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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE: AMENDED CRIMINAL JUSTICE
ACT PLAN

GENERAL ORDER 13-24

The Court hereby adopts the attached Amended Criminal Justice Act Plan for the United States District Court Western District of Washington, as approved by the Judicial Council for the Ninth Circuit on November 21, 2024.

This Amended Criminal Justice Act Plan is effective as of November 21, 2024, and supersedes this Court’s prior Plan.

The Federal Public Defender is directed to supply a copy of the Plan to all members of the CJA Panel.

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IT IS SO ORDERED.

Dated this 2nd day of December, 2024.



David G. Estudillo
Chief United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CJA PLAN**

I. AUTHORITY

As required by the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the Guidelines for Administering the CJA and Related Statutes, Volume 7A, Guide to Judiciary Policy (CJA Guidelines), the judges of the United States District Court for the Western District of Washington adopt this Plan, as approved by the Ninth Circuit, 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 to attain the goal of equal justice under the law by providing all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, to ensure that services are cost-effective without compromising the quality of representation, to promote the independence of the defense function so that the rights of individual defendants are safeguarded and enforced, and to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), CJA Guidelines, Ninth Circuit CJA Policies and Procedures, and Local Rules of the Western District of Washington in a way that meets the needs of this district.

This Plan must 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. Representational Services

This Plan provides for representational services by the Federal Public Defender Office and for the appointment and compensation of private attorneys from an approved panel list (“CJA Panel”) and other private attorneys in limited circumstances, in cases authorized under the CJA and related statutes.

C. Panel Administration

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

D. Compliance

The Court, its clerk, the Federal Public Defender Office, attorneys provided by a bar association or legal aid agency, private attorneys appointed under the CJA, federal law enforcement officers, the United States Attorney's Office, and the Pretrial Services Office must comply with the CJA Guidelines, approved by the Judicial Conference or its Committee on Defender Services, the Ninth Circuit's CJA Policies and Procedures, and with this Plan. The Court will ensure that a current copy of the CJA Plan is made available on the Federal Public Defender Office's website and provided to counsel upon the attorney's designation as a member of the CJA Panel.

III. DEFINITIONS

- A. **"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 Office and its staff attorneys, and attorneys provided by a bar association or legal aid agency.
- B. **"CJA Administrator"** is a person employed by the Federal Public Defender Office to perform tasks related to the administration of the CJA Panel.
- C. **"CJA Resource Counsel"** is an attorney employed by the Federal Public Defender Office who oversees voucher review.
- D. **"Panel Attorney District Representative"** (PADR) is a member of the district's CJA Panel who is selected by the CJA Standing Committee, with approval from the Chief District Judge, to serve a three-year renewable term as a representative of the district's CJA Panel for the Defender Services CJA PADR program and local CJA committees.
- E. **"Representation"** includes counsel, service providers (such as paralegals, investigators, or experts), litigation support vendors, and expenses.

IV. ELIGIBILITY FOR CJA REPRESENTATION

A. Subject-Matter Eligibility

1. Mandatory. Representation must be provided for any financially eligible person who:
 - a. is charged with a felony 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, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when appointed representation is required by law;
 - e. is entitled to appointed counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under 18 U.S.C. chapter 313;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence or when an evidentiary hearing is warranted in a non-capital proceeding under 28 U.S.C. § 2254 or § 2255;
 - j. 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;
 - 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, unless an evidentiary hearing is warranted (see above IV(A)(1)(i));
- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
- e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States attorney for processing under a pretrial diversion program; or
- g. is held for international extradition under 18 U.S.C. chapter 209.

3. Ancillary Matters. The Court has the discretion to appoint counsel 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 to:

- a. protect a constitutional right;
- b. contribute in some significant way to the defense of the principal criminal charge;
- c. aid in preparation for the trial or disposition of the principal criminal charge;
- d. enforce the terms of a plea agreement in the principal criminal charge;
- e. 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. 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 Federal Law Enforcement Officers
 - (1) For the purpose of ensuring that eligible persons have access to counsel as soon as practicable, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel of an arrest, unless the person has retained counsel. Court personnel will in turn notify the Federal Public Defender Office of the arrest.
 - (2) Employees of law enforcement agencies may 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
 - (1) Upon the return or unsealing of an indictment, the filing of a criminal complaint or information, and where the defendant has not retained counsel, the United States Attorney's Office will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the Federal Public Defender Office.
 - (2) Upon issuance of a target letter, and where the individual has not retained counsel, the United States Attorney's Office must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the Federal Public Defender Office, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the Federal Public Defender Office, in which case they must promptly notify the Court.
 - (3) Employees of the United States Attorney's Office may 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 Federal Public Defender Office
 - (1) In cases in which the Federal Public Defender Office may be appointed, the office will immediately investigate and determine whether an actual or potential conflict exists and, if so, must promptly notify the CJA Administrator to facilitate the timely appointment of other counsel.

