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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON

7 In the Matter of

8 Amended Criminal Justice Act Plan

GENERAL ORDER NO. 03-17

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10 The Court hereby adopts the amended Criminal Justice Act Plan for the Western
11 District of Washington as approved by the Judicial Council for the Ninth Circuit on February 16
12 2017.

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14 DATED this 2nd day of March, 2017.

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17 RICARDO S. MARTINEZ
18 CHIEF UNITED STATES DISTRICT JUDGE
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United States District Court
For the Western District of Washington
Criminal Justice Act Plan
Amended January 2017

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 (recodified 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.

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 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 eligibility 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 or district court judge;
3. when they are formally charged or notified of charges if formal charges are sealed; or
4. when a magistrate or district court 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 as will 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 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 Organization 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 Organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

F. Supervision of Defender Organization

The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender organization. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that organization 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 court room 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 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

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.

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

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.

X. Prerequisites for Participation on the CJA Panel

- A. The CJA Panels 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 court room.
- 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

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

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 federal 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 CJA 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.

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-containment 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, or 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's 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. In the event that 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 courts 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 such experience and character as would qualify him or her 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 Unit 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, as well as 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 Committee, when any licensing authority, grievance committee, or administrative body has taken action 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 hours relevant to federal criminal practice and training relevant to the management of electronic discovery and technology in the court room 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 capability 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 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 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. The CJA Administrator or their designee will review the claim for mathematical and technical accuracy and for conformity with the *Guide*, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.
4. Absent extraordinary circumstances, the court should act on CJA compensation claims within 30 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.
5. Except in cases involving mathematical corrections, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.
6. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, should refer the voucher to the CJA Standing Committee for review and recommendation before final action on the claim is taken. See Appendix A of this Plan.
7. 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. In the event that the matter is resolved to the satisfaction of the court and CJA Panel member, the claim for compensation need not be referred to the CJA Standing Committee for review and recommendation.

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 in an *ex parte* application to the

court (using the court's eVoucher system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy. A court may choose to have applications considered by a non-presiding judge.

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](#), and [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 FEBRUARY
16, 2017.


CHIEF JUDGE COURT OF APPEALS