

GENERAL ORDER NO. 2

CRIMINAL JUSTICE ACT PLAN

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

I. AUTHORITY

The judges of the United States District Court for the Northern District of California adopt this Plan, as approved by the Ninth Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation as required by the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the Guidelines for Administering the CJA and Related Statutes, Volume 7A, Guide to Judiciary Policy (CJA Guidelines).

II. STATEMENT OF POLICY

A. Objectives

The objectives of this Plan are to attain the goal of equal justice under the law by providing all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, to ensure that services are cost-effective without compromising the quality of representation, to promote the independence of the defense function so that the rights of individual defendants are safeguarded and enforced, and to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), CJA Guidelines, Ninth Circuit CJA Policies and Procedures, and Local Rules of the Northern District of California in a way that meets the needs of this district.

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

B. Representational Services

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

C. Panel Administration

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

D. Compliance

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

III. DEFINITIONS

- A. **"Appointed Attorney"** is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the Federal Public Defender, and its staff attorneys.
- B. **"CJA Panel Administrator"** is a person employed by the Federal Public Defender to perform tasks related to the administration of the CJA Panel including case assignments.
- C. **"CJA Supervising Attorney"** is an attorney employed by the Court who oversees the CJA Department, budgeting, and funding of cases, including coordinating CJA attorneys in multi-defendant cases, and voucher review.
- D. **"Panel Attorney District Representative" (PADR)** is a member of the district's CJA Panel who is selected by the Federal Public Defender, with approval from the Chief District Judge, to serve as a representative of the district's CJA Panel for the Defender Services CJA PADR program and local CJA committees.
- E. **"Representation"** includes counsel, service providers (such as paralegals, investigators, or experts), litigation support vendors, and expenses.

IV. ELIGIBILITY FOR CJA REPRESENTATION

A. Subject-Matter Eligibility

1. Mandatory

Representation must be provided for any financially eligible person who:

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modifications sought

is favorable to the probationer and the government has not objected to the proposed change);

- d. is under arrest, when appointed representation is required by law;
- e. is entitled to appointed counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under 18 U.S.C. chapter 313;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence or when an evidentiary hearing is warranted in a non-capital proceeding under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case, and federal law requires the appointment of counsel.

2. Discretionary

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

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence, unless an evidentiary hearing is warranted (see above IV(A)(1)(i));
- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be

subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

- e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States attorney for processing under a pretrial diversion program; or
- g. is held for international extradition under 18 U.S.C. chapter 209.

3. Ancillary Matters

The Court has the discretion to appoint counsel for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the Court should consider whether such representation is reasonably necessary to:

- a. protect a constitutional right;
- b. contribute in some significant way to the defense of the principal criminal charge;
- c. aid in preparation for the trial or disposition of the principal criminal charge;
- d. enforce the terms of a plea agreement in the principal criminal charge;
- e. preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
- f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

- a. Duties of Federal Law Enforcement Officers
 - 1) For the purpose of ensuring that eligible persons have access to counsel as soon as practicable, federal law enforcement

officials must promptly notify, telephonically or electronically, the appropriate court personnel and the Federal Public Defender of an arrest, unless the person has retained counsel.

- 2) Employees of law enforcement agencies may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

b. Duties of United States Attorney's Office

- 1) Upon the return or unsealing of an indictment, the filing of a criminal complaint or information, and where the defendant has not retained counsel, the United States Attorney's Office will promptly notify, telephonically or electronically, appropriate court personnel and the Federal Public Defender.
- 2) Upon issuance of a target letter, and where the individual has not retained counsel, the United States Attorney's Office must promptly notify, telephonically or electronically, the appropriate court personnel and the Federal Public Defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the Federal Public Defender, in which case they must promptly notify the CJA Panel Administrator.
- 3) Employees of the United States Attorney's Office may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

c. Duties of the Federal Public Defender

- 1) In cases in which the Federal Public Defender may be appointed, the office will immediately investigate and determine whether an actual or potential conflict exists and, if so, must promptly notify the CJA Panel Administrator to facilitate the timely appointment of other counsel.
- 2) Whenever practicable, the Federal Public Defender will discuss with the person the right to appointed counsel and arrange to have the matter promptly presented before a judicial officer of this Court to determine financial eligibility and counsel appointment.

d. Duties of Pretrial Services Office

- 1) When counsel has been appointed, the pretrial services officer will provide counsel opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.
- 2) The pretrial services officer will not conduct the pretrial services interview of a financially eligible defendant until counsel has been appointed and given an opportunity to attend the interview.