(2) Whenever practicable, the Federal Public Defender Office will discuss with the person the right to appointed counsel, assist with completion of a financial affidavit (Form CJA 23), and arrange to have the matter promptly presented before a judicial officer of this Court to determine financial eligibility and counsel appointment.

d. Duties of Pretrial Services Office

(1) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

(2) Unless it is not practicable, the pretrial services officer will not conduct the pretrial services interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived, or the defendant otherwise consents to a pretrial services interview without counsel.

2. Eligibility Determination

a. In every case where 18 U.S.C. § 3006A(a) and related statutes authorize appointment of counsel, 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, the Court will appoint counsel to represent the person if he or she is financially unable to obtain counsel.

b. The completed financial eligibility affidavit (Form CJA 23) should reflect relevant information bearing on the person's financial eligibility for appointed counsel and should not be included in the public case file.

c. Determining eligibility for representation under the CJA is a judicial function performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the Court or the Federal Public Defender Office may be

designated to obtain or verify the facts relevant to the financial eligibility determination.

- d. If at any time after appointment appointed counsel has reason to believe that a person is financially able to retain private counsel or make partial payment for the appointed representation, and the source of counsel's information is not protected as a privileged communication, counsel will advise the Court.
- e. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to retain private counsel or make partial payment for the appointed representation, the judge may terminate the counsel appointment or direct the defendant to pay available funds as provided in 18 U.S.C. § 3006A(f).
- f. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel will be appointed in accordance with the general provisions set forth in this Plan.
- g. If at any stage of the proceedings a judge finds that a pro se or privately represented person is not financially able to pay other representation costs, including investigative, expert, or other services, funding may be authorized for those costs in accordance with the general provisions set forth in this Plan.

3. Standards

- a. In determining whether a person is "financially unable to obtain counsel," the Court should consider the cost of providing the person and the person's dependents with life's necessities, the cost of securing pretrial release, asset encumbrance, and the likely cost to retain counsel.
- b. The initial eligibility determination must be made without regard to the financial ability of the person's family to retain counsel unless the person's family indicates a willingness and ability to do so promptly.
- c. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected later.

V. TIMELY APPOINTMENT OF COUNSEL

- A.** Timing. Eligible persons must receive appointed counsel as soon as feasible. This means as soon as possible after receiving a target letter, after being taken into custody, upon appearing before a judicial officer, when formally charged, when

notified of charges if formal charges are sealed, or when a judicial officer otherwise determines appointed counsel is appropriate under the CJA or this Plan, whichever occurs earliest. The Court, in cooperation with the Federal Public Defender Office 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.

- B. Pretrial Services Interview. When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial services interview without counsel, financially eligible persons will be provided appointed counsel prior to being interviewed by a pretrial services officer
- C. Retroactive Appointment. Appointment of counsel may be made retroactive to include representation provided prior to entry of an appointment order.

VI. FEDERAL PUBLIC DEFENDER OFFICE

A. Establishment

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

B. Staff Supervision and Case Workload

The Federal Public Defender is responsible for supervising and managing the Federal Public Defender Office. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the Federal Public Defender's discretion. The Federal Public Defender will continually monitor staff workloads to ensure high-quality representation for all clients.

C. Standards and Professional Conduct

- D. **The Federal Public Defender Office must provide high-quality representation consistent with the best practices of the legal profession. 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. 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 Office Code of Conduct.

E. Panel Attorney Training

In coordination with the PADR and the CJA Standing Committee, the Federal

Public Defender Office will assess the training needs of the CJA Panel and provide regularly scheduled training opportunities and other educational resources that include updates regarding substantive law, best practices in federal criminal defense, and presentations on courtroom and office technology.

