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SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In the matter of

PLAN OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA PURSUANT TO THE CRIMINAL JUSTICE ACT

General Order No. 499-F

Pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, the Judges of the United States District Court for the Southern District of California adopt the following amended Plan for the adequate representation of any person otherwise financially unable to obtain adequate representation.

* * *

IT IS SO ORDERED.

Dated: 7/15/20

LARRY ALAN BURNS,
Chief Judge
United States District Court

DANA M. SABRAW, Judge
United States District Court

WILLIAM Q. HAYES, Judge
United States District Court

JANIS L. SAMMARTINO, Judge
United States District Court

ANTHONY J. BATTAGLIA, Judge
United States District Court

CATHY ANN BENCIVENGO, Judge
United States District Court

GONZALO P. CURIEL, Judge
United States District Court

CYNTHIA BASHANT, Judge
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MARILYN L. HUFF, Judge
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BARRY TED MOSKOWITZ, Judge
United States District Court

JEFFREY T. MILLER, Judge
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THOMAS J. WHELAN, Judge
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M. JAMES LORENZ, Judge
United States District Court

JOHN A. HOUSTON, Judge
United States District Court

ROGER T. BENITEZ, Judge
United States District Court

MICHAEL M. ANELLO, Judge
United States District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In the matter of **PLAN OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA PURSUANT TO THE CRIMINAL JUSTICE ACT**	**General Order No.**

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CRIMINAL JUSTICE ACT PLAN[1]

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[1] Effective Date. This Plan supersedes this Court's prior Criminal Justice Act Plans and all General Orders related thereto and will be effective when approved by the Judicial Council of the Ninth Circuit.

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I. AUTHORITY

A. Pursuant to the Criminal Justice Act ("CJA") of 1964, as amended, 18 U.S.C. § 3006A, the Judicial Council of the Ninth Circuit Model Plan for the Implementation and Administration of the CJA; 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 Southern District of California have adopted this CJA Plan (Plan) for any person financially unable to obtain adequate representation in connection with a criminal matter.

II. STATEMENT OF POLICY

A. This Plan provides for the furnishing of representational and other services by Federal Defenders of San Diego, Inc. ("Federal Defender"), and private attorneys compensated under the CJA and related statutes.

B. 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.

III. OBJECTIVES OF THIS CJA PLAN ARE:

A. To attain the goal of equal justice under the law;

B. To provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained;

C. To provide cost-effective services that also protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced;

D. To engage in recruitment efforts to establish a diverse CJA panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases; and

E. To particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (re-codified at 18 U.S.C. § 3599), and the CJA Guidelines in a manner that meets the needs of this district.

IV. COMPLIANCE

A. The Court, its Clerk of Court ("Clerk"), the Federal Defender and private attorneys appointed pursuant to the CJA must comply with this Plan.

B. The Court will ensure that a current copy of the CJA Plan and any appendices are made available on the Court's website and provided to panel members upon designation as a member of one of the CJA panels for the Southern District of California (collectively, "CJA panel").

V. DEFINITIONS

A. "Appointed attorney, or panel member" includes an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys that are members of the CJA panel ("CJA attorneys" or "panel members") and the Federal Defender and its staff attorneys.

B. "The CJA Panel or panel" refers to the panels identified in Section X.A. of this Plan that, collectively, constitute the CJA Panel, unless otherwise indicated.

C. "Representation services" includes services rendered by appointed counsel, investigators, experts, interpreters, other service providers, including litigation support vendors and expenses.

D. The "Federal Defender" includes the Executive Director of Federal Defenders of San Diego, Incorporated, and his or her staff attorneys.

E. "Appropriate Resource Counsel" are experts who may assist the Court in the selection and appointment of counsel in capital cases. See, Appendix D, Section III.

F. "Court" refers to the United States District Court for the Southern District of California or the judge presiding over a particular matter.

G. "CJA Supervising Attorney" is an employee designated by the Clerk to assist the Court in the administration of this Plan.

H. "Panel Attorney District Representative" (PADR) is a member of the CJA Panel who is selected by the Chief Judge to serve as a district representative on the circuit's CJA Panel for the Defender Services, CJA PADR program and local CJA committees.

VI. ADMINISTRATIVE COMPONENTS OF THIS PLAN

A. The Court will administer this Plan, with aspects of this Plan delegated and/or assigned to the Clerk, the CJA Committee, the CJA Criminal Advisory Committee, the CJA Material Witness Advisory Committee, the Criminal Appellate Committee and the CJA Death Penalty Committee as provided herein.

B. The Clerk

1. The Clerk is delegated and assigned the tasks of managing CJA assignments and duty schedules, as required; maintaining the records of the CJA Plan and implementing its operational procedures and processes, including but not limited to billing policies and procedures and voucher review operations. The Clerk will collaborate with the CJA Committee, the CJA Criminal Advisory Committee, the CJA Material Witness Advisory Committee, and the Federal Defender to ensure the effective and timely provision of representational services to the accused.

2. The Clerk will develop and recommend cost-effective measures for the Court to consider relating to the provision of services in a manner that does not interfere with the panel members' independent function of providing quality representation.

3. The Clerk will maintain current lists of all panel members, their current office addresses, email or other electronic addresses, and telephone numbers, along with records relating to qualifications (including any foreign language proficiency), panel experience, allegations of misconduct, and the Court's action on the same.

4. The CJA Supervising Attorney

   The CJA Supervising Attorney, through the Clerk of Court, will assist the Clerk and Court in the administration of this Plan. The CJA Supervising Attorney's duties and responsibilities will include: reviewing of CJA vouchers and funding requests; processing vouchers

and funding requests through delegation by judicial officers; coordinating and collaborating with the Ninth Circuit CJA Case Management Attorney (CMA) and/or the National Litigation Support Team Attorney (NLSTA) regarding case budgeting, preliminary discovery review and any other matters subject to voucher review in multi-defendant and other significant non-capital cases as appropriate; and coordinating and collaborating with the Court's Death Penalty Law Clerk, in addition to consulting with the CMA and/or the NLSTA and assisting the appointed counsel in capital cases regarding case budgeting, preliminary discovery and any other matters subject to voucher review in capital cases; and providing and/or participating panel training.

C. The CJA Committee

1. The Chief Judge has appointed a committee consisting of district judges and magistrate judges known as the CJA Committee.

2. One member will be selected by the Chief Judge to serve as its Chair at the discretion of the Chief Judge.

3. The CJA Committee will recommend to the full Court the appointment of attorneys the CJA Panel, the removal of non-performing panel members, amendments to this Plan that will provide improved representation to the accused, and cost-effective representation and management measures.

4. The district judges will vote on the appointment of attorneys to the CJA panel, the removal of attorneys from the CJA Panel and amendments to this Plan.

5. The Committee will also collaborate and coordinate on matters relating to the implementation of this Plan with the Clerk, the CJA Supervising Attorney, the CJA Criminal Advisory Committee, the CJA Material Witness Advisory Committee, and the Federal Defender as appropriate or as directed by the Chief Judge of the Court.

D. CJA Criminal Defense Advisory Committee

1. The CJA Criminal Defense Advisory Committee (previously known as the CJA Advisory Committee) has been established by the Court. The Criminal Defense Advisory Committee will be composed of seven

experienced CJA panel members selected by the Court, one of whom will be designated by the Court as its Chair.

2. The Court should make a diligent effort to ensure that the composition of this advisory committee reflects the ethnic, racial, gender, and geographic diversity of this district.

3. The CJA Criminal Defense Advisory Committee members will serve a minimum term of four years. The Court may stagger the terms to ensure continuity of experience on the committee.

4. The CJA Criminal Defense Advisory Committee will review and recommend applicants for selection to the CJA Criminal Panel as requested by the CJA Committee and/or the Court.

5. The CJA Criminal Defense Advisory Committee will meet at least twice a year, and at any time the Court requests the committee to consider any issue relating to the administration of the Plan.

6. The CJA Criminal Defense Advisory Committee will collaborate with the Court and the Clerk, through the CJA Supervising Attorney, on appointment protocols, case assignments, and any other matter that will improve the administration of the panel.

7. The CJA Criminal Defense Advisory Committee will coordinate training and continuing education with the Material Witness Advisory Committee, the Federal Defender, the CJA Committee, and the CJA Supervisory Attorney as directed by the Court.

8. The CJA Criminal Defense Advisory Committee will administer a mentor program as directed by the Court and with the assistance of the CJA Supervising Attorney.

E. CJA Material Witness Defense Advisory Committee

1. The CJA Material Witness Defense Advisory Committee is hereby established by the Court. The Material Witness Advisory Committee will consist of at least three experienced material witness panel members selected by the Court, one of whom will be designated by the Court as its Chair.

2. The Court should make a diligent effort to ensure that the composition of the Material Witness Defense Advisory Committee reflects the ethnic, racial, gender, and geographic diversity of this district.

3. The Material Witness Defense Advisory Committee members will serve a minimum term of two years. The Court may stagger the terms to ensure continuity of experience on the committee.