2. Eligibility Determination

In every case where 18 U.S.C. § 3006A(a) and related statutes authorize appointment of counsel, the Court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, the Court will appoint counsel to represent the person if he or she is financially unable to obtain counsel.

The completed financial eligibility affidavit (Form CJA 23) should reflect relevant information bearing on the person's financial eligibility for appointed counsel.

Determining eligibility for representation under the CJA is a judicial function performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the Court or the Federal Public Defender may be designated to obtain or verify the facts relevant to the financial eligibility determination if the Defender Organization is not available.

3. Standards

In determining whether a person is "financially unable to obtain counsel," the Court should consider the cost of providing the person and the person's dependents with life's necessities, the cost of securing pretrial release, asset encumbrance, and the likely cost to retain counsel.

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

Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected later.

If at any time after appointment appointed counsel has reason to believe that a person is financially able to retain private counsel or make partial payment for the appointed representation, and disclosure would not conflict with counsel's ethical duties, counsel will advise the Court.

If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to retain private counsel or make partial payment for the appointed representation, the judge may terminate the counsel appointment or direct the defendant to pay available funds as provided in 18 U.S.C. § 3006A(f).

If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel will be appointed in accordance with the general provisions set forth in this Plan.

If at any stage of the proceedings a judge finds that a pro se or privately represented person is not financially able to pay other representation costs, including investigative, expert, or other services, funding may be authorized for those costs in accordance with the general provisions set forth in this Plan.

V. TIMELY APPOINTMENT OF COUNSEL

- A.** Eligible persons must receive appointed counsel as soon as feasible. This means as soon as possible after receiving a target letter, after being taken into custody, upon appearing before a judicial officer, when formally charged, when notified of charges if formal charges are sealed, or when a judicial officer otherwise determines appointed counsel is appropriate under the CJA or this Plan, whichever occurs earliest.
- B.** Financially eligible persons will be provided appointed counsel prior to being interviewed by a pretrial services officer. The Federal Public Defender will maintain a schedule of "on call" or "duty day" attorneys, who are employees of the Federal Public Defender, to advise persons who are in custody, or who otherwise may be entitled to counsel under the CJA, during the pretrial services interview process.
- C.** Appointment of counsel may be made retroactive to include representation provided prior to appointment.

VI. FEDERAL PUBLIC DEFENDER OF THE NORTHERN DISTRICT OF CALIFORNIA

A. Establishment

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

B. Staff Supervision and Case Workload

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

C. Standards and Professional Conduct

The Federal Public Defender must provide high-quality representation consistent with the best practices of the legal profession. The Federal Public 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 and other standards for professional conduct adopted by the Court.

D. Private Practice of Law

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

E. Panel Attorney Training

In coordination with the PADR, CJA Supervising Attorney, and the CJA Administration Committee, the Federal Public Defender will assess the training needs of the CJA Panel and provide regularly scheduled training opportunities and other educational resources that include updates regarding substantive law, sharing best practices in federal criminal defense, and presentations on courtroom and office technology.

VII. CJA ADMINISTRATION COMMITTEE

A. Establishment

The CJA Administration Committee has been established by the Court in consultation with the Federal Public Defender to assist the Court in administering the Act and will promulgate regulations necessary to implement this Plan including the selection, oversight, and management

of CJA Panel members. The CJA Administration Committee Chair may establish subcommittees both standing and ad hoc, that include non-members that have the necessary expertise and qualifications to address specific CJA related issues such as recruiting panel members, training, mentoring, reviewing complaints, and reviewing voucher reductions.

B. Composition

At a minimum, the CJA Administration Committee must consist of:

1. the Chair, appointed by the Chief Judge;
2. three District Judges with one from each of the San Francisco, Oakland, and San Jose divisions;
3. two Magistrate Judges;
4. the Federal Public Defender or delegate, who will be a permanent member of the CJA Administration Committee;
5. the district's current PADR or delegate, who will be a permanent member of the CJA Administration Committee;
6. the district's CJA Supervising Attorney, who will be a permanent member of the CJA Administration Committee;
7. three experienced criminal defense attorneys with prior panel experience; and
8. the Clerk or designee thereof who will act as administrative coordinator.