VII. CJA STANDING COMMITTEE

A. Establishment

1. A CJA Standing Committee will be established by the Federal Public Defender Office in consultation with the Court to assist the Court in the selection, oversight, and management of CJA Panel members. The CJA Standing Committee may establish subcommittees that include non-members to address specific CJA-related issues such as recruiting panel members, training, mentoring, reviewing complaints, and reviewing voucher reductions.
2. At a minimum, the CJA Standing Committee must consist of:
 - a. the Federal Public Defender or delegate, who will be a permanent member of the CJA Standing Committee;
 - b. the district's current PADR or delegate, who will be a permanent member of the CJA Standing Committee;
 - c. two or more criminal defense attorneys, at least one of whom is a CJA Panel member.
 - d. the CJA Resource Counsel, who shall serve as an ex officio member of the CJA Standing Committee.

3. Except for the Federal Public Defender, PADR, and CJA Resource Counsel, members will serve for three years and may be extended for one additional three-year term. Terms will be staggered to ensure continuity on the CJA Standing Committee and rotation of members. Vacancies will be filled upon recommendation of the remaining committee members and approval by the Chief District Judge.
4. The CJA Standing Committee will meet at least twice a year and at any time the Court or a committee member asks the committee to consider an issue.

B. Duties

1. CJA Panel Membership. The CJA Standing Committee will examine applications for appointment or reappointment to the CJA Panel and recommend to the Chief District Judge approval of those attorneys deemed qualified to serve on the CJA panel, as provided in Sections VIII.C and VIII.D. The committee will also recommend removal of any CJA Panel attorney who fails to satisfy the requirements of panel membership, including failing to provide high quality representation, or engages in conduct that would render continued panel service inappropriate. See also Section VIII.E.
2. Recruitment. The CJA Standing Committee will strive to establish and maintain a diverse CJA Panel of the highest caliber federal criminal defense practitioners. In conjunction with a mentoring program, the Committee will devise a recruitment strategy that identifies and trains a diverse set of viable panel applicants.

3. Mentoring. The CJA Panel Committee will collaborate with the Defender Organization to administer a mentoring program to help prepare viable panel candidates by pairing experienced practitioners with attorneys new to federal criminal practice. Mentoring program participants will be compensated. See Appendix A
4. Training. The CJA Standing Committee will assist the Federal Public Defender Office in devising and presenting training programs for the CJA Panel.
5. Voucher Review. The CJA Standing Committee will be available to review and make a recommendation on any

CJA payment voucher the presiding judge or designee is considering reducing for reasons other than mathematical errors. The presiding judge or designee will, at the time the voucher is submitted to the CJA Standing Committee, provide a statement describing questions or concerns they have with the voucher. Counsel will be notified of the potential voucher reduction and given the opportunity to provide relevant information or documentation. See Section XI.E.

6. Annual Report. Annually, the committee will review panel operation and administration for the preceding year and provide a report to the Chief District Judge describing efforts to recruit qualified and diverse panel members, any proposed changes to panel size, any recurring issues or difficulties panel attorneys or their clients encounter, and any other operating difficulties, along with recommendations for appropriate changes.

VIII. CJA PANEL MEMBERSHIP

A. Establishment

The existing, previously established panel[s] of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized. The Court will approve additional attorneys for membership on the CJA Panel after receiving recommendations from the CJA Standing Committee. Nothing in this Plan creates a property interest in being or remaining on the CJA Panel.

1. **Appellate Panel**. 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. 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.
2. **Emeritus Panel**. 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.

B. Size

The CJA Panel size will be determined by the CJA Standing Committee, subject to the Court's review, based on panel member caseloads and activity. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so panel members will each receive an adequate number of appointments to maintain their federal criminal defense work proficiency, enabling them to provide high quality representation consistent with the best practices of the legal profession.

