the United States Attorney’s Office designed to discuss and develop cost efficiencies associated with bail requests, discovery disputes, management of complex cases, or other matters that draw on the resources of the CJA.
7. Creation of relationships with the United States Marshal, Pretrial Services, and the Probation Office to develop cost effective measures with those agencies.

B. The Standing Committee, in cooperation with the FPD, CJA Administrator, and CJA Resource Counsel, shall promptly provide panel lawyers with current information concerning national and Ninth Circuit policies and initiatives related to cost effectiveness, fiscal constraints, and changes in rules related to claims for compensation.

C. The Committee, with the Federal Public Defender, will consider methods for reducing the cost of prison visits by panel members, interpreters, and experts, and, where appropriate, coordinate with the Bureau of Prisons to effectuate cost saving measures.

V. YEAR-END REPORT

The Standing Committee shall prepare and provide a brief year-end report to the Chief Judge of the Western District of Washington describing the fiscal year operation of the panels. The report must include a summary of CJA payments to panel members, information regarding all complaints received about panel members and their disposition, information regarding training conducted, and the number of times each panel attorney “passed” on appointments during the preceding year. The report must also summarize the Committee’s annual review of panel members as described in this Appendix.

The CJA Administrator shall provide relevant statistical information to the Standing Committee for inclusion in its yearly report of operations. The report of operations shall cover the fiscal year and be submitted not later than January 31st.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

APPENDIX B

I. ADMINISTRATION OF APPELLATE PANEL

A. The Federal Public Defender and CJA Administrator shall maintain a list of qualified individuals to handle appointments on appeal. The list shall include individuals with a proven commitment to the defense function, who are learned in the practice of federal criminal law and have demonstrated excellence in writing skills.

B. In selecting individuals for placement on the appellate panel, the Federal Public Defender shall take steps to ensure appropriate diversity and geographic balance within the Western District of Washington and the inclusion of panel members who speak Spanish and other languages typically spoken by residents of this district.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

APPENDIX C
PROVISIONS APPLICABLE IN CASES
INVOLVING THE DEATH PENALTY

I. STATUTORY AUTHORITY

A. The appointment and compensation of counsel and the approval and payment of persons providing investigative, expert, and other services governed by 18 U.S.C. § 3005, 18 U.S.C. § 3599, Local Rule CR104(d), Volume 7A, Chapter 6, §§ 610.10-630.60 of the Guidelines for Administration of the CJA (*Guide*), and the Ninth Circuit Judicial Council CJA Policies and Procedures.

B. Detailed recommendations on the appointment and compensation of counsel in federal death penalty cases were adopted by the Judicial Conference on September 15, 1998 (JCUS-SEP 98, p. 22). In September 2010, the Defender Services Committee endorsed revised commentary to the 1998 recommendations. The recommendations and the accompanying revised commentary are set forth in Appx. 6A (Recommendations Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010)) to Part A of the *Guide*.

C. The provisions of this Appendix apply to all capital cases whether originating in a state court or a United States District Court.

II. APPOINTMENT OF COUNSEL IN CAPITAL CASES

A. At the outset of every capital case, the Court shall appoint two attorneys, at least one of whom is experienced in and knowledgeable about the defense of death penalty cases. 18 U.S.C. § 3005, 18 U.S.C. § 3599(a)(1) & (2).

B. While Courts should not appoint more than two attorneys unless exceptional circumstances and good cause are shown, appointed counsel may, with prior Court authorization, use the services of attorneys who work in association with them, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits that could not otherwise have been met.

III. PROCEDURES FOR APPOINTMENT OF COUNSEL IN CAPITAL CASES

A. Appointment of counsel shall be made after consultation with and upon the recommendation of the Federal Public Defender.

B. In evaluating the qualifications of counsel considered for appointment, the Federal Public Defender shall consider the:

1. minimum experience standards set forth in 18 U.S.C. § 3599(b)-(d), 18 U.S.C. § 3005, and other applicable laws or rules including Local Rule 104(d);
2. qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;
3. recommendations of capital resource counsel, other federal public and community defender organizations, and local and national criminal defense organizations;
4. proposed counsel's commitment to the defense of capital cases; and
5. availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

C. Courts should ensure that all attorneys appointed in federal death penalty cases are well qualified, by virtue of their prior defense experience, training, and commitment, to serve as counsel in this highly specialized and demanding litigation.

D. Ordinarily, "learned counsel" (see 18 U.S.C. § 3005) should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high-quality representation.

E. To facilitate this process the Federal Public Defender shall maintain a list of counsel qualified to undertake capital representations.

F. The provisions of this section shall take effect whenever a defendant is charged with a federal criminal offense for which the penalty of death is possible, unless the government issues written notice at or before the initial appearance that the government will not seek the death penalty or unless the Court orders that death is not an applicable punishment upon conviction. If such written notice by the government that it will not seek death as punishment is later withdrawn, the provisions set forth in this section shall be implemented as soon after the withdrawal of the notice as is practicable. In the event that counsel for the defendant has already been appointed or

retained at the time the government either withdraws its notice not to seek the death penalty or files a notice of intention to seek the death penalty, the provisions of this section shall apply to permit the appointment of additional or substitute counsel if necessary to comply with the qualification standards contained above and in applicable rules and statutes. For cases originating in state court and subject to the provisions of 28 U.S.C. § 2254, appointment of counsel shall be made as soon as practicable after the state conviction is deemed final in order to assure timely filing in this district.

G. Ordinarily the attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the defendant at trial. Appointment of appellate counsel shall be made upon recommendation of the Federal Public Defender who shall consider the attorney's experience in federal criminal appeals and capital appeals among other relevant factors.

H. In appointing counsel in post-conviction habeas proceedings, the Court shall consider the recommendation of the Federal Public Defender and the attorney's experience in such matters.

I. Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c) but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation. Such appointments should be made after consultation with the Federal Public Defender.

J. In the interest of justice and judicial economy, unless precluded by a conflict of interest, the Court should typically continue the appointment of state post-conviction counsel if qualified under *Guide*, Vol. 7A, § 620.60.

K. The appointment of counsel in capital cases extends "throughout every subsequent stage of judicial proceedings" as defined in 18 U.S.C. § 3599(e) and the *Guide*, Vol. 7A, § 620.70.

IV. COMPENSATION IN CAPITAL CASES

A. Statutory maxima do not apply in capital cases. The Court will set the rate at an amount not to exceed compensation limits set by the Judicial Conference and reported in the *Guide*, Vol. 7A, § 620.60. In the interest of justice and in furtherance of relevant statutory provisions regarding qualifications of counsel in capital cases, the Court should compensate counsel at a rate sufficient to ensure adequate compensation.

B. Pursuant to the *Guide*, Courts must discuss with appointed counsel, at the outset of the case, the preparation and submission of a budget that will be subject

to modification in light of facts and developments that emerge as the case proceeds. The budget should be prepared with the assistance of case budgeting attorneys and/or capital resource counsel where appropriate. The budgeting process should be guided by § III of the Criminal Justice Act Policies and Procedures adopted by the Judicial Council of the Ninth Circuit and those set forth in the *Guide*, Vol. 7A, §§ 640.20-40.