

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**



**PLAN FOR IMPLEMENTATION AND ADMINISTRATION  
OF THE CRIMINAL JUSTICE ACT**

October 21, 2020

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## **I. AUTHORITY**

The judges of the United States District Court for the District of Nevada (“the District Court”) adopt this Plan for Implementation and Administration of the Criminal Justice Act (“the Plan”), as approved by the Judicial Council of the Ninth Circuit, for furnishing representation 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:

1. 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;
2. Ensure that services are cost effective without compromising the quality of representation;
3. Promote the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
4. 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 District of Nevada in a way that meets the needs of this district.

This Plan must be administered so that those accused of a crime or those who are 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 Office of the Federal Public Defender for the District of Nevada (“FPDO”) and for the appointment and compensation of private attorneys from an approved panel

list (“CJA Panel”) and other private attorneys in limited circumstances, in cases authorized under the CJA and related statutes.

**C. Panel Administration**

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the Federal Public Defender for the District of Nevada (“FPD”). The District Court further authorizes a CJA Standing Committee comprised of judges of the District Court, with representation from the unofficial southern and northern divisions, to oversee and assist the FPD in the administration of the CJA Panel in conformity with the roles and responsibilities described herein.

**D. Compliance**

The District Court, its clerk, the FPD, attorneys provided by a bar association or legal-aid agency, private attorneys appointed under the CJA, and the United States 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 District Court will ensure that a current copy of the CJA Plan is made available on the District Court’s and the FPDO’s websites 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 FPD, staff attorneys of the FPDO, and attorneys provided by a bar association or legal-aid agency.
- B. “CJA Panel Attorney” or “panel attorney”** is a private attorney appointed under this Plan who provides representation for financially eligible individuals who are not represented by the FPDO.
- C. “CJA Panel Committee”** is a committee established by this Plan that consists of the FPD or delegate; the PADR or delegate; CJA Resource Counsel; two criminal-defense attorneys from the unofficial northern division and two from the unofficial southern division, with at least one from each division being a member of the CJA Panel; and an ex officio staff member employed by the FPDO.

- D. **“CJA Resource Counsel”** are attorneys employed by the FPDO who have been designated by the FPD to administer the CJA Panel.
- E. **“CJA Standing Committee”** is comprised of three judges with representation from the unofficial southern and northern divisions of the District Court. Members of this committee are selected by the Chief District Judge.
- F. **“FPD CJA Unit”** consists of CJA Resource Counsel and such other individuals identified by the FPD to assist with the administration of the CJA Panel.
- G. **“Panel Attorney District Representative”** or **“PADR”** is a member of the CJA Panel who has been selected by the FPD, with approval from the Chief District Judge, to serve as a representative of the CJA Panel and for the Defender Services CJA PADR program and local CJA committees.
- H. **“Representation”** includes legal services provided by counsel, legal support staff (such as paralegals, investigators, or experts), litigation-support vendors, and the expenses arising from the provision of legal services.

#### IV. ELIGIBILITY FOR CJA REPRESENTATION

##### A. Subject-Matter Eligibility

1. Mandatory. Representation must be provided for any financially eligible person who meets at least one of the following criteria:
  - a. Charged with a felony or Class A misdemeanor;
  - b. Juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
  - c. Charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - d. Under arrest, when appointed representation is required by law;

- e. Entitled to appointed counsel in parole proceedings;
  - f. 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. Subject to a mental-condition hearing under 18 U.S.C. chapter 313;
  - h. In custody as a material witness;
  - i. Seeks to set aside or vacate a sentence of death, or when an evidentiary hearing is warranted in a non-capital proceeding under 28 U.S.C. § 2254 or § 2255;
  - j. Entitled to appointed counsel in verification-of-consent proceedings in connection with a transfer of an offender to or from the United States for execution of a penal sentence under 18 U.S.C. § 4109;
  - k. Entitled to appointment of counsel under the Sixth Amendment to the Constitution;
  - l. Faces loss of liberty in a case and federal law requires the appointment of counsel; or
  - m. Charged with a petty offense (Class B or C misdemeanor, or an infraction) that is proceeding to trial.
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 meets at least one of the following criteria:
- a. Charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence of confinement is authorized;
  - b. Seeks relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;