C. Qualifications and Membership

1. Equal Opportunity. All qualified attorneys are encouraged to apply for CJA Panel membership. The CJA Standing Committee shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, national origin, gender identity, sexual orientation, age, religion, or disability.
2. Application. Application forms for CJA Panel membership are available from the Federal Public Defender Office. Applications may be submitted to the CJA Standing Committee at any time.
3. Eligibility. CJA Panel applicants must:
 - a. be members in good standing of the state bar of this district, federal bar of this district, and the Ninth Circuit Court of Appeals;
 - b. except for appellate or capital habeas panel members, maintain a primary, satellite, or shared office in the District;
 - c. possess strong litigation and writing skills;
 - d. demonstrate proficiency with the Bail Reform Act, Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, United States Sentencing Guidelines, federal sentencing procedures, and this District's Local Rules;
 - e. have the training and ability to manage and effectively utilize electronic case presentation equipment and software in the courtroom and manage electronic discovery;
 - f. 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.
 - g. carry professional malpractice insurance with minimum limits of \$200,000.00 for each occurrence.

- (1) Attorneys who do not possess the experience set forth above but believe they have equivalent other experience, or who have completed a mentoring program, are encouraged to apply and set forth in writing the details of that experience for the committee's consideration.

D. Reappointment

1. Once appointed, CJA Panel members will serve a term of three years. CJA Panel members may serve an unlimited number of terms and may serve on specialized panels as deemed appropriate by the CJA Standing Committee.
2. 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.
3. In considering the reappointment of CJA Panel members, the CJA Standing Committee may:
 - a. solicit input from the legal community and the Court concerning the quality of representation provided by attorneys seeking reappointment;
 - b. request a personal interview with the CJA Panel member; and
 - c. consider the number of cases the CJA Panel member accepted and declined during the review period, the member's participation in training opportunities and compliance with continuing legal education requirements, whether the member

continues to meet this Plan's technology and facilities requirements, whether the member has been the subject of any complaints, whether the member has complied with CJA funding authorization and billing procedures and requirements, and whether the member continues to meet the prerequisites and obligations of CJA panel members or applicants as set forth in this Plan.

E. Removal

1. Mandatory Removal. Members of the CJA Panel who are suspended or disbarred from the practice of law by their state courts, or who are suspended or disbarred from any federal court, will be removed from the CJA Panel immediately and ordered to withdraw from current CJA representations. The CJA Administration will be immediately notified when any member of the CJA Panel is removed.
2. Automatic Disciplinary Review. The CJA Standing Committee will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority, grievance committee, or administrative body has acted, or when a finding of probable cause, contempt, sanction, or reprimand has been made against the panel member by any state or federal court.

F. Complaints

1. A member of the CJA Panel may be suspended from new case appointments by the CJA Standing Committee upon a vote of the majority of the voting members of the CJA Standing Committee. A member of the CJA Panel may be removed from the Panel due to deficient representation or misconduct at any time upon a recommendation for removal by the CJA Standing Committee and vote of the majority of the judges.
2. The CJA Standing Committee will investigate complaints about misconduct or deficient representation regarding CJA Panel attorneys and make a recommendation to the Court if a majority of voting members believe that an attorney should be removed from the CJA Panel.
3. The Committee will provide the attorney with a written statement of reasons and an opportunity to respond and meet with the Committee before a suspension or recommendation of removal from the Panel. In cases of suspension, the Committee will also inform the attorney of the duration of their suspension and/or any requirements for lifting the suspension.

4. If there are circumstances warranting immediate suspension, the Committee may temporarily suspend an attorney prior to meeting with the attorney. The Committee shall notify the Court whenever an attorney is suspended and the reasons for the suspension. The Court shall then decide, by majority vote, whether to remove an attorney who has been suspended from pending cases during the suspension.
5. In instances when a lesser remedy than suspension or removal is appropriate, the Committee may decide to do one or more of the following without involvement of the Court: place the attorney on probation, require training, implement a performance improvement plan, assign a mentor to the attorney or require co-counsel for pending or new cases, or take any other action or impose any other conditions it deems appropriate.
6. While removal is considered final by the Court, an attorney may submit a new application for Panel membership if they believe the issues leading to removal have been adequately addressed. An application may be submitted for a term beginning at least one full year after the removal or non-renewal of the attorney's panel membership.
7. None of these procedures create a property interest in being on or remaining on the CJA Panel.
8. Information acquired concerning complaints and potential disciplinary action will remain confidential unless otherwise directed by the Court or required by applicable ethical standards.