C. Terms

Court members of the CJA Administration Committee who are judicial officers serve at the pleasure of the Chief Judge. Except for the Federal Public Defender, PADR, CJA Supervisory Attorney, and ex officio administrator, members will serve for three years and may be extended for one additional three-year term. Terms will be staggered to ensure continuity on the CJA Administration Committee and rotation of members. Vacancies will be filled upon recommendation of the Chair, with input from the Federal Public Defender, PADR, and the CJA Supervising Attorney, and upon approval by the Chief District Judge.

D. Diversity

The CJA Administration Committee will ensure the creation of a diverse panel.

E. Meeting Requirement

The CJA Administration Committee will meet at least once a year and at any time the Court or a committee member asks the committee to consider an issue.

F. Training

The CJA Administration Committee will assist the Federal Public Defender in devising and presenting training programs for the CJA Panel.

G. Quorum

Six members shall constitute a quorum.

H. Annual Report

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

I. CJA Panel Membership

There shall be four panel selection subcommittees to select members for the San Francisco/Oakland, San Jose, Appellate, and Eureka Panels. The Chairs of each committee shall be selected by the Chair of the CJA Administration Committee in consultation with the Chief Judge.

J. Recruitment

The CJA Panel Selection Committees will strive to create and maintain a diverse CJA Panel of the highest caliber federal criminal defense practitioners. In conjunction with a mentoring program, the Committee will devise a recruitment strategy that identifies and trains a diverse set of viable panel applicants.

K. Panel Selection Committees

1. San Francisco/Oakland and San Jose Panel Selection Subcommittees

The Chair of the CJA Administration Committee shall select a District Judge member of each panel selection subcommittee, who shall select the Magistrate Judge and attorney members of his or her panel selection subcommittee, subject to approval by the Chair of the CJA Administration Committee. The trial panel selection subcommittees shall consist of at least one District Judge, one Magistrate Judge, two experienced criminal attorneys with prior

panel experience, the Federal Public Defender and/or a designee, the CJA Supervising Attorney, and the current CJA Panel Attorney District Representative. With the exception of the Federal Public Defender, members of each panel selection subcommittee shall have their chambers or principal place of business in the geographic area served by that subcommittee.

2. Appellate Panel Selection Subcommittee

The Chair of the CJA Administration Committee shall select a District Judge member of the Appeals Selection Subcommittee, who shall select the Magistrate Judge and attorney members of his or her panel selection subcommittee, subject to approval by the Chair of the CJA Administration Committee. The Appellate Selection Subcommittee shall consist of at least one District Judge, one Magistrate Judge, two experienced criminal attorneys with prior panel and appellate experience and the Federal Public Defender and/or a designee.

3. Eureka Panel Selection Subcommittee

This subcommittee shall consist of the resident Magistrate Judge in conjunction with the Chair of the CJA Administration Committee and the Federal Defender or a designee.

4. Meetings

The panel selection subcommittees shall annually review attorney applications and recommend attorneys for appointment to the panel.

5. Terms

Each non-judicial member of the Panel Selection Subcommittees, except ex officio members, shall serve a three-year term and may be reappointed by the Chair of the CJA Administration Committee for one successive term.

6. Process of Selecting Panel Attorneys

The four panel selection subcommittees shall select panel attorneys based on their proven experience and competence in the field of criminal defense, proof that they meet the minimum requirement as set forth in this Plan, and their willingness to serve indigent defendants. The panel selection subcommittees will present their appointment recommendations to the Chair of the CJA Administration Committee, who will present them to a quorum of the CJA Administration Committee for approval, after which the Chair of the CJA Administration Committee will present the list of

the recommended panel attorneys to the Chief Judge for final approval.

7. Additional Panel Selection Subcommittee Responsibilities

At least annually, the panel selection subcommittees shall (a) review the operation and administration of their panels over the preceding year and make recommendations to the CJA Administration Committee regarding the selection, recommendation and appointment process, and panel management, and (b) determine the continued availability and willingness of each panel member to accept appointments.

VIII. CJA PANEL MEMBERSHIP

A. Establishment

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

B. Size

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

C. Qualifications and Membership

1. Equal Opportunity.

All qualified attorneys are encouraged to apply for CJA Panel membership.

2. Application.

Application forms for CJA Panel membership are available from the Federal Public Defender during the annual application time period.

3. Eligibility

a. General Qualifications:

CJA Panel applicants must have the following general qualifications:

- 1) be members in good standing of the State Bar of California, federal bar of this district, and the Ninth Circuit Court of Appeals;
- 2) except for capital habeas panel members, maintain a primary, satellite, or shared office in the specific court Division of the District for the applicable panel at the time the attorney submits an application for the panel membership and during the entire term of membership;
- 3) possess strong litigation and writing skills;
- 4) demonstrate proficiency with the Bail Reform Act, Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, United States Sentencing Guidelines, federal sentencing procedures, and this District's Local Rules;
- 5) have the training and ability to manage and effectively utilize electronic case presentation equipment and software in the courtroom and manage electronic discovery;
- 6) have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

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

b. CJA Trial Panels.

Trial Panel memberships are divided into two specialized panels.

- 1) "Tier One" made up of the most experienced panel members eligible for appointment in all cases, including the most complex and difficult cases;

- 2) "Tier Two" members are eligible for appointment in the following types of cases:
 - (a) 18 U.S.C. § 922(g) cases;
 - (b) 21 U.S.C. § 841 cases that do not involve mandatory minimum sentences alleged in the initial indictment, conspiracy allegations, wiretaps, or weapons; and
 - (c) Other less serious cases identified as appropriate by the Federal Public Defender or the defender's legal staff.

c. Minimum Relevant Professional Experience

All panel members must be of good standing in the State Bar of California and have their primary place of business in the Northern District of California.

- 1) Trial Panel Membership Tier One: At a minimum, counsel must have five years of continuous private federal criminal practice, or seven years of criminal practice in state or federal court, or three years of experience as an Assistant United States Attorney or Assistant Federal Public Defender; and five federal or state felony jury trials. Two of the required trials may be replaced with equivalent experience such as unusually complex matters which are settled short of trial, criminal appeals which require unusual knowledge or effort, or substantial civil jury trials.
- 2) Any applicant who has not tried two federal felony jury trials must audit two cases from start to finish pursuant to the mentor program established under the Plan. Successful completion of the mentor program will satisfy the requirements necessary to serve on a trial panel, but it does not guarantee admission. This audit shall include watching at least one federal felony jury trial.
- 3) Trial Panel Membership Tier Two: At a minimum, counsel must have five years of continuous criminal practice and three felony jury trials in either state or federal court. Tier Two panel members have the ability to apply for the Tier One panel after two years.
- 4) Appellate Panel Membership: Ten federal or state felony appeals or combination thereof, or substantial relevant experience such as complex criminal motion and

trial work, habeas corpus proceedings, or judicial clerkships.

- 5) Members of the San Francisco/Oakland Trial Panels must be willing to take cases in either venue.
- 6) Such additional qualifications as may be established by the CJA Administration Committee.

D. Term Limits for Panel Attorneys

Each panel member will serve for a three-year term. A panel member's term will continue until the conclusion of any active representation under this Plan, but no new appointments will be offered. Subject to the provisions of this Plan, members of the panels shall serve at the pleasure of the Court.

E. Re-Appointment and Re-application

1. In considering the re-appointment of CJA Panel members, the CJA Panel Committee may:
 - a. solicit input from the legal community and the Court concerning the quality of representation provided by attorneys seeking reappointment;
 - b. request a personal interview with the CJA Panel member; and
 - c. consider the number of cases the CJA Panel member accepted and declined during the review period, the member's participation in training opportunities, whether the member continues to meet this Plan's technology and facilities requirements, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members or applicants as set forth in this Plan.
2. The CJA Panel Administrator will notify CJA Panel members, within 3 months prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel and will set forth the procedures and deadlines for reapplying.

F. Leaves of Absence

A panel member may take a leave of absence not to exceed three months without being required to resign from the panel, which can be initiated by the panel member sending a letter to the CJA Supervising Attorney. The leave of absence will not extend the panel attorney's term. The CJA Administration Committee may permit longer leave periods if justified.

IX. CJA PANEL MEMBER DUTIES

A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the legal profession's best practices. CJA Panel attorneys will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations and the ABA's Criminal Justice Standards for the Defense Function.
2. Attorneys appointed under the CJA must conform to the highest standard of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and all other standards for professional conduct adopted by the Court.
3. CJA Panel members must immediately notify the Federal Public Defender, in writing, if they are disbarred, suspended, sanctioned, or reprimanded by any licensing authority, grievance committee, or administrative body. CJA Panel members must also notify the Federal Public Defender in writing, within 30 days, if they are sanctioned or found in contempt by any state or federal court judge.

B. Training and Continuing Legal Education

1. CJA Panel attorneys are expected to remain current with developments in federal criminal defense law, practice, and procedure, including electronic discovery techniques.
2. CJA panel members are encouraged to annually attend CLE or federal criminal practice training, hosted by the Office of the Federal Public Defender, the Defender Services Office, or by the Court. Participation in federal criminal practice trainings will be considered during the panel application process.
3. The effective defense of indigent federal criminal defendants requires counsel to remain current with developments in case law, forensics, ethics, and other related fields.

C. Facilities and Technology Requirements

1. CJA panel attorneys must have the facilities, resources, and technological capability to effectively and efficiently manage assigned cases, including the availability of office space to meet with clients and the technological resources to receive, review, organize, and otherwise manage electronic discovery and records.

2. CJA panel attorneys must know and comply with the requirements of electronic filing and eVoucher, including how to submit requests for investigative, expert, and other services.
3. CJA panel attorneys shall maintain competence with technology including using email, word processing, spreadsheets, keyword searching tools, and application to open ZIP files, and creating searchable PDF documents.

X. MENTOR PROGRAM

The Federal Public Defender shall administer this program. If requested by the Federal Public Defender, the trial panel member is encouraged to serve as a mentor to a non-panel attorney (“mentee”) who has not tried two federal criminal jury trials. The mentor shall provide an opportunity for the mentee to audit all aspects of a federal criminal case, including client conferences, strategy determination, motion and trial preparation, and court appearances, and the mentee shall be part of the defense team for the purposes of creating duties of loyalty and confidentiality owed to the client. To complete the requirements of the program, mentees need to audit two federal criminal cases from start to finish including at least one jury trial and two of each of the following: arraignment, detention hearing, motion hearing, and sentencing.

XI. COUNSEL APPOINTMENT IN NON-CAPITAL CASES

A. Apportionment of Cases

CJA Panel attorneys will be appointed in a sufficient number of cases per year so that attorneys remain proficient in criminal defense work.

B. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be unusual or complex or to otherwise involve exceptional circumstances. Separate from the formal appointment of counsel, particularly in cases involving trials or evidentiary hearings, the Court welcomes and will consider seriously requests by appointed counsel to associate junior counsel. Panel members should propose associate counsel who they are willing to mentor and train specifically as future panel members and are encouraged to identify associate lawyers, especially those from diverse backgrounds and those with fewer years of experience as federal lawyers.

C. Appointment List

The CJA Panel Administrator will maintain a current list of all CJA Panel attorneys, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

D. Appointment Procedure

The Federal Public Defender is responsible for overseeing the appointment of cases to panel attorneys. The Federal Public Defender will maintain a record of panel attorney appointments and data reflecting the proportion of appointments among the CJA Panel and the Federal Public Defender. If the Federal Public Defender cannot accept an appointment, the CJA Panel Administrator shall refer a panel attorney for the Court's appointment.

1. Appointment of cases to CJA panel members will ordinarily be made on a strict rotational basis. Exceptions are allowed only when the representation calls for a specialization or demand.
2. Under special circumstances, the Court may appoint an attorney who is not a member of the District's CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of an attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. Other circumstances may include large multi-defendant cases for which there is an insufficient number of CJA Panel attorneys in the District. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Administration Panel Committee.

E. Continuing Representation

1. Once counsel is appointed under the CJA, counsel will continue the representation until:
 - a. the matter is closed, including conclusion of any appellate or certiorari proceedings;
 - b. substitute counsel has filed a notice of appearance;
 - c. an order is entered allowing the client to proceed pro se; or
 - d. the appointment is otherwise terminated by Court order.
2. If trial counsel prefers to withdraw in favor of new counsel on appeal, trial counsel will first file the notice of appeal in the district court to preserve the client's right to appeal and then move to withdraw in the Court of Appeals, asking for appointment of substitute counsel.

XII. REMOVAL FROM THE PANEL

A. Mandatory Removal

Any attorney whose right to practice in this District or the State of California has been suspended or revoked shall be automatically removed from the panel.

B. Discretionary Removal

For good cause shown, the CJA Administration Committee may remove an attorney from the panel for engaging in unethical behavior, improper billing, or misconduct or for failing to represent his or her client in a vigorous, competent, professional, or ethical way.

C. Removal Procedure

1. Filing a Complaint

Any person who believes that a panel member's conduct should be investigated may file a complaint addressed to the Chair of the CJA Administration Committee and delivered to the CJA Unit in a sealed envelope marked "confidential." A complaint should be made as soon as possible after the event arises so that fair consideration of the facts is possible; a complaint is subject to dismissal when the passage of time has rendered adequate investigation impracticable. A complaint must meet the following requirements:

- a. The complaint may be in letter format, not to exceed five typewritten or legible handwritten pages, and it must contain a thorough statement of what occurred, the time and place of the occurrence(s), and any other information that would assist investigation, such as the presence of witnesses and their names and contact information.
- b. Supporting documentation should be attached.
- c. The complaint must be signed, and the complainant's address and daytime phone provided. Anonymous complaints are disfavored; it is within the discretion of the CJA Administrative Committee to decide whether an anonymous complaint merits further investigation.

2. Investigating a Complaint

Within 21 days of receipt of the complaint, the Chair of the CJA Administration Committee shall determine whether the complaint should be investigated and forward this recommendation to the other committee members. If the other members agree with the

Chair's determination, the Chair shall provide a copy of the complaint to the panel member who is the subject of the complaint and request that the panel member, within 14 days, submit a written response by letter addressed to the Chair. The CJA Administration Committee may undertake any investigation necessary to resolve the matter or may appoint a subcommittee to do so. The investigation may include interviewing the complainant, the panel attorney and witnesses. The CJA Administration Committee will provide the results of this investigation to the panel attorney and provide that attorney with an opportunity to respond.

3. Investigating a Complaint Involving Allegations of Criminal Activity

If the complaint alleges criminal activity, the CJA Administration Committee is not required to notify the panel attorney of the complaint if disclosure could jeopardize the investigation.

4. Bases for Automatic Dismissal of the Complaint

Within 21 days of receipt of the complaint, the Chair of the CJA Administration Committee shall automatically dismiss the complaint without further action if:

- a. It alleges activities that can no longer be adequately investigated because of the passage of time;
- b. It lacks sufficient detail; or
- c. The allegations are clearly frivolous or untrue.

When a complaint is dismissed for any of these reasons, the subject panel member shall receive a copy of the complaint with a written statement of dismissal from the Chair of the CJA Administration Committee.

5. Final Determination by CJA Administration Committee

Within 90 days of receipt of a complaint, the CJA Administration Committee will dismiss a complaint if the allegations are found to be untrue or, if true, insufficiently serious to warrant removal from the panel. The CJA Administration Committee may impose other sanctions short of removal, such as censure, a term of probation, or any other sanction it deems appropriate under the circumstances. If the CJA Administration Committee finds the allegations to be true and warranting removal, the Chair will notify the panel member of his/her removal from the panel. A notice of removal should occur no more than 90 days from the date the complainant filed the

complaint, although the Chair of the CJA Administration Committee may extend this deadline for good cause.

6. Reapplication to the Panel Following Removal

Any member who is removed from the panel, whether for mandatory or discretionary reasons, may reapply for panel membership after waiting one year from the date of removal.

7. Miscellany

The original complaint and all papers, records and reports will be kept in confidential files by the Clerk of the Court.

The Chair of the CJA Administration Committee may extend a deadline for good cause shown.

The entire complaint process shall remain confidential until the Chair of the Administration Committee

- a. formally dismisses the complaint, or
- b. formally removes the attorney from the panel.

These procedures are not meant to preclude remedies available through malpractice or negligence suits arising from the provision of representational services.

If the CJA Administration Committee finds the allegations to be true and warranting removal from the panel, the Chair may, after consultation with the Chief Judge, refer the matter to the Court's Standing Committee on Professional Conduct.

XIII. SPECIAL PROVISIONS FOR CAPITAL CASES

A. Capital Cases

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

B. Applicable Legal Authority

The appointment and compensation of counsel in capital cases and the authorization and payment of persons providing investigative, expert,

and other services are governed by 18 U.S.C. §§ 3005, 3006A, and 3599; CJA Guidelines, Ch. 6; and General Order 50.

C. Counsel Qualifications

1. In addition to the requirements for Panel membership set out in Section VIII of this Plan, counsel appointed in capital cases to represent financially-eligible persons will meet the statutory requirements set out in 18 U.S.C. §§ 3005 and 3599(b)-(d) as expanded upon below, as well as any applicable circuit rules.
2. All attorneys appointed in capital cases must (1) be well qualified as demonstrated by their training, commitment to the defense of capital cases, and distinguished prior criminal defense experience at the relevant stage of the proceeding; (2) have sufficient time and resources to devote to the representation, considering their current caseload and the extraordinary demands of a capital case; (3) meet all applicable guidelines adopted by the American Bar Association concerning representation of persons in death penalty cases; and (4) consult regularly with the appropriate Death Penalty Resource Counsel project available through the Defender Services division of the Administrative Office of the United States Courts.
3. In trial-level capital cases requiring the appointment of “learned counsel,” such counsel must meet the minimum standards in 18 U.S.C. §§ 3005 and 3599(b) or (d). Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal or state death-penalty cases that, in combination with co-counsel, will assure high-quality representation. “Distinguished prior experience” contemplates excellence, not simply prior experience.
4. In direct appeals and post-conviction proceedings under 18 U.S.C. §§ 2254 or 2255, appointed counsel must meet the minimum standards required by 18 U.S.C. § 3599(c) or (d) and should have distinguished prior experience in federal criminal appeals, capital appeals, federal post-conviction proceedings, or capital post-conviction proceedings.
5. Out-of-district counsel, including Defender Organization staff, who possess the requisite expertise may be considered for appointment in capital cases to achieve high-quality representation.
6. An attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal capital habeas corpus relief may be appointed if the

attorney is fully qualified. This appointment may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. (See 18 U.S.C. § 3006A(a)(3).)

D. Appointment of Counsel

1. Pre-Trial

No later than when a defendant receives a target letter alleging the commission of a capital offense or is charged with a federal criminal offense where the statute authorizes the death penalty, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel.” If necessary, for adequate representation, more than two attorneys may be appointed. Consistent with Section V.A of this Plan, the Court may appoint capably qualified counsel for an individual that, although uncharged, is the subject of an investigation in a federal death-eligible case. When appointing counsel, the judge must consider the recommendation of the Federal Public Defender who will consult with Death Penalty Resource Counsel to recommend qualified counsel.

2. Direct Appeals

Counsel representing a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal. When appointing counsel, the Court must consider the recommendation of the Federal Public Defender who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.

3. Post-Conviction Proceedings

In any post-conviction proceeding under 18 U.S.C. §§ 2255 or 2254, the Court must appoint at least one qualified attorney and may consider appointing at least two given the complex, demanding, and protracted nature of death penalty proceedings. When appointing counsel, the Court should consider the recommendation of the Federal Public Defender, who will consult with the appropriate Resource Counsel project to recommend qualified counsel. For § 2255 proceedings, appointment should take place, if possible, prior to denial of certiorari on direct appeal by the United States Supreme Court. For § 2254 proceedings, appointment should take place at the earliest time permissible by law to permit federal

counsel to avail themselves of the full statute-of-limitations period to prepare a petition.

E. Case Budgeting and Resources

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

XIV. EFFECTIVE DATE

This plan shall take effect when approved by the Judges of the Northern District of California and the Judicial Council of the Ninth Circuit.

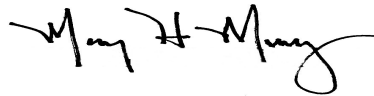
DATED: January 3, 1973

AMENDED: February 24, 2000
December 20, 2011
June 16, 2015
January 22, 2020
September 23, 2022



CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**FOR THE COURT FOR THE JUDICIAL
COUNCIL OF THE NINTH CIRCUIT:**



Dated: December 5, 2022

CHIEF JUDGE
NINTH CIRCUIT COURT OF APPEALS