- c. Charged with civil or criminal contempt and faces loss of liberty;
  - d. Called as a witness before a grand jury, a federal court, Congress, or a federal agency or commission that 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 criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
  - e. Advised by the United States Attorney or a law-enforcement officer that the person is the target of a grand jury investigation;
  - f. Proposed by the United States Attorney for processing under a pretrial-diversion program;
  - g. Held for international extradition under 18 U.S.C. chapter 209; or;
  - h. May be eligible for early release or sentence reduction as a result of newly enacted federal law.
3. Ancillary Matters. The court has discretion to appoint counsel for financially eligible persons in ancillary matters appropriate to 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 proceedings under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, when the 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 that 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 Individual for Financial Eligibility Determination

#### a. Duties of Appointed Attorney

- (1) When an individual may be eligible for or seeks representation under the CJA, the FPDO will immediately investigate and determine whether an actual or potential conflict exists as to its representation of this individual and, if so, will promptly notify the FPD CJA Unit to facilitate the timely appointment of a panel attorney.
- (2) Whenever practicable, the appointed attorney will discuss with the person the right to appointed counsel, assist with completion of a financial affidavit (Form CJA 23), and arrange to have the matter promptly presented before a judicial officer of the District Court (“the court”) to determine financial eligibility and counsel appointment.

#### b. Duties of the United States Pretrial Services Office

- (1) When counsel has been assigned by the FPD CJA Unit, the United States Pretrial Services officer will provide counsel with notice and a reasonable opportunity to attend any interview of the individual by the United States Pretrial Services officer prior to the initial pretrial release or detention hearing.

- (2) The duties of the United States Pretrial Services officer will be consistent with the District Court's general orders and the Memo of Understanding between the United States Pretrial Services Office and the FPDO.
- (3) If counsel does not contact the United States Pretrial Services officer after notice and a reasonable opportunity to do so, the United States Pretrial Services officer may contact the individual and, consistent with the United States Pretrial Services Office's policy and practice, read to the individual notice of the right to have counsel present during the interview, and will terminate the interview if the individual asks for counsel to be present.

## 2. Eligibility Determination

- a. In every case in which 18 U.S.C. § 3006A(a) and related statutes authorize the appointment of counsel, the court must advise the person of the right to be represented by counsel throughout the case and that, if so desired, the court will appoint counsel if the person is financially unable to obtain counsel.
- b. The completed financial eligibility affidavit (Form CJA 23) must reflect relevant information bearing on the person's financial eligibility for appointed counsel.
- c. Determining eligibility for representation under the CJA is a judicial function performed after making appropriate inquiries into the person's financial eligibility and the standards set forth in Section 3 below.

## 3. Standards

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

- b. The initial eligibility determination must be made without regard to the financial ability of the person's family to retain counsel.
- c. Any doubts about a person's eligibility should be resolved in favor of eligibility.
- d. If, at any time after appointment, appointed counsel has reason to believe that a person is financially able to retain private counsel or make partial payment for the appointed representation, and the source of counsel's information is not protected as a privileged communication, counsel must so advise the court unless such disclosure will negatively affect the person's representation.
- e. If, at any time after the appointment of counsel, the court finds that a person who is represented by appointed counsel is financially able to retain private counsel or make partial payment for the appointed representation, the court may terminate the appointment or direct the represented person to pay available funds as provided in 18 U.S.C. § 3006A(f).
- f. If, at any stage of the proceedings, the court finds that a person is no longer financially able to pay retained counsel, the court must appoint counsel in accordance with this Plan.
- g. If, at any stage of the proceedings, the court 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 this Plan and the procedures set forth in the Federal Public Defender's CJA Policies and Procedures Manual ("the CJA Manual").

## **V. TIMELY APPOINTMENT OF COUNSEL**

Eligible persons must receive appointed counsel as soon as practicable, which 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 that appointed counsel is appropriate under the CJA or this Plan, whichever occurs earliest.

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

## **VI. FEDERAL PUBLIC DEFENDER**

### **A. Establishment**

The FPDO is established in this district under the CJA and is responsible for representation of all individuals throughout the district who are eligible for appointed counsel and for whom representation presents no conflict.

### **B. Staff Supervision and Case Workload**

The FPD will be appointed in all cases assigned to the FPDO for subsequent assignment to staff attorneys at the FPD's discretion. The FPD will continually monitor staff workloads to ensure high-quality representation for all clients.

### **C. Standards and Professional Conduct**

The FPDO must provide high-quality representation consistent with the best practices of the legal profession. The FPDO must conform to the highest standards of professional conduct, including the Federal Public Defender Code of Conduct.