IX. CJA PANEL MEMBER DUTIES

A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the legal profession's best practices. CJA Panel attorneys will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association *Performance Guidelines for Criminal Defense Representations* and the ABA's *Criminal Justice Standards for the Defense Function*.
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. CJA Panel members must immediately notify the CJA Administration in writing, if they are disbarred, suspended, sanctioned, or reprimanded by any licensing authority, grievance committee, or administrative body. CJA Panel members must also notify the CJA Administration, in writing, within 30 days, if they are sanctioned or found in contempt by any state or federal court judge.

B. Training and Continuing Legal Education

1. CJA Panel attorneys are expected to remain current with developments in federal criminal defense law, practice, and procedure, including electronic discovery techniques.
2. The CJA Standing Committee shall establish training requirements and monitor compliance of panel members. 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 the facilities, resources, and technological capability to effectively and efficiently manage assigned cases, including the availability of office space to meet with clients and the technological resources to receive, review, organize, and otherwise manage electronic discovery and records.
2. CJA panel attorneys must know and comply with the requirements of electronic filing and eVoucher, including how to submit requests for investigative, expert, and other services.

X. COUNSEL APPOINTMENT IN NON-CAPITAL CASES

A. 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.

B. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be extremely difficult or when necessary, in the interests of justice, to ensure high quality representation. Co-counsel who are members of the CJA Panel will be compensated at the applicable CJA hourly rate. If a non-panel attorney is appointed as co-counsel, the Court will determine the hourly rate, not in excess of the applicable CJA hourly rate, based on the attorney’s experience and qualifications.

C. Appointment List

The Federal Public Defender Office will maintain a current list of all CJA Panel

attorneys, with current office addresses, email addresses, and telephone numbers

D. Appointment Procedure

The Federal Public Defender Office is responsible for overseeing the assignment of cases to panel attorneys. The Federal Public Defender Office will maintain a record of panel attorney appointments and data reflecting the proportion of appointments among the CJA Panel and Federal Public Defender Office.

1. 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.
2. 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.
3. Under special circumstances, the Court may appoint an attorney who is not a member of the District's CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. Other circumstances may include large multi-defendant cases for which there is an insufficient number of CJA Panel attorneys in the District.
4. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Standing Committee.

E. Continuing Representation

1. Once counsel is appointed under the CJA, counsel will continue the representation until:
 - a. the matter is closed, including conclusion of any appellate or certiorari proceedings;
 - b. substitute counsel has filed a notice of appearance;
 - c. an order is entered allowing the client to proceed pro se; or
 - d. the appointment is otherwise terminated by Court order.

2. If trial counsel prefers to withdraw in favor of new counsel on appeal, trial counsel will first file the notice of appeal in the district court to preserve the client's right to appeal and then move to withdraw in the Court of Appeals, asking for appointment of substitute counsel.

XI. CJA ATTORNEY COMPENSATION AND FUNDING FOR NEEDED SERVICES

A. Court Compensation Policies

1. 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. In determining the reasonableness of out-of-court time, the court must consider three factors:
 - a. whether the work was performed;
 - b. whether the work performed was a reasonable means of achieving the client's aims in the litigation; and
 - c. whether the time spent to accomplish that work was reasonable.
2. Voucher reductions will be limited to mathematical errors; instances in which work billed was not compensable, undertaken, or completed; and instances in which the hours billed clearly exceed what was reasonably required to complete the task.
3. Vouchers and funding requests for service providers and other litigation costs will not be delayed or reduced to lessen Defender Services program costs in response to adverse financial circumstances.
4. Absent extraordinary circumstances, the Court or designee will act on compensation claims within 14 days of submission.
5. Payment vouchers and amounts paid to counsel or service providers will not be disclosed except as required by law or CJA Guidelines.

B. Claim Submission

1. Claims for compensation from counsel or a service provider must be submitted on the appropriate CJA form through the Court's eVoucher

system. Information regarding eVoucher is available on the Federal Public Defender Office website.

2. Interim claims for compensation from counsel or a service provider may be submitted monthly if the amount of outstanding billable time exceeds \$1,000.
3. Final claims for compensation from counsel or a service provider will be submitted no later than 45 days after the representation concludes, unless good cause is shown. Every effort should be made to encourage claim submission as soon as possible upon completion of services rendered. While extremely late submissions may impact the ability to adequately substantiate claims, voucher reductions based solely on submissions outside the time limit are not authorized.

C. Delegated Authority for Claim Approval

1. This Court has delegated to CJA Resource Counsel and the CJA Panel Administrator the authority to review, approve, adjust, or deny in accordance with the CJA and this Plan:
 - a. CJA compensation claims requesting payment (“vouchers”) for the services of an attorney for up to \$25,000 per attorney per case;
 - b. CJA compensation claims requesting payment for the services of interpreters, investigators, paralegals, and other service providers up to a combined \$10,000 per case; and
 - c. Requests for transcripts and routine travel and all associated vouchers.
2. This Court has delegated to CJA Resource Counsel the authority to review, approve, adjust, or deny in accordance with the CJA and this Plan all budgets, regardless of amount, in criminal cases, in consultation with a Ninth Circuit Case Budgeting Attorney as necessary.
3. Judges shall retain authority to review, approve, adjust, or deny for all cases assigned to them:
 - a. CJA compensation claims requesting payment (“vouchers”) for the services of an attorney in excess of \$25,000 per attorney per case; and
 - b. CJA compensation claims requesting payment for the services of interpreters, investigators, paralegals, and other service providers in excess of a combined \$10,000 per case.
4. Individual judges may opt to retain authority to review, approve, adjust,

or deny all attorney and service provider vouchers for cases assigned to them, and must inform the CJA Administrator of their intent to do so.

5. The Court retains ultimate review and approval authority.

D. Voucher Review Procedure

The CJA Department will perform an initial review for accuracy and compensability under the CJA Guidelines, Ninth Circuit CJA Policies and Procedures, and Ninth Circuit CJA Compensability Handbook. In determining whether services provided by counsel are compensable, the guidelines for

ancillary appointment of counsel in Section IV.A.3 of this Plan may be considered. After this review, vouchers will be forwarded for consideration and action by the presiding judge or designee, who will review claims for overall reasonableness. A voucher may be referred to the CJA Standing Committee for review and recommendation before final action on the claim is taken.

E. Voucher Reductions and Independent Review Procedures

1. Reductions. Claims for compensation under the CJA will not be reduced without affording counsel notice and an opportunity to be heard.
 - a. When contemplating a voucher reduction for other than mathematical or technical reasons, the Court or CJA Department will notify CJA counsel of any proposed reduction and offer counsel the opportunity to justify the submission.
 - b. If counsel indicates that the reduction is not contested, or if no response is received within ten days, the Court or CJA Department will process the reduced voucher.
 - c. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.

2. Independent Review.
 - a. If after reviewing counsel's response the presiding judge or CJA Department reduces the voucher, counsel may seek review of the reduction to the Chief District Judge or designee within ten days. If the Chief District Judge is the presiding judge who reduced the voucher, counsel may seek review by the Chief Circuit Judge or designee within thirty days. Deadline extensions may be granted for good cause.
 - b. If the reviewing judge or designee finds the request for review to be meritorious, the CJA Department will direct counsel to create a new voucher for the appropriate amount.

F. Investigative, Expert, and Other Services; Litigation Expenses

1. Financial Eligibility. Counsel for a person financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request CJA funding 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 presiding judge or designee must authorize the funding.

2. Delegation. This Court has delegated to CJA Resource Counsel the authority to review, approve, adjust, or deny in accordance with the CJA and this Plan.
 - a. CJA compensation claims requesting payment (“vouchers”) for the services of interpreters, investigators, paralegals, and other service providers up to a combined \$10,000 per case;
 - b. Requests for funding (“AUTHs”) for interpreters, investigators, paralegals, and other service providers up to a combined \$10,000 per case. Authority to review, approve, adjust, or deny AUTHs in excess of \$10,000 per case shall be delegated to a district or magistrate judge selected by the Court for this task;
3. Applications. Requests to authorize funds for investigative, expert, and other services must be submitted 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 CJA Guidelines.
4. Cost Considerations. Appointed counsel is expected to use lower-cost service providers such as lower-billing associates, contract lawyers, law clerks, investigators and paralegals to undertake tasks not requiring appointed counsel’s expertise. 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. In multi-defendant cases with multiple CJA attorneys, counsel must make all reasonable efforts to coordinate with each other to reduce costs, including coordinating and sharing discovery and utilizing shared investigators and other services to the extent possible.
5. Compliance. Counsel must comply with Judicial Conference policies set forth in CJA Guidelines, Ch. 3.

G. Case Budgeting

Consistent with CJA Guidelines, Ch. 2 §§ 230.26.10–20, CJA counsel are required to use case-budgeting techniques in non-capital representations where combined attorney and service provider costs are likely to exceed the equivalent of 300 times the prevailing CJA panel attorney non-capital hourly rate. The Court or appointed counsel should contact CJA Resource Counsel to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget. Non-capital representations that may exceed \$100,000, must be budgeted by a Circuit Case Budgeting Attorney pursuant to Ninth Circuit Judicial Council policy.

H. No Receipt of Other Payment

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

XII. SPECIAL PROVISIONS FOR CAPITAL CASES

A. Capital Cases

For purposes of this plan, “capital cases” are those involving the death penalty and include: (1) prosecutions under any provision of federal law carrying a potential penalty of death; (2) direct appeals from cases wherein the death penalty was imposed by a federal court; (3) post-conviction proceedings in which an individual sentenced to death by a federal court is seeking to set aside or vacate the conviction or sentence under 28 U.S.C. § 2255; and (4) habeas corpus proceedings in which an individual sentenced to death by a state court is seeking to set aside or vacate the conviction or sentence under 28 U.S.C. § 2254.

B. Applicable Legal Authority

The appointment and compensation of counsel in capital cases and the authorization and payment of persons providing investigative, expert, and other services are governed by 18 U.S.C. §§ 3005, 3006A, and 3599; CJA Guidelines, Ch. 6; and any applicable Local Rule or General Order.

C. Counsel Qualifications

1. In addition to the requirements for Panel membership set out in Section VIII of this Plan, counsel appointed in capital cases to represent financially eligible persons will meet the statutory requirements set out in 18 U.S.C. §§ 3005 and 3599(b)-(d) as expanded upon below, as well as any applicable circuit rules.
2. All attorneys appointed in capital cases must (1) be well qualified as demonstrated by their training, commitment to the defense of capital cases, and distinguished prior criminal defense experience at the relevant stage of the proceeding; (2) have sufficient time and resources to devote to the representation, considering their current caseload and the extraordinary demands of a capital case; (3) meet all applicable guidelines adopted by the American Bar Association concerning representation of persons in death penalty cases; and (4) consult regularly with the appropriate Death Penalty Resource Counsel project available through the Defender Services division of the Administrative Office of the United States Courts.

3. In trial-level capital cases requiring the appointment of “learned counsel,” such counsel must meet the minimum standards in 18 U.S.C. §§ 3005 and 3599(b) or (d). Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal or state death-penalty cases that, in combination with co-counsel, will assure high-quality representation. “Distinguished prior experience” contemplates excellence, not simply prior experience.
4. In direct appeals and post-conviction proceedings under 18 U.S.C. §§ 2254 or 2255, appointed counsel must meet the minimum standards required by 18 U.S.C. § 3599(c) or (d) and should have distinguished prior experience in federal criminal appeals, capital appeals, federal post-conviction proceedings, or capital post-conviction proceedings.
5. Out-of-district counsel, including Federal Public Defender Office staff, who possess the requisite expertise may be considered for appointment in capital cases to achieve high-quality representation.
6. An attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal capital habeas corpus relief may be appointed if the attorney is fully qualified. This appointment may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. (See 18 U.S.C. § 3006A(a)(3).)

D. Appointment of Counsel

1. Pre-Trial. No later than when a defendant receives a target letter alleging the commission of a capital offense or is charged with a federal criminal offense where the penalty of death is possible, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel.” If necessary for adequate representation, more than two attorneys may be appointed. Consistent with Section IV.A.1 of this Plan, the Court may appoint capably qualified counsel for an individual that, although uncharged, is the subject of an investigation in a federal death-eligible case. In appointing counsel, the judge should consider and give due weight to the recommendations made by the Federal Public Defender Office and Death Penalty Resource Council and articulate reasons for not doing so.
2. Direct Appeals. Counsel representing a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.

When appointing counsel, the Court should consider and give due weight to the recommendations of the Federal Public Defender Office and Federal Capital Appellate Resource Counsel and articulate reasons for not doing so.

3. Post-Conviction Proceedings. In any post-conviction proceeding under 18 U.S.C. §§ 2255 or 2254, the Court must appoint at least one qualified attorney and may consider appointing at least two given the complex, demanding, and protracted nature of death penalty proceedings. When appointing counsel, the Court should consider and give due weight to the recommendations of the Federal Public Defender Office and the appropriate Resource Counsel project, including out-of-district appointment of another defender organization’s Capital Habeas Unit, and articulate reasons for not doing so. For § 2255 proceedings, appointment should take place, if possible, prior to denial of certiorari on direct appeal by the United States Supreme Court. For § 2254 proceedings, appointment should take place at the earliest time permissible by law to permit federal counsel to avail themselves of the full statute-of-limitations period to prepare a petition.

E. Case Budgeting and Resources

All capital cases, unless staffed only by the Federal Public Defender Office, must be budgeted in eVoucher. As early as practicable after appointment, counsel or the Court should refer the case to CJA Resource Counsel Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in capital cases also may be directed to the appropriate Death Penalty Resource Counsel project or the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030.

XIII. EFFECTIVE DATE

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

ENTERED FOR THE COURT ON November 26, 2024.



CHIEF JUDGE, WESTERN DISTRICT OF WASHINGTON

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON NOVEMBER 21, 2024.



CHIEF JUDGE, NINTH CIRCUIT COURT OF APPEALS

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

APPENDIX A
CJA MENTOR PROGRAM SUMMARY

The CJA Mentor Program is designed to familiarize attorneys with federal criminal defense in order to increase the pool of qualified applicants for the CJA Panel and to promote diversity on the CJA Panel. The CJA Administration of the Federal Public Defender's Office will administer the Mentor Program.

The Mentor Program shall include two tiers. Applicants for both tiers must become admitted to the United States District Court for the Western District of Washington and the United States Court of Appeals for the Ninth Circuit upon acceptance into the Mentor Program. They must have extensive experience in criminal law and a demonstrated interest in representing individuals who lack the means to hire an attorney. Applicants must also maintain a primary, satellite, or shared office in the Western District of Washington and have sufficient resources and support to manage CJA assignments. Qualified attorneys of any race, color, religion, sex, gender identity, sexual orientation, age, national origin, or disability are encouraged to apply.

The intensive tier of the Mentor Program is intended for attorneys with little or no federal criminal experience. It shall consist of appointment as associate counsel in two cases and mandatory participation in training programs administered by the Federal Public Defender. Participation in the intensive tier will be limited to the number of anticipated vacancies on the CJA Panel at the time mentees are expected to complete the program.

Intensive tier mentees will be assigned to cases as close to the initiation of a case as possible, and mentees must remain as counsel through the case resolution. Mentees are expected to appear and argue on the record and participate in every aspect of the cases to which they are assigned. Intensive tier mentors shall be the lead attorneys for these cases, will have ultimate responsibility for the cases, and must train and supervise their mentees and appear in court for all court appearances in cases to which they are assigned pursuant to the Mentor Program.

Intensive tier mentees shall be compensated at a rate of \$130 per hour for case-related work, and their mentors shall be compensated at the prevailing CJA hourly rate.

The advanced tier of the Mentor Program is intended for attorneys who have some federal criminal experience but who could still benefit from additional guidance. It shall consist of regular case appointments on cases that appear at the time of appointment to be less complex.

Advanced tier mentees shall be assigned an experienced CJA panel attorney to serve as a mentor to provide up to ten hours of guidance on case-related work. Advanced tier mentees must regularly attend the FPO training programs for CJA panel mentees.

Advanced tier mentees and their mentors shall be compensated at the prevailing CJA rate.

Applicants to the CJA Panel may be approved for membership to the CJA Panel without participation in either tier of the Mentor Program if they already possess sufficient federal criminal experience. Participants in the Mentor Program shall be selected and designated to a tier by the CJA Standing Committee.

Participation in the Mentor Program does not guarantee future approval to be placed on the CJA Panel, nor does the program have a guaranteed or set length of time to complete. Participants in the intensive tier of the Mentor Program will be eligible to apply to the advanced tier of the Mentor Program after completing two second chair appointments and the required training programs.

Mentees and mentors may be removed if they are unable to meet the expectations of the Mentor Program as described above or if found to engage in unethical or illegal conduct during participation in the Mentor Program.