4. The Material Witness Defense Advisory Committee will review and recommend applicants for selection to the CJA Material Witness Panel as requested by the CJA Committee and/or the Court.

5. The Material Witness Defense Advisory Committee will meet at least twice a year, and at any time the Court requests the committee to consider any issue relating to the administration of the Plan.

6. The Material Witness Defense Advisory Committee will collaborate with the Court and the Clerk, through the CJA Supervising Attorney, on appointment protocols, case assignments, and any other matter that will improve the administration of the Plan.

7. The Material Witness Defense Advisory Committee will coordinate and conduct material witness-specific training with the CJA Committee and the CJA Supervisory Attorney as directed by the Court and attend and participate in continuing legal education training provided by the Federal Defender and the CJA Criminal Advisory Committee as directed by the Court.

F. Criminal Appellate Panel Committee

1. This Committee is composed of the Federal Defender or designee, the Presiding Magistrate Judge and a District Court Judge.

2. Notices for applications for the panel are published by the Clerk.

3. The Committee will review the applications and present its recommendations for panel selection to the Ninth Circuit Coordinator for Appellate Counsel who makes the final selection of appellate panel members.

G. Capital Case Committee

1. The Capital Case Committee is composed of the Federal Defender and the appropriate Resource Counsel (hereafter, Resource Counsel) and will be activated only when necessary to assist the Court with the appointment of qualified counsel in a capital case.

2. Selection procedures and Counsel Qualifications are contained in Appendix D.

3. Selected panel members will represent defendants charged with or who have received notice that he/she may be charged with, or convicted of, a capital offense but only on the case to which he/she is specifically appointed. See Section X.A.6.

VII. DETERMINATION OF ELIGIBILITY FOR CJA REPRESENTATION

A. Subject Matter Eligibility

1. Mandatory. Representation should 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 revocation, modification or enlargement of a condition, extension, or other adverse change of a term of probation;

   d. is charged with a violation of supervised release or faces a revocation, modification, or enlargement of a condition, extension or other adverse change of a term of supervised release;

   e. is under arrest, when such representation is required by law;

   f. "is entitled to appointed counsel in parole proceedings";

g. is subject to a mental condition hearing under Chapter 313 of Title 18, United States Code;

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 pursuant to a transfer of an offender to or from the United States for the execution of penal sentence under 18 U.S.C. § 4109;

k. is otherwise entitled to appointment of counsel under the Sixth Amendment to the Constitution;

l. is seeking early termination of probation or supervised release; or

m. 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 of confinement is authorized;

b. is seeking relief under 28 U.S.C. §§ 2241, 2254, 2255 other than to set aside or vacate a death sentence, unless an evidentiary hearing is warranted (see above section VI(A)(1)(h));

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 chapter 209 of Title 18, United States Code.

B. Ancillary Matters

1. 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 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).

C. Presentation of Accused for Financial Eligibility Determination – Duties of the Federal Defender

1. In cases in which the Federal Defender may be appointed, the office will:

   a. immediately investigate and determine whether an actual or potential conflict exists; and

   b. in the event of an actual or potential conflict, promptly notify the Court to facilitate the timely appointment of other counsel.

2. When practicable, the Federal Defender will discuss the right to be appointed counsel with the person indicating financial eligibility and, if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a magistrate judge or district judge for determination of financial eligibility and appointment of counsel.

D. Determination of Financial Eligibility

1. 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.

2. 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.

3. 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.

4. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless the family indicates a willingness and ability to do so promptly.

5. 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.

6. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit approved by the Court (Form CJA 23).

7. If at any time after appointment of the Federal Defender or panel member, the district judge or magistrate judge finds that the accused is financially able to obtain an attorney, in whole or in part, for legal or other provider services in connection with the representation, the judge may terminate the appointment of the Federal Defender or panel member, order that any funds available to the accused be paid as provided in 18 U.S.C. § 3006A(f), or take other appropriate action including permitting the Federal Defender or panel member to continue to represent the client and order that the client reimburse part or all of the cost of representation to the Government.

8. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel or other representation costs, the judge has discretion, pursuant to 18 U.S.C. § 3006A(c), to authorize appointment and payment for previously retained counsel under the CJA.

    a. In deciding whether to authorize the appointment, the Court may consider whether retained counsel is a panel member or one who regularly practices in federal court.

    b. Regarding payment, the Court may inquire into the fees already paid to the retained attorney. Such inquiry may include requiring retained counsel to provide copies of the retainer agreement, billing statements, and a statement of funds actually received from or on behalf of the client.

    c. The Court may find it appropriate to allow the retained attorney to begin billing under the CJA upon appointment.

Alternatively, the Court may appoint the retained attorney Nunc pro tunc to the start of counsel's representation. In the latter scenario, the Court may order that any funds paid to retained counsel be attributed to work performed and costs incurred at the applicable CJA hourly rate until the funds are deemed exhausted. Other equitable arrangements may be appropriate. Once exhausted, counsel and service providers may begin billing under the CJA.

VIII. TIMELY APPOINTMENT

A. Appointed counsel must be provided to eligible persons as soon as feasible in the following circumstances, whichever occurs earliest:

1. after the accused is taken into custody; or
2. when the accused appears before a magistrate or district court judge; or
3. when the accused is formally charged or notified of charges if formal charges are sealed; or
4. when a person receives a target letter: or
5. when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA or this Plan.

B. The Court may utilize an "on call" or "duty day" appointment process. CJA attorneys may be appointed to be on call or may be assigned duty days to advise persons who are in custody, or who otherwise may be entitled to counsel, prior to their first appearance.

C. When practicable, Pretrial Services will provide to the Court information on matters relating to bail.

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

E. A person deemed entitled to representation under the CJA will not have the right to select his or her appointed counsel from the attorneys employed by the Federal Defender, the CJA panel, or otherwise.

IX. FEDERAL DEFENDERS OF SAN DIEGO, INC.

A. The Federal Defender, established in this district pursuant to the CJA, is hereby recognized as the Defender Community Organization responsible for rendering defense services upon appointment throughout this district.

B. The Federal Defender should be capable of providing legal services throughout the district and shall maintain offices in San Diego, California and El Centro, California.

C. The Executive Director will be responsible for the supervision and management of the Federal Defender organization. Accordingly, cases assigned to the Federal Defender may be further re-assigned, at his/her discretion, to staff attorneys.

D. The Federal 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.

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

F. The Federal Defender must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct, Code of Conduct for Federal Public Defender Employees, Model Code of Conduct for Federal Community Defender Employees, Rules of Professional Conduct for the Bar of the State of California, and this Court's Local Rules.

G. Neither the Federal Defender nor any staff attorney may engage in the private practice of law except as authorized by the Model Code of Conduct for Federal Community Defender Employees.

H. The Federal Defender will continually assess the training needs of his/her staff and, in collaboration and coordination with the Chairs of the CJA Criminal Defense Advisory Committee, the CJA MW Defense Advisory Committee and the CJA

Committee, assess training needs and provide training opportunities and other educational resources to CJA panel members and potential applicants to the panel.

X. ESTABLISHMENT OF THE CJA PANEL

A. The following identified panels are established and will collectively constitute the CJA Panel in this district. Unless otherwise indicated, the use of the word "panel" in this Plan applies to all panel members.

1. The Criminal Defense Panel. The panel members will be appointed by the Court to handle misdemeanor cases originating in the San Diego Sector and felony cases in the district.

2. The El Centro Criminal Defense Panel. The panel members will be appointed by the Court to handle misdemeanor cases and handle as co-counsel felony cases originating in the El Centro Sector. See Appendix C.

3. The Material Witness Defense Panel. The panel members will be appointed by the Court to handle all MWs involved in felony cases originating in the District.

4. The Central Violations Bureau (CVB) Defense Panel. The panel members will be appointed by the Court to handle CVB cases originating in the District.

5. The Criminal Appellate Panel. Panel members will be appointed to handle all non-capital criminal appeals, except where the pre-conviction panel member has no apparent conflict, has not been granted leave to withdraw or has not been otherwise relieved by the Court. Panel members will not be appointed to handle post-conviction collateral proceedings.

6. Capital Case Panel. Counsel appointed to represent defendants charged with, received notice that he/she may be charged with, or convicted of, a capital offense will comprise the Capital Case Panel. The nature and duration of an appointment to this panel is distinguished from an appointment made in non-capital cases. The selection as appointed counsel in a capital case is case-specific. Accordingly, these panel members are not selected for a period of

time or for multiple appointments or multiple case assignments, but only for the duration of the case to which he/she is appointed. Once the assigned matter is resolved, the panel member is no longer a panel member and no longer subject to the rules contained in this Plan

B. Size of CJA Panel

1. The size of the CJA panel will be determined by the Court upon the recommendation of the CJA Committee and in collaboration with the Chairs of the CJA Criminal Defense Advisory Committee and the CJA MW Defense Advisory Committee based on the caseload of panel members and other demands that may negatively impact effective representation.

2. The CJA panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, thereby enabling them to provide high-quality representation consistent with the best practices of the legal profession.

XI. APPLICATIONS AND QUALIFICATIONS FOR MEMBERSHIP ON THE NON-CAPITAL CJA PANELS

A. Application forms for membership on the CJA panels will be available from the Court upon publication of notice regarding the relevant application period, which will be at least once per year. The Court may consider appointment of attorneys to supplement the CJA panel at any time.

B. Qualifications for appointment are set forth in Appendix A.

XII. QUALIFICATIONS FOR APPOINTMENT ON CAPITAL CASES

Qualifications and appointment of counsel to represent defendants charged with, received notice that he/she may be charged with, or convicted of, a capital offense are contained in Appendix D.

XIII. COMPENSATION FOR CJA PANEL MEMBERS

A. 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. The Court will set the compensation rate for panel members at an amount not to exceed compensation limits set by the Judicial Conference and reported in the Guide, Vol. 7A, § 620.60. Compensation rates will be available on the Clerk's website.

C. Unless otherwise provided in this Plan, claims for compensation and other voucher requests must be submitted as provided in Appendices E and F.

XIV. ACCESS TO INVESTIGATIVE, INTERPRETER/TRANSLATOR, EXPERT, AND OTHER REPRESENTATIONAL SERVICES

A. Panel members and the accused will have reasonable access to investigator, interpreter/translator, expert, and other services necessary for an adequate, independent defense.

B. Guidelines for the use of associate and contract counsel deemed necessary for the panel member to provide an adequate and independent defense, and compensation of associate and contract counsel are contained in Appendix B.

C. Unless otherwise provided, requests for authorization of funds for investigative, expert, and other necessary services must be submitted as provided in this Plan. *See* Appendices E. and F.

D. The hourly rates and statutory maximums per case for investigators, interpreters/translators, experts, and all other service providers deemed necessary for an adequate and independent defense will be set by the Court based upon the availability of resources and skills set of similar provider-types within the district and based upon the needs of this district. The compensation may be subject to future adjustments by the Court. Compensation rates will be available on the Clerk's website.

XV. APPOINTMENT AND CASE ASSIGNMENT IN NON-CAPITAL CASES

A. Panel Membership Is a Privilege - Not a Right.

The appointment of applicants to the CJA panel, their subsequent case assignments, and the procedures and responsibilities contained in this Plan do not create a property interest in being a member of or remaining on the CJA panel. Appointment to the panel is a matter of privilege and not of right, and the Court may remove a panel member at any time.

B. Appointment Procedures

1. The Court, through the Clerk, is responsible for overseeing the appointment of cases to panel members and the Federal Defender. The Court will maintain a record of panel member appointments and, as deemed appropriate, data reflecting the apportionment of appointments between the Federal Defender and panel members.

2. The appointment of cases to panel members and the Federal Defender will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Court may appoint counsel outside the normal rotation to ensure the defendant has sufficiently experienced counsel.

3. In addition to the rotational appointment process, the Court may utilize at its discretion an "on call" or "duty day" assignment/appointment process based upon the needs of the district.

4. The Court has the discretion to determine the manner and means of appointing newly selected panel members in the CJA rotation.

C. Number of Counsel in a Non-Capital Case

1. In most cases, only one panel attorney will be appointed to represent a client.

2. The Court may appoint more than one attorney to represent a single client based upon (1) the nature of the charges brought or contemplated against an accused, (2) the geographic location of the accused within the Southern District, and/or (3) other considerations making the case extremely difficult as determined by the Court.

D. Apportionment of Cases

1. Where practical, the assignment of cases will be apportioned between the panel members the Federal Defender as determined by the Court upon consultation with the Federal Defender and the CJA Criminal Defense Committee.

2. The Court may exercise discretion to permit an individual panel member, upon request, be appointed to less than a proportional number of cases than otherwise assigned to panel members.

XVI. REAPPOINTMENT OF CJA PANEL MEMBERS IN NON-CAPITAL CASES

A. A panel member who wishes to be considered for reappointment must apply for appointment to an additional term prior to the expiration of his or her current term. Applicants seeking reappointment will compete with all applicants for selection.

B. Panel members must satisfy the applicable duties and responsibilities set forth in Section XVII and the training requirements and conditions set forth in Section XVIII of this Plan.

C. The CJA Committee will solicit recommendations from the CJA Supervising Attorney, the CJA Criminal Defense Advisory Committee and the CJA MW Defense Advisory Committee concerning the quality of representation and performance of lawyers seeking reappointment.

XVII. TERMS OF CJA PANEL MEMBERS IN NON-CAPITAL CASES

A. Panel members will serve a term of two years, generally beginning with appointments on or after December each year, with the opportunity to reapply for successive terms. Such service shall at all times be at the pleasure of the Court.

B. The terms of panel members may be staggered to facilitate continuity of high-quality and experienced representation on the panel.

XVIII. REMOVAL OR SUSPENSION FROM THE CJA PANEL

A. By the Court

Notwithstanding the provisions in Section XIX., a panel member may be suspended or removed from the panel prior to expiration of his or her term whenever the Court so determines it is clear the representation is resulting in immediate harm to a client or otherwise necessary to ensure the effective representation of accused persons.

B. Mandatory Removal

Any panel member who is suspended or disbarred from the practice of law by the state court before whom such member is admitted, the bar of this Court, or any federal court will be removed from the CJA panel immediately.

C. Automatic Disciplinary Review

The CJA Committee will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority, grievance committee, or administrative body has taken any adverse action, including but not limited to contempt, sanction, or a reprimand against the panel member. The panel member will receive notice and have an opportunity to be heard. The CJA Committee will recommend appropriate action to the full Court.

D. Notification

The panel member, the CJA Criminal Defense Advisory Committee or the CJA MW Defense Advisory Committee, as appropriate, and the Clerk of Court will be immediately notified when a panel member is removed or suspended.

E. Removal From a Case

A panel member may be removed from an individual case if the judge presiding over the matter deems it necessary in the interest of justice.

XIX. COMPLAINTS

A. Purpose. To ensure the proper administration of justice, civility and the adherence to the Standards and Professional Conduct referred to in Section XX.A., infra, the Court adopts the following procedures to provide a clear avenue of redress relating to allegations of misconduct and/or unprofessional conduct associated with the performance of duties proscribed in this Plan.

B. Initiation. A complaint concerning performance or misconduct of a panel member, an attorney employed by the Federal Defender, associate or contract counsel (hereafter the attorney) may be initiated by any concerned individual and should be

directed to the Chair of the CJA Committee. Complaints must be in writing and state the alleged misconduct or deficiency with specificity. The CJA Committee will determine whether further investigation is necessary.

C. Concerned individuals include clients, family members of clients, judges, prosecutors, fellow panel members and staff members of the USAO, the Federal Defender, U.S. Pretrial Services, U. S. Probation, the United States Marshal Service, any detention facility, the Clerk or the Court's staff.

D. Notice. Upon receiving a written complaint, the CJA Committee will notify the attorney and the Chief District Judge of the specific allegations and will advise the attorney whether it has commenced an investigation or dismissed the complaint. Written complaints alleging deficient performance or misconduct against an attorney employed by the Federal Defender will be referred to the Federal Defender for investigation and all follow-up actions.

E. Response. An attorney under review may be asked to respond in writing and appear before the CJA Committee or may request to do so.

F. Protective Action. Prior to deciding the matter, the CJA Committee may recommend the attorney's suspension or removal from any pending case, or removal from the CJA Panel, and may take any other protective action that is in the best interest of the attorney's clients, individuals involved or the administration of this Plan.

G. Investigation. Any investigation undertaken by the CJA Committee will be concluded within forty-five days (45) days of receiving the initial complaint. Should the investigation need to continue beyond this prescribed period, the CJA Committee must notify both the attorney and the Chief District Judge in writing.

H. The CJA Committee may in its discretion delegate the responsibility of conducting the investigation to the CJA Criminal Defense Committee or CJA MW Defense Committee, as appropriate. The CJA Committee will make every effort to avoid conflicts of interests.

I. Review and Recommendation. After investigation and review, the CJA Committee may recommend closing the matter with no further action or may recommend appropriate remedial action, including:

1. removing the attorney from the panel permanently or temporarily;

2. limiting the attorney's participation to certain categories of cases;

3. directing the attorney to complete specific training requirements before receiving further panel appointments;

4. limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner or assigning a mentor;

5. directing the attorney to attend counseling for substance abuse issues; or

6. any other appropriate remedial action.

J. Oversight of Remedial Action. Should the CJA Committee recommend any remedial action on the part of the attorney, the CJA Committee will establish, in its recommendation to the Chief District Judge, a plan for overseeing completion of conditions for full panel reinstatement.

K. Final Disposition by the Court. The CJA Committee will forward its recommendation to the Chief District Judge for consideration and final disposition. The Chief District Judge will communicate a final disposition in writing to the attorney, the CJA Committee, and the CJA Criminal Defense Committee or CJA Material Witness Defense Committee, as appropriate.

L. Confidentiality. Information acquired concerning complaints and potential disciplinary action will remain confidential unless otherwise directed by the Court or required by applicable ethical standards.

M. The Clerk will retain records, under seal, of complaints against attorneys and actions thereon for a period of five years, unless otherwise ordered by the Court.

XX. PANEL MEMBER DUTIES

A. Standards and Professional Conduct

1. Panel members must provide high-quality representation consistent with the best practices of the legal profession.

2. Panel members must conform to the highest standards of professional conduct, including but not limited to the local rules and general orders of this Court, the California Rules of Professional Conduct, and other standards for professional conduct adopted by the Court. Such conduct includes being accessible to clients and exercising civility in interactions with the client, opposing parties, and the Court.

3. Within ten days, panel members must notify the Chair of the CJA Committee and the CJA Supervising Attorney when any state or federal court, licensing authority, grievance committee, or administrative body has taken action against the panel member by issuing a finding of contempt, sanction, or reprimand.

B. Waiver of All Claims

Except for claims that may be permitted by the Federal Tort Claims Act, panel members will waive and hold harmless all claims against the United States, its officers, employees, and the court-appointed members of any committee identified in this Plan resulting from participation in the administration of the provisions of this Plan.

C. Discovery Produced Via Protective Order

Panel members will return to the government or the judge presiding over the case all discovery produced by stipulation and/or protective order pursuant to the terms of said stipulation or order unless otherwise ordered by the Court. Where the panel member reasonably believes that certain requested discovery material must be maintained by counsel after the conclusion of the case, the matter should be brought to the court's attention at the time of the request for such material.

D. Use of Qualified Service Providers

1. Panel members will engage only qualified service providers.

2. Panel members have a duty to ensure the service provider is certified or licensed as required by his/her trade or profession and is otherwise in good standing with the certification or licensing agency.

3. Panel members should carefully review and revise the service providers' bills and records to ensure that the amount billed is accurate and reasonable.

E. Record Keeping

Panel members must maintain contemporaneous time and expense records for all work performed by associates, contract lawyers, paralegals, support staff, and other service providers in a manner consistent with Appendix H. Such records may be subject to audit and must be maintained for three years after approval of the final voucher.

F. Case Budgeting

In non-capital representations that involve unusual complexity and/or voluminous discovery and are likely to become extraordinary in terms of cost, panel members should consult with the CJA Supervising Attorney and/or the CMA and comply with budgeting directives in a manner consistent with in Appendix F.

G. Adherence to the Rules Supporting this Plan

Panel members are bound by the provisions of this Plan and any and all revisions and appendices to this Plan.

H. Material Breach

The Court's decision that there has been a material breach of a duty or other provision of this Plan may result in suspension or removal from the CJA panel.

XXI. TRAINING AND CONTINUING LEGAL EDUCATION (CLE)

A. The Court may require panel members with limited federal criminal practice to attend post-selection training conducted by the Federal Defender, the CJA Criminal Defense Advisory Committee and/or the CJA MW Defense Advisory Committee on federal criminal law and procedure, including related areas of law such as immigration law, as a condition to the receipt of case assignments/appointments. The training must be completed according to the timeframe and any other conditions set by the Court.

B. Appointed counsel is expected to remain current with developments in federal criminal law, practice, and procedure, along with the Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases ("ESI Protocol").

C. Appointed counsel is expected to attend training sponsored by the Federal Defender as otherwise required by the Court.

D. Appointed counsel must participate annually in at least five hours of CLE relevant to federal criminal practice, including but not limited to federal criminal procedure and practice, federal sentencing law and procedure, and immigration consequences relating to federal criminal practice.

E. CLE must be completed by August 1 of each calendar year. Evidence of annual written CLE certification(s) must be submitted by each panel member to the Chair of the CJA Committee, through the Clerk of Court, by November 15 of each calendar year. Panel members must include evidence of compliance within an application to be re-appointed to the CJA Panel.

XXII. MENTOR PROGRAM

Newly appointed panel members may be required to participate in a mentor program directed or approved by the Court. Experienced panel members will be selected to serve as mentors to newly appointed panel members for a period of time determined by the Court.

XXIII. NO DUAL ENGAGEMENTS

No appointed counsel may require, request, or accept any payment, promise of payment or other consideration for the representation of a defendant for whom he/she is appointed, unless such payment is approved by order of the Court.

APPENDIX A

QUALIFICATIONS FOR APPOINTMENT

(NON-CAPITAL CJA PANELS)

I. Applicants for the CJA panel must be members in good standing with the State Bar of California, United States District Court for the Southern District of California, and the Ninth Circuit Court of Appeals.

II. Applicants must maintain a primary or satellite office in the Southern District of California.

III. Applicants must demonstrate strong litigation skills and experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of individuals who lack the financial means to hire an attorney, AND

A. Applicants for the CJA Criminal Defense Panel must:

1. Have practiced felony criminal law at least four (4) years in the United States District Court and demonstrated strong litigation skills and proficiency with the Federal Sentencing Guidelines, Bail Reform Act, Federal Rules of Criminal Procedure, and Federal Rules of Evidence; OR

2. Have for the last two (2) preceding years practiced for and been employed by either:

   (a) The criminal division of the Office of the United States Attorney in any federal judicial district; or

   (b) Federal Defenders of San Diego, Inc. or another federal community or public defender office in any federal judicial district; OR

3. Have practiced criminal law at least four (4) years in a court of competent jurisdiction; and in the last two (2) years have second-chaired an attorney in the United States District Court in:

(a) Two felony trials; and

(b) Four sentencing hearings in which the United States Sentencing Guidelines were applied; OR

4. Have for the last four (4) preceding years, the last two ((2) years of which involved the prosecution or defense of felony cases, been employed by either:

   (a) A county or state district attorney's office or other prosecutor's office in any state, or

   (b) A county or state public defender's office in any state, and

   (c) Have demonstrated that his/her criminal practice involved significant immigration-related consequences that impacted litigation strategy, disposition, and/or sentencing; OR

5. Have practiced criminal law for at least four (4) years in a court of competent jurisdiction; and

   (a) Have for the last two (2) preceding years attained and maintained at least a Level III criminal attorney certification/eligibility rating, as established by the San Diego County District Attorney, the San Diego County Public Defender, the San Diego Office of the Alternate Public Defender, or equivalent, and

   (b) Have demonstrated that his/her criminal practice involved significant immigration-related consequences that impacted litigation strategy, disposition, and/or sentencing.

B. Applicants for the CJA Material Witness Defense Panel must:

1. Have at least two (2) years of experience in the prosecution and/or defense of felony criminal cases;

2. Have demonstrated that his/her criminal practice involved immigration-related consequences that impacted litigation strategy, disposition, and/or sentencing; and

3. Have demonstrated that he/she has practice experience with the deposition practice in civil or criminal court.

C. Applicants for the CJA Central Violations Bureau (CVB) Panel must:

1. Have at least two (2) years of experience in the prosecution and/or defense of misdemeanor cases; OR

2. Have at least two (2) years as a Commissioned Officer, a Non-Commissioned Officer, or service in the military police or criminal investigation personnel in the U.S. Armed Services.

IV. Applicants who do not possess the above experience but believe they have other equivalent experience are encouraged to apply and provide in writing the details of that experience for the Court's consideration.

V. The Court may authorize limited exceptions to the qualification provisions of this Plan in a manner that fits the needs of this district, provides effective delivery of representation services while protecting the independence of the defense function, and gives due consideration to the unique nature of criminal litigation in this district or particular representation type.

VI. Post-selection training and practice requirements will be imposed for selectees having limited federal experience. See Section XXI.A. of the Plan.

APPENDIX B

ASSOCIATE AND CONTRACT COUNSEL

(USE AND COMPENSATION)

I. The Court expends considerable effort in identifying and selecting experienced, qualified attorneys to provide quality representation to federal indigent defendants. To that end, the Court has a vested interest in ensuring associate and contract counsel can adequately assist panel members in providing quality representation to clients.

II. An "associate counsel" is defined as an attorney who is a partner in or employee of the panel member's law firm. A "contract attorney" is defined as an attorney who is not a partner or employee of the panel member's law firm.

III. Panel members are encouraged to use associate and contract attorneys who are not panel members to reduce costs where the panel members' expertise is not required, such as for legal research and docket review, preliminary discovery review, or non-substantive court appearances. However, the panel members' expertise is required relative to all substantive work, including in-court hearings (except for status hearings or requests to continue); plea negotiations; advisement relating to a plea offer; and handling the plea hearing, the probation interview, the safety valve/substantial assistance interview, and sentencing.

IV. Prior authorization is required for use of associate and contract counsel as provided in Appendix F. The panel member should present sufficient information to permit the court to consider the necessity of the service, the work to be assigned, the proposed attorney's experience, and an appropriate hourly rate.

V. The panel member should develop a plan to divide responsibilities among the contract or associate counsel and panel member so that each is performing duties effectively and efficiently, thereby avoiding unnecessary duplication of effort.

A. While meetings may be needed to effectively divide responsibilities and to coordinate efforts, the panel member should also avoid unnecessary conferences. In-person meetings are compensable if the frequency and time billed are reasonable given the needs of a case, but the panel member should always assess the need for a meeting in advance and consider whether the purpose of the meeting could be served equally by a conference call or other electronic transmission.

B. The associate and contract counsel may be compensated for reasonable time conferring with the panel member.

C. Prior approval must be obtained from the judge presiding over the case for an associate or contract counsel to appear in Court as a compensated second chair. Reasonable notice must be provided to allow the court to rule on the necessity of the associate or contract counsel's participation without delaying the proceeding.

VI. The compensatory services of associate and contract counsel and that of the panel member, in combination, may not exceed the maximum case-related rate for the case or the amount preauthorized as provided in the Plan.

VII. The compensatory services of associate and contract counsel may not be billed as an expense of the panel member. EVoucher forms CJA-20 and CJA-30 should be used to bill these services. Such vouchers must be submitted at the same time as the panel member for the same billing period.

VIII. The Court will set the compensation for associate counsel and contract counsel pursuant to an experience-based, hourly rate schedule that will be subject to proportionate adjustment based upon any future change to the hourly rates of panel members. Compensation rates will be available on the Clerk's website.

IX. An associate or contract attorney who is also a panel member may be engaged to perform substantive work, as described herein, and will be permitted to bill at the normal CJA panel rate.

APPENDIX C

PROCEDURES FOR CRIMINAL CASES IN THE EL CENTRO SECTOR

The following procedures will apply in connection with the appointment of CJA counsel and the Federal Defender in criminal cases originating in the El Centro sector of this District:

I. CJA CRIMINAL DEFENSE COUNSEL

A. On the first appearance of a defendant charged with a misdemeanor and a felony or with a felony offense or offenses in the El Centro United States District Courthouse, in cases where the Federal Defender is not appointed, the magistrate judge will appoint both CJA Lead Counsel from the San Diego sector (Lead Counsel) and CJA Co-counsel from the El Centro sector (Co-counsel) to represent the defendant. Lead Counsel with work cooperatively with Co-counsel on these cases.

B. It will be the responsibility of Lead Counsel to evaluate the charges and evidence against the defendant, advise the defendant regarding the case, and counsel the defendant regarding any plea offer. While the case is pending in El Centro, Lead Counsel is strongly encouraged to avoid travel to El Centro in connection with these responsibilities or other preliminary court proceeding .

C. Following the defendant's first appearance, Lead Counsel is strongly encouraged to delegate to Co-counsel all preliminary appearances on behalf of the defendant in the El Centro United States District Courthouse, including but not limited to the preliminary hearing, a hearing to waive indictment or to arraign the defendant on the indictment, any bail, status, or detention hearing, and any change of plea hearing. Lead Counsel is also strongly encouraged to communicate with the defendant by video conference and telephone where feasible, with Co-counsel physically visiting the client in Lead Counsel's stead, when the defendant is not housed in San Diego County.

D. Lead counsel may not utilize contract or in-house associates to travel to El Centro but must instead utilize Co-counsel for any work in El Centro not performed directly by Lead Counsel.

E. Lead Counsel will continue to represent the defendant and make all appearances on behalf of the defendant upon the transfer of the defendant's case to the San Diego United States District Courthouse. Co-counsel will have limited ongoing involvement upon transfer of the defendant's case to the San Diego United States District Courthouse.

F. For a defendant charged only with a misdemeanor offense in the El Centro sector of this District, the magistrate judge will appoint counsel from the El Centro sector or the Federal Defender to represent the defendant as the defendant's sole counsel.

II. INTERPRETERS AND OTHER SERVICE PROVIDERS

A. To minimize travel costs, panel members (CJA Criminal Defense Counsel and CJA MW Counsel) must make reasonable efforts to retain the services of interpreters and other service providers from the El Centro sector where the proposed services are to be performed, if such providers are reasonably available. It is anticipated that interpreters or other service providers will not travel to El Centro in connection with any interview, investigation, or other proceeding.

B. Interpreters and other service providers will not be reimbursed for travel to El Centro without prior approval by the CJA Supervising Attorney, upon a showing of good cause. To the extent such travel is approved, the travel rate shall be no more than fifty dollars ($50) an hour.

APPENDIX D

APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CAPITAL CASES

I. 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. As such, the provisions of this Appendix apply to all capital cases whether originating in state court or a United States District Court.

II. 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; the CJA Guidelines, Ch. 6; the Ninth Circuit CJA Policies and Procedures and CivLR HC. 3(d).

III. UTILIZATION OF THE DEATH PENALTY RESOURCE COUNSEL PROJECTS

A. For assistance with the selection and appointment of counsel, case budgeting, and legal, practical and other matters arising in federal capital cases, the Court will rely on the death penalty expert services available through the Administrative Office of United States Courts Defender Services Death Penalty Resource Counsel projects. The resource counsel projects include:1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials); 2) Federal Capital Appellate Resource Counsel Project; 3) Federal Capital Habeas Section 2255 Project; and 4) National and Regional Habeas Assistance and Training Counsel Projects (Section 2254).

B. The appropriate resource counsel to be consulted depends upon the nature of the case or representation-type. As such, the appropriate resource counsel project will be involved in a given case.

C. Pursuant to Section VI.G. of the Plan, the appropriate resource counsel project will be a member of the Capital Case Committee to assist the Court with the particular appointment.

IV. COUNSEL QUALIFICATIONS

A. The Court should ensure that all attorneys appointed in federal death penalty cases must:

1. be well qualified as demonstrated by their training, commitment to the defense of capital cases, and distinguished prior criminal defense experience;
2. meet the minimum experience standards set forth in 18 U.S.C. § 3599(b)-(d), 18 U.S.C. § 3005, and other applicable laws as well as any applicable Ninth Circuit rules;
3. have sufficient time and resources to devote to the representation, considering their current caseload and the extraordinary demands of a capital case; and
4. meet all applicable guidelines adopted by the American Bar Association and other legal organizations regarding the quality of legal representation in capital cases;

B. 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 criminal defense 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.

C. 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 criminal defense experience in federal criminal appeals, capital appeals, federal post- conviction proceedings, or capital post-conviction proceedings.

D. Out-of-district counsel, including a Federal Defender, who possess the requisite expertise may be considered for appointment in capital cases to achieve high-quality representation

E. An attorney furnished by a state or local public defender organization or a 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 a fully qualified Federal Defender, CJA panel attorney or an attorney appointed pro hac vice. (See 18 U.S.C. § 3006A(a)(3).)

F. "Distinguished prior criminal defense experience" contemplates excellence, not simply prior experience.

V. APPOINTMENT OF COUNSEL

A. Recommendation of Capital Case Committee

1. When appointing counsel, the Court must consider the recommendation of the Capital Case Committee relating to qualified counsel.

2. The Capital Case Committee will submit a Report and Recommendation (Report) providing the nature and extent of the search effort, the candidates' experience, the candidates' availability to handle the matter and other distinct reasons supporting the recommendations. The Report will be filed under seal for the Court's review.

3. When practicable, given the high demand for qualified counsel, the Report should contain at least two qualified candidates.

4. The Court should consider and give due weight to the recommendations made in the Report of vetted, qualified counsel and articulate reasons for not doing so.

5. The Court may consider other qualified candidates having the requisite experience and availability to handle the matter. Under 18 U.S.C. § 3599(d), the Court, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c) but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation. Such appointments should be made after consultation with the Capital Case Committee.

B. Trial Counsel

1. The appointment of qualified capital trial counsel must occur as soon as practicable after a defendant is charged with a federal criminal offense where the penalty of death is possible.

2. To protect the rights of an individual who, although not charged, is the subject of an investigation in a federal death-eligible case, the Court may appoint capitally qualified counsel upon request, consistent with these provisions.

3. At the outset of every capital case, the Court must appoint two attorneys, at least one of whom meets the qualifications for "learned counsel" as described above.

C. Direct Appeals

1. Counsel representing a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.

2. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.

3. Out-of-district counsel, including a Federal Defender, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with other efficiencies.

4. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals.

5. At least one of the attorneys appointed must have the requisite background, knowledge, and experience required by18 USC Section 3599 (c) or (d).

D. Post-Conviction Proceedings

1. 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 attorneys given the complex, demanding, and protracted nature of death penalty proceedings.

2. For § 2255 proceedings, appointment should take place, if possible, prior to denial of certiorari on direct appeal by the United States Supreme Court.

3. 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.

VI. APPOINTMENT EXTENDS THROUGH ALL PROCEEDINGS

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

B. Appointed Counsel in a capital case will be considered a member of the Capital Case Panel in the district during the course of the appointment.

VII. DISCRETION TO APPOINT THE FEDERAL DEFENDER

Notwithstanding any provision herein and absent a conflict of interest, the Court is not precluded from the consideration and the appointment of an otherwise qualified Federal Defender.

VIII. COMPENSATION

A. Statutory maxima do not apply in the defense of capital cases.

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

IX. BUDGETING AND SERVICE PROVIDER RESOURCES

A. All capital cases, unless staffed only by a Federal Defender, must be budgeted.

B. As early as practicable after appointment, the Court, CJA Supervisory Attorney, CMA and/or the NLSTA must discuss with appointed counsel the preparation and submission of a budget that will be subject to modification in light of facts and developments that emerge as the case proceeds.

C. The budget should be prepared with the assistance of the CJA Supervisory Attorney, the CMA and/or NLSTA.

D. Appointed Counsel will consult regularly with the district's CJA Supervising Attorney, the CMA and the appropriate Resource Counsel.

E. Questions concerning the appointment and compensation of additional counsel and the authorization and payment of investigative, expert, and other service providers in capital cases may be directed to The CJA Supervisory Attorney, CMA and/or NLSLTA, or to the appropriate Federal Resource Counsel or the AO Defender Services Office, Legal and Policy Division Duty Attorney.

F. The budgeting process should be guided by § III of the Criminal Justice Act Policies and Procedures adopted by the Judicial Council of the Ninth Circuit and those set forth in the Guide, Vol. 7A, §§ 640.20-40.

X. Any and all provisions of the Plan, not specifically designated as applicable to non-capital CJA only, applies to appointed counsel in capital cases.

APPENDIX E

VOUCHER AUTHORIZATION ADMINISTRATION AND REVIEW

I. All claims for compensation should be submitted electronically through the CJA eVoucher system on the appropriate CJA eVoucher form. Counsel's requests for preauthorization, claims for compensation, and supporting documentation, as well as the Court's approval, modification, or rejection of the same should be entered and maintained on eVoucher to facilitate transparency of all eVoucher-related operations, procedures, and decisions.

II. PREAUTHORIZATION OF ATTORNEY FEES

A. Panel members must utilize the CJA-26 form in eVoucher to request preauthorization of attorney fees in cases anticipated to exceed the statutory maximum and cases subject to budgeting. To aid district court and circuit review of a preauthorization request, panel members should utilize the Clerk's Request for Excess Compensation (REC) form to be attached to the CJA-26 that will include documentation to support the request.

B. Associate and contract attorney services anticipated to be in excess of eight hours require prior authorization. In seeking prior authorization, counsel should utilize the Clerk's REC form to be attached to the CJA-26 that will include the nature of and the necessity for the service, the experience level of the attorney, the hourly rate requested, and the estimated number of hours to complete the anticipated task.

III. PREAUTHORIZATION OF SERVICE PROVIDER FEES

A. Title 18 U.S.C., Section 3006A(e)(2) and Ninth Circuit policy requires preauthorization of service provider fees in excess of the statutory maximum. In the rare instance preauthorization is not feasible, counsel must attach supporting justification to the voucher to aid circuit review of nunc pro tunc requests.

B. Panel attorneys must utilize the eVoucher AUTH form to request preauthorization of fees for any service provider type anticipated to exceed the statutory maximum.

C. When seeking prior approval, counsel must indicate the necessity for the service, the hourly rate requested for the provider, and the estimated number of hours to complete the anticipated task.

D. To aid circuit review of a preauthorization request, counsel should utilize the Clerk's Service Provider Funding Request (SPFR) form to be attached to the AUTH form that will include a resume/CV, any applicable license and case budgeting documentation to support the request.

IV. PREAUTHORIZATION OF SERVICES PERFORMED BY RELATIVES

Panel attorneys must utilize the AUTH form in eVoucher to request preauthorization of fees for service providers who are relatives and who are not associates in counsel's law firm. When seeking such approval, counsel must indicate the nature of the relationship, the necessity for the services of the provider, the experience of the provider, the hourly rate charged, and the estimated number of hours to complete the anticipated task.

V. WHEN PRIOR APPROVED HOURS ARE CONSIDERED INSUFFICIENT TO COMPLETE THE ASSIGNED TASK

A. If counsel obtains preauthorization and it later becomes apparent that the cost will exceed the initially approved amount, requests for additional compensation must be authorized by the Court before any further service is provided.

B. Nunc pro tunc requests will be considered only upon good cause, such as when a task not previously contemplated required immediate action.

VI. PREAUTHORIZATION FOR INTERIM VOUCHERS

A. Panel members must utilize the CJA-26 form in eVoucher to request preauthorization to submit interim vouchers in complex representation cases. The Court may authorize the submission of interim vouchers upon good cause as to the unique particulars of the case. Interim vouchers may also be authorized via a budget prepared with the Ninth Circuit CJA Case Managing Attorney ("CMA").

B. The Court will review for approval all interim vouchers requesting payment of fees in excess of the statutory maximum for cases in which the circuit reviewing judge or designee has approved a budget, a request to exceed the statutory

maximum for attorney fees (CJA-26), or a preauthorization for service provider fees. Only the final payment voucher will be submitted for review and approval by the circuit reviewing judge or designee.

C. Interim vouchers that do not exceed the preauthorized maximum will not be sent to the circuit for review unless otherwise directed by the circuit reviewing judge or designee.

D. In cases where the circuit reviewing judge or designee has not approved a preauthorization request to exceed the case compensation maximum for attorney fees, the Court will submit all approved interim payment vouchers to the circuit for review once the statutory maximum is exceeded. To aid district court and circuit review, counsel should utilize the Clerk's REC form to be attached to the CJA-26 that will CJA-26 justify the excess costs.

VII. DEADLINE FOR VOUCHER SUBMISSION

A. Final vouchers should be submitted no later than 90 days after the filing of the judgment and commitment order or other disposition. Counsel is required to submit associate counsel vouchers on the same CJA-20 form. Counsel is required to submit contract counsel vouchers on a separate CJA-20 at the same time as his or her own voucher. Counsel is encouraged, but not required, to submit service providers at the same time as his or her own voucher. Counsel is responsible for advising and encouraging service providers to abide by this voucher submission requirement.

B. Given that panel members handle a significant volume of criminal matters in this district, vouchers submitted up to one year after the case terminates may be approved if good cause is shown.

C. Counsel must obtain prior court authorization before submitting a voucher over one year after the case terminates. Counsel should submit a motion and declaration attached to the CJA-26 that demonstrates good cause for the untimely submission. The Court will make the decision on the request. In the event the Court approves the request, counsel can submit the CJA-20 voucher. When submitting such a request, counsel undertakes a serious risk of not being paid for the representation.

VIII. VOUCHER REVIEW

A. The Clerk's Voucher Review Staff ("VRS") will review all voucher submissions for mathematical accuracy and technical compliance with the CJA Guidelines and the Ninth Circuit CJA Policies and Procedures as adopted in this Plan. The VRS may reduce or increase the amount payable to reflect a correction to a mathematical or technical error.

B. Authority to approve vouchers submitted to the Court for payment pursuant to 18 U.S.C. §§ 3006A(d)(5) and 3599(a)1), (f) and (g), including those submitted for investigator, interpreter, expert, or other provider services, is delegated to the VRS subject to the following restrictions:

1. The VRS should not reduce or increase the amount payable for any reason other than to reflect a correction to a mathematical or technical error.

2. The total attorney fees claimed for a panel member's representation including associate or contract counsel must be equal to or less than $3,500.00 per criminal representation or $1,000.00 per material witness, supervised release, and/or Central Violations Bureau (CVB) representation.

3. The total amount claimed for investigator, interpreter, expert, or other service provider types must be equal to or less than $1,600.00, excluding expenses, per provider type (not per provider).

4. The Court, upon periodic review of the delegated threshold amounts contained herein, may exercise its discretion to increase the delegated threshold amounts for the purpose of enhancing efficiencies, considering the caseload, staff resources and other demands that negatively impact effective monitoring and review of vouchers.

C. The CJA Supervising Attorney is delegated the authority to:

1. Review, approve, reduce, or deny any voucher or request for panel member compensation and/or any service provider services submitted in which

a. the VRS identifies a reasonableness or other question on matters within its delegated authority, or

b. the claimed amount exceeds the thresholds identified in Section VIII. B, supra.

2. Review, approve, reduce, or deny any requests for preauthorization required by this Plan, including but not limited to requests for interim vouchers; funding for service providers exceeding the current statutory maximum; funding for associate and contract counsel; and/or funding for non-attorney relatives.

3. Coordinate and collaborate with the CMA and/or NLST regarding case budgeting, preliminary discovery review, and any other matters subject to voucher review in complex, multi-defendant and other potential high-cost cases.

4. Coordinate and collaborate with the Court's Death Penalty Law Clerk, in addition to consulting with the CMA and/or the NLSTA regarding case budgeting, preliminary discovery and any other matters subject to voucher review in capital cases.

D. The judge presiding over a case may elect to opt out of all or any portion of this delegation based upon the unique nature of the case or the service provider type.

IX. PROCEDURES FOR VOUCHER REDUCTION

A. Voucher review and/or reduction should not occur due to concerns relating to the diminishing of CJA program funds caused by the government's adverse financial conditions.

B. In the event the CJA Supervising Attorney determines any voucher claims or pre-authorization requests should be reduced or denied:

1. The CJA Supervising Attorney will notify the panel member of the reason for the proposed voucher reduction or denial of a request for preauthorization, identifying the proposed amount of the reduction, explain the reason(s) for it, and require counsel's response to the notice

and advise counsel of the option to submit a written request for reconsideration. The request for reconsideration must address reasons for reduction established by the CJA Supervising Attorney and the propriety and reasonableness of the voucher or preauthorization request. A response must be submitted to the CJA Supervising Attorney within 14 calendar days of notification of the proposed reduction or denial unless good cause is shown.

2. The CJA Supervising Attorney will should review a timely submitted request for reconsideration and may grant it in full, in part, or not at all. The CJA Supervising Attorney's decision and supporting rationale for the denial of any part of a request for reconsideration shall be communicated to the panel member. Within ten calendar days of such notice, the panel member may appeal the denial of reconsideration to the judge presiding over the case. The appeal should be filed with the CJA Supervising Attorney who shall immediately refer the matter for decision, together with the complete voucher file, to the judge who presided over the case. The judge's decision on appeal shall be final.

C. Review by Judge Opting-Out of the Delegation to the CJA Supervising Attorney on a Particular Case

1. Authority to Opt-Out. A judge presiding over a case may 'opt-out' of all or any portion of the delegation of authority provided in this Section.

2. Notice and Order. When a judge opting out of the delegation of authority determines that any voucher or series of vouchers, or pre-authorization request, or a portion(s) thereof, should be reduced or denied based upon failing to conform to the Court's billing guidelines, unreasonableness, or is otherwise inaccurate or improper, the judge shall do the following:

   a. Issue an order to the panel member or service provider to show cause.

   b. Identify the issue(s) concerning to the Court along with the proposed amount of the reduction or denial, explain the reason(s) therefor, require a response by the panel member or service provider, and advise of the option to request independent review.

3. Response by counsel. The panel member or service provider should respond to the show cause with a written explanation addressing the identified issue(s) and supporting the reasonableness of the request within 14 days of receipt and elect one of the following options:

    a. Accept the proposed reduction or denial;

    b. Contest the proposed reduction or denial and waive independent review; or

    c. Contest the proposed reduction or denial and request independent review.

4. Judge's Options. The judge will review counsel's response.

    a. If the panel member or service provider fails to timely respond, the judge will make a final decision and authorize the reduced payment;

    b. If the panel member or service provider accepts the proposed reduction or denial, the judge will make a final decision and authorize the reduced payment;

    c. If the panel member or service provider contests the proposed reduction or denial and waives independent review, the court will consider the response of the panel member or service provider, and make a final decision and authorize payment, as appropriate;

    d. If the panel member or service provider contests the proposed reduction or denial, requests an alternative payment amount in his/her response, and requests independent review, and the judge determines the requested alternative payment amount is reasonable and otherwise appropriate based upon the explanation(s) in the response, the judge may make a final decision approving the alternative payment, and authorize the alternative payment; or

    e. If the panel member or service provider contests the proposed reduction or denial, and requests independent review, and (d) does

not apply, the judge will forward the matter to a reviewing judge. The reviewing judge will be selected by a way of a computer-assisted random selection or a duty judge-based system to ensure independent review.

5. Independent Review and Recommendation

   a. The reviewing judge will conduct a review and investigation to determine whether the voucher of the panel member or service provider conforms to the Court's billing guidelines, is reasonable considering a funding authorization and/or the circumstances of the case and is otherwise accurate or proper.

   b. The investigation may include a review of the explanation(s) of the panel member or service provider, vouchers submitted by other panel members or service providers in the same or similar cases, a review of court records, records of detention facilities, and/or interviews of court staff, panel members or service providers including the individual whose voucher is being reviewed.

   c. No provision of this section will be construed as permitting disclosure to the panel member or service provider of information from which they may infer the source, and no information shall be disclosed to the panel member or service provider or be obtained by any process which would jeopardize the confidentiality of communications of persons whose opinion have been sought in the investigation.

   d. The reviewing judge will determine whether the voucher complies with the Court's billing guidelines, is reasonable or is not otherwise accurate or proper, specifying the reasons therefor. The reviewing judge shall make a recommendation regarding whether no reduction, the proposed reduction or any other reduction is appropriate.

   e. A copy of the recommendation will be provided to the panel member or service provider, the CJA Supervising Attorney, and the judge presiding over the matter.

6. Finality

a. The presiding judge will give significant weight to the reviewing judge's recommendation in making a final decision.

b. Whether or not the presiding judge adopts the reviewing judge's recommendation, the judge's decision is final and there is no additional right of review or further appeal.

D. Any determination that a voucher should be considered for reduction or reduced under Sections B and/or C, above, does not necessarily constitute a finding of wrongdoing.

X. All information gathered pertaining to a panel member or service provider during any voucher review becomes the property of the United States District Court for the Southern District of California and is to be treated as confidential.

XI. All matters relating to the preauthorization and voucher review process, including all initial and final decisions by the CJA Supervising Attorney, all requests by panel members and service providers for reconsideration or independent review relating to voucher reduction or denial of any request, will be maintained within eVoucher to ensure a transparent account and record of all exchanges between the panel member, service provider, reviewers and the final decision of the Court.

APPENDIX F

BILLING, TIMESHEETS, RECORD KEEPING, AND EXPENSES

I. TIMESHEETS AND RECORDKEEPING

A. Specificity in Timesheets

Actual time billing must be in tenths of an hour. Each entry in the timesheet of the panel member or service provider must reflect discrete individual tasks as to actual time spent. Time spent should not be bundled (except for tasks requiring less than six minutes, as explained below), especially tasks billable to different voucher categories. For example, if in one day counsel spent two hours conducting research, three hours reviewing discovery, 30 minutes on phone calls, and one hour drafting correspondence, counsel must create four separate entries in eVoucher for that day, with each task corresponding to its appropriate category. This requirement also applies to service providers.

B. Information must be provided in detail sufficient to permit meaningful review, without violating the canons of ethics or disclosing client confidences, so that reviewers may determine that the amount sought in the voucher provides fair compensation for the services rendered. In particular:

1. Describe division of work between panel member and associate/contract attorney or any other service provider;

2. Describe witness interviews with sufficient information to distinguish between individuals (*e.g.*, "Witness 1" or "W1" or "Witness A.K.");

3. Identify the person(s) involved in telephone conversations or conferences and general topic of discussion (using descriptors or initials where confidentiality is needed);

4. Generally, describe any issue being researched or drafted; and

5. When preparing or reviewing a court filing, identify the document by name or ECF number;

C. Record and Discovery Review

1. Counsel should include all discovery review and all docket filing review on the voucher.

2. The information should:

   a. Provide specificity by describing the type of discovery review; (transcripts, reports, medical records, photos, audio recordings, etc.);

   b. List bates number ranges or approximate number of pages;

   c. Describe the length of audio or video recordings, as applicable; and

   d. Describe docket entry review in ECF and note docket number.

D. Aggregate Time

Multiple tasks in one day of less than 0.1 hour (six minutes) each (*e.g.*, reviewing ECF documents, reviewing and sending brief emails, leaving phone messages) must be quantified together at no more than the total actual time expended on all tasks.

E. Excess Hours in One Day

If billing more than eight (8) hours in a single day when not in trial, counsel must ensure that sufficient justification is provided to explain the necessity for the excessive time. Without such justification, the voucher may be questioned or rejected with a request to provide additional information.

F. Multiple Vouchers When Representing Multiple Clients

When multiple vouchers are submitted due to representing multiple clients in a given case or proceeding, and when an entry is replicated on multiple claims – for example, pre-disposition preparation, video preparation and depositions, deferred prosecution matters, or CVB matters – the panel member should specify in each voucher whether there were multiple, separate meetings or whether there was one meeting and the total time was split across the various voucher submittal.

G. Delays Outside of the Control of Panel Member or Service Provider

1. Any compensable claims resulting from delay caused by factors outside of the control of the panel member or service provider must be specifically documented.

2. Examples of delays outside of the control of the panel members or service providers include jail processing time, jail lock-downs, court wait times and wait times relating to the production of a defendant or material witness or the arrival of opposing counsel to hearings, interviews or depositions.

3. Voucher time entries must clearly and separately account for such delays.

H. Further guidance regarding specificity for timesheets is provided on the CJA page of the Court's website. When clarification is needed, counsel should consult with the VRS and/or CJA Supervising Attorney regarding the level of specificity required in the supporting documentation.

II. COMPENSABLE AND NON-COMPENSABLE SERVICES

A. Budgeting and Voucher Preparation

Time spent preparing a CJA-20 or CJA-30 (attorney payment voucher in a capital case) is not compensable. Time spent reviewing and certifying expert and service provider vouchers as required by this Plan is compensable, but the act of creating or submitting a CJA-21 or CJA-31 in eVoucher is not. Additionally, time spent preparing a budget, a CJA-26 or an AUTH is compensable because it requires counsel to plan for litigation by preliminarily reviewing records, sorting through discovery, initiating contact with experts and other service providers, and assessing overall case needs.

B. Making Travel Arrangements

Time spent making travel arrangements, whether undertaken by an attorney, paralegal, or other staff member, is not compensable. Time spent preparing a request for travel authorization is compensable.

C. Travel – Appointed Counsel

1. Appointed counsel will be compensated for travel time and expenses reasonably incurred, subject to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations. Counsel should consult with the district's CJA Committee, the VRS, or the Clerk's CJA Supervising Attorney for those regulations.

2. Advance approval by the Court is required in two circumstances: (1) out-of-district travel and (2) overnight travel. When feasible, counsel is expected to perform case-related work while traveling. Counsel should not perform non-CJA-related work while traveling if such travel time is billed to the CJA representation.

D. Travel – Service Providers

1. Unless otherwise provided in this Plan, service providers must be compensated for travel time and expenses reasonably incurred. However, advance approval by the Court is required in these circumstances: (1) out-of-district travel, and (2) overnight travel.

2. Interpreters, as service providers, are also entitled to travel expenses.

    a. However, due to the availability of Spanish speaking interpreters in the El Centro Sector (consult with VRS for list), interpreter/translator travel time to the El Centro Sector is limited to $50 an hour, unless prior approval is obtained. Any rate in excess of the approved hourly range requires a supporting statement establishing the necessity of the higher rate and should be preauthorized as provided in this Plan prior to any travel undertaken.

    b. The USAO and appointed counsel should make every effort to avoid less than 24 hours' notice of a cancelled interpreter appointment. Should that occur, the interpreter may bill for any actual out-of-pocket expenses and for the time required to get to and from the appointment.

E. Negotiating Hourly Rates

Counsel are encouraged to negotiate with service providers, especially higher-cost specialists, for lower hourly rate for travel time. If the service provider bills travel at a reduced rate, time spent performing case-related work while traveling is not "travel time" and should be compensated at the full (i.e., not reduced) hourly rate. Case-related work is work relevant to the responsibilities or duties assigned to the service provider by the panel member.

F. Non-Compensable Administrative Work

1. Filing court documents (CM/ECF);

2. Downloading, reviewing, renaming, saving, printing, or forwarding a Notice of Electronic Filing (NEF) unless NEF is text-only entry unaccompanied by ECF document;

3. Mailing, faxing, copying;

4. Preparing correspondence by either drafting from general instructions or typing in prescribed format;

5. Transcribing dictation, editing and proofreading initial drafts, general word processing;

6. Receiving, screening, and referring telephone and in-person callers;

7. Answering/obtaining general inquiries/information about the attorney's office;

8. Setting up meetings and conferences and informing participants of dates, times, locations, etc., and maintaining office calendar;

9. Setting up and booking travel arrangements for counsel, clients, or expert service providers;

10. Notifying clients of dates and times of court appearances and appointments with counsel, interpreters, and other experts;

11. Opening and closing case files; and

12. Preparing attorney or expert billing.

G. Discovery Organization and Review

1. Preliminary Case Review and Expenditure Plan

   As soon as practical after receiving discovery, panel members are encouraged to consider defense strategy and the anticipated time for services needed from associate/contract counsel, interpreters, investigators, or other service providers and submit a "Preliminary Defense Expenditure Plan" attached to a CJA-26.

2. Complex Cases

   a. After the Court pronounces the criminal case complex and/or the case is determined to involve voluminous discovery, panel member(s), should confer with the Ninth Circuit's CJA Case Managing Attorney (CMA), the CJA Supervising Attorney, or a member of the National Litigation Support Team (NLST) in the Defender Services Office and/or the judge presiding over the case.

   b. In any case where counsel is contracting for discovery-related services in excess of $10,000 or seeking to purchase computer hardware or software in excess of $800, counsel must confer with the CMA or the NLST and CJA Supervising Attorney. CJA Guidelines § 320.70.40(a)(2).

H. Potential High-Cost Cases

At the onset of a case that has the potential for budgeting due to the nature of the case or discovery, the appointed counsel and the United States Attorney should meet and confer about the nature, volume, and mechanics of producing discovery. *See* Fed. R. Crim. P. 16.1. Appointed counsel should then present a preliminary budget detailing an efficient and cost-effective method to process, distribute, and organize discovery. This may include the use of an eDiscovery vendor, case management software, and/or use of paralegals and investigators. If the Court appoints consultants or attorneys skilled in electronic discovery to assist appointed counsel in developing a budget and discovery plan, the time

associated with preparing the budget is compensable and should be included in the panel member's budget.

I. Multi-Defendant Cases

In multi-defendant cases, appointed counsel should meet and confer about the nature, volume, and organization of discovery review. Appointed counsel must make every effort to collaborate and share discovery management resources with co-counsel involved in the case to the extent conflicts can be avoided. Conflicts related to collaborating and sharing discovery resources should be brought to the attention of the district judge and the CMA/NLST and the CJA Supervising Attorney.

J. Discovery Document Budgeting

1. To reduce extraordinary expenses associated with record review of cases with voluminous documents, a two-stage approach should be employed for review of discovery materials. Use of a paralegal is strongly encouraged.

    a. In the first stage, the Court approves a reasonable amount for a paralegal to assess the available materials and prepare an inventory or index, including a general description of each box. Original documents that have potential use as exhibits should be preserved and copies made as needed for the paralegal or attorney to use during substantive review. The paralegal(s) may be supervised by an associate or contract attorney.

    b. In the second stage, counsel should know the types and volume of documents that need careful review (*e.g.*, police reports with handwritten notes) (core materials) and those that may need less detailed attention (non-core materials). Accordingly, counsel should be in a position to prepare a detailed and more accurate budget proposal for review of the core and non-core materials.

    c. The budget may include time for preliminary review and organization of materials by a paralegal, supervising associate,

or contract attorney prior to attorney review.

III. EXPENSES

A. Prior approval of the Court is required for any non-travel, case-related expense in excess of $900, out-of-district or overnight travel, and travel to El Centro by an interpreter.

B. The use of couriers, messengers, and other premium delivery services such as Federal Express, and United Parcel Service is discouraged unless there is a genuine necessity for the service or unless the cost of the premium service does not exceed United States Postal Service express mail rates. Explanations and receipts for all such services are required.

C. Counsel should use the most fiscally responsible method for discovery duplication. In some instances, this will require coordination among co-counsel, a "meet and confer" with the AUSA, or use of an outside vendor.

D. In-house copying is strongly encouraged and is reimbursable at a rate not to exceed fifteen cents ($0.15) per page and twenty-five cents per page for color copies. If in-house duplication is neither feasible nor cost effective, panel members are expected to negotiate the lowest rate possible from an outside vendor. Counsel should utilize the special rates made available to the U.S. Courts by contract.

E. Panel members' office overhead and items or services of a personal nature including but not limited to flat-fee computerized research plans unless itemized by client, land and cellular telephone maintenance fees, books and publications, office supplies and equipment, all costs related to educational seminars, and items of a personal nature (i.e. clothing, haircuts, or meals for the defendant) are non-reimbursable expenses. The cost of use by panel members of computer-assisted legal research (*e.g.*, Westlaw) may be allowed as a reimbursable out-of-pocket expense provided the research pertains to the case and the amount claimed is reasonable and properly documented. Counsel are encouraged to copy relevant material from computer-assisted legal research aids in lieu of extended periods of reviewing and digesting material online.

F. Transcript requests must be submitted on the CJA-24 form. Except during trial, expedited or daily transcripts are discouraged. Transcript orders from magistrate case proceedings (where no court reporter was present) should be

electronically filed in CM/ECF using the Transcript Order Form available on the Court's website. The form should be electronically filed after receipt of notice that the CJA-24 voucher has been approved.

G. Any requests for expedited or daily transcripts must be justified and preapproved by the Court.

H. Non-travel expenses that exceed $50 require receipts that should be attached in the "Documents" tab of a payment voucher in eVoucher; all travel expenses for meals, lodging, and transportation (except mileage) require itemized receipts.

I. As stated elsewhere herein, the services of non-appointed counsel (associate and contract counsel) may not be billed as an expense of the panel member even if the attorney is an employee or partner of the panel member's firm. Contract counsel (non-employee or partner of the panel member) are required to use separate voucher forms (CJA-20 and CJA-30) to bill those services. Such vouchers must be submitted at the same time as the panel member's voucher for the same billing period and be certified by the panel member, as directed by the CJA Supervising Attorney. Compensation for non-appointed counsel is included in the calculation of the case maximum.

IV. Maintaining Records

A. Panel members are responsible for keeping track and must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, contract lawyers, and support staff, as well as expense records. This record-keeping requirement includes all information entered into eVoucher timesheets, provided the information is entered as soon as feasible after performing the work described or based upon contemporaneous notes. These records may be subject to audit and must be retained for at least three years after approval of the final voucher for any appointment.

B. Counsel should advise all investigative, expert, and other service providers that they must maintain contemporaneous time and attendance records for all work billed by them as well as expense records. These records are subject to audit and must be maintained for at least three years after approval of the service provider's or appointed counsel's final voucher, whichever is later.