### **D. Panel Attorney Training**

In coordination with the PADR and the CJA Panel Committee, the FPD will assess the training needs of the CJA Panel and provide regularly scheduled training opportunities and other educational resources that include but are not limited to updates regarding substantive law, sharing best practices in federal criminal-defense, and presentations on courtroom and office technology. The FPDO will publish on its website the opportunities for continuing legal education that are provided by the FPDO.

### **E. Voucher Review**

The FPDO will assist the District Court in ensuring compliance with mandated billing guidelines and accurate record keeping, assessing the reasonableness of vouchers and individual time entries, and providing due

process and fairness in voucher review. With approval of the CJA Standing Committee, the FPDO will publish on its website the policies and procedures for independent review of panel attorney and service provider voucher reductions and case-funding denials.

## **VII. CJA PANEL COMMITTEE**

### **A. Establishment**

A CJA Panel Committee will be established by the FPD, in consultation with the CJA Standing Committee, to assist the CJA Standing Committee in the selection, oversight, and management of panel attorneys. The FPD will determine the CJA Panel Committee's manner of operation.

The CJA Panel Committee will establish subcommittees that may include nonmembers of the CJA Panel to address specific CJA-related issues such as recruiting panel attorneys, training, mentoring, resolving complaints, and reviewing vouchers and case-funding denials or reductions.

### **B. Authority**

The District Court delegates to the CJA Panel Committee the authority to oversee the selection and renewal process for attorneys on the CJA Panel consistent with this Plan.

The District Court delegates to the CJA Panel Committee the authority to manage the conduct or performance of attorneys on the CJA Panel consistent with this Plan. The CJA Standing Committee retains final authority to address the performance and conduct of CJA Panel Attorneys.

### **C. Composition**

1. At a minimum, the CJA Panel Committee will consist of the following members:
  - a. FPD or FPD delegate as a permanent member, who will chair the Committee and represent it to the CJA Standing Committee;
  - b. PADR or PADR delegate as a permanent member;
  - c. CJA Resource Counsel as permanent members;

- d. Two criminal-defense attorneys from the unofficial northern division and two from the unofficial southern division of the District Court, with at least one from each division being a member of the CJA Panel; and
  - e. An ex officio staff member employed by the FPDO who will act as administrative coordinator.
2. Members of the CJA Panel Committee who have a conflict of interest must recuse themselves from participation.
  3. Except for the FPD, PADR, CJA Resource Counsel, and the ex officio administrator, CJA Panel Committee 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 Panel Committee and rotation of members. Vacancies will be filled upon recommendation by a majority vote of the remaining committee members and approval by the CJA Standing Committee.
  4. The CJA Panel Committee will strive to maintain a diverse committee membership.
  5. The CJA Panel Committee will meet at least twice per year and at any time the District Court or a committee member asks the committee to consider an issue.

**D. Duties**

1. CJA Panel Membership. The CJA Panel Committee will examine applications for appointment or reappointment to the CJA Panel and recommend to the District Court, through its CJA Standing Committee, approval of those attorneys deemed qualified to serve on the CJA Panel. The committee will also recommend removal of any panel attorney who fails to satisfy the membership requirements, including failing to provide high-quality representation or engaging in conduct that would render continued panel service inappropriate.
2. Recruitment. The CJA Panel Committee will strive to create and maintain a diverse CJA Panel of the highest caliber federal criminal-defense practitioners. The committee will devise a recruitment strategy to identify and train a diverse set of viable panel applicants.

3. Mentoring. The CJA Panel Committee will create and administer a mentoring program as determined by the needs of the CJA Plan to help prepare viable panel candidates by pairing experienced practitioners with attorneys new to federal criminal practice. Mentoring program participants will be compensated to the extent possible and as deemed appropriate by the CJA Standing Committee.
4. Training. With the approval of the CJA Standing Committee, the CJA Panel Committee will establish the type and number of hours of continuing education required of panel attorneys at least once every three years. Continuing-education requirements approved by the CJA Standing Committee will be published on the FPDO's website.
5. Annual Report. Annually, the CJA Panel Committee will review operation and administration of the CJA Panel for the preceding year and provide a report to the CJA Standing Committee. The report will describe the number of cases assigned to panel attorneys and the distribution of those cases, efforts to recruit qualified and diverse attorneys, any proposed changes to panel size, any recurring issues or difficulties that panel attorneys or their clients encounter, and any other operating difficulties, along with recommendations for appropriate changes.

## **VIII. CJA PANEL MEMBERSHIP**

### **A. Establishment**

The existing, previously established panels of attorneys who are eligible and willing to be appointed to provide representation under the CJA are hereby recognized. Nothing in this Plan creates a property interest in CJA Panel membership.

### **B. Size**

The size of the CJA Panel will be determined by the CJA Panel Committee, subject to the CJA Standing Committee's review, based on panel attorney 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 attorneys will each receive an adequate number of appointments to maintain their federal criminal-defense work proficiency, thereby enabling them to provide high-quality representation consistent with the best practices of the legal profession.

### C. **Qualifications and Applications**

1. Equal Opportunity. All qualified attorneys are encouraged to apply for CJA Panel membership.
2. Application. Application forms are available on the FPDO's website. Applications may be submitted to the CJA Panel Committee at any time by emailing [NV\\_CJAResource@fd.org](mailto:NV_CJAResource@fd.org).
3. Eligibility. CJA Panel applicants must meet the following criteria:
  - a. Except for appellate panel attorneys, be members in good standing of the federal bar of this district;
  - b. Except for appellate or habeas panel attorneys, maintain a primary, satellite, or shared office in the district;
  - c. Possess strong litigation and writing skills;
  - d. Demonstrate proficiency with the Bail Reform Act, Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, United States Sentencing Guidelines, federal sentencing procedures, and the District Court's Local Rules;
  - e. Have the training and ability to manage and effectively utilize electronic case-presentation equipment and software in the courtroom and manage electronic discovery; and
  - f. Have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

Applicants 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 CJA Panel Committee's consideration.



## **D. Selection & Reappointment Process**

The CJA Panel Committee will manage the process of selecting attorneys for the CJA Panel. The CJA Panel Committee will make recommendations to the CJA Standing Committee, which will accept or reject such recommendations after giving them due weight.

1. Terms. Once appointed, attorneys serve three years on the CJA Panel, unless otherwise determined by the CJA Standing Committee. Panel attorneys may serve an unlimited number of terms and may serve on specialized panels as deemed appropriate by the CJA Standing Committee.
2. Reappointment. The CJA Panel Committee will notify panel attorneys of the need to apply for reappointment to the CJA Panel and will set forth the procedures and deadlines for reapplying.
3. Performance Evaluations. Attorneys seeking reappointment to the CJA Panel will undergo a performance evaluation prior to the expiration of their appointment term, unless otherwise determined by the CJA Standing Committee. The performance evaluation will be conducted by the CJA Panel Committee in compliance with the procedures set forth in the CJA Manual. The following performance indicators are utilized:
  - a. Nature and history of appointments;
  - b. Adherence to performance standards;
  - c. Billing practices and case-funding requests;
  - d. Personal observations of in-court performance;
  - e. Complaints;
  - f. Training; and
  - g. Professionalism.

Information collected during the performance evaluation will be provided to the panel attorney seeking reappointment and to the CJA Standing

Committee. Panel attorneys will be given an opportunity to respond to any feedback provided in the performance evaluation.

Concerns regarding a panel attorney's performance will be referred to the FPD, who will follow the procedures for addressing complaints that are outlined in the CJA Manual.

## **E. Removal**

1. Mandatory Removal. CJA Panel Attorneys who are suspended or disbarred from the practice of law by any state or federal court will be removed from the CJA Panel immediately and ordered to withdraw from current CJA representations. The FPD CJA Unit will be immediately notified when any CJA Panel Attorney is removed.
2. Automatic Disciplinary Review. The CJA Panel Committee will conduct an automatic disciplinary review of any panel attorney who has been removed from any indigent defense panel; against whom any licensing authority, grievance committee, or administrative body has acted; or when a finding of probable cause, contempt, sanction, or reprimand has been made against the panel attorney by any state or federal court.
3. Discretionary Removal. The CJA Panel Committee may recommend to the District Court, through its CJA Standing Committee, the removal of a panel attorney who fails to fulfill the obligations of CJA Panel membership.

## **F. Complaints**

In an active case, a complaint by an individual represented by a panel attorney will be reviewed by the presiding judge.

Complaints regarding a panel attorney's performance must be directed to the FPD CJA Unit by emailing [NV\\_CJAResource@fd.org](mailto:NV_CJAResource@fd.org). The FPDO will publish on its website the procedures for receiving and reviewing such complaints, as approved by the CJA Standing Committee.

1. Initiation. A complaint about a panel attorney's performance may be initiated by any concerned individual and should be addressed to the FPD, who will determine whether further investigation is necessary.

If the FPD determines that no further investigation is required, the FPD will notify the complainant.

2. Content. Complaints must be in writing and state the alleged deficiency with specificity. A complaint must contain the following minimum information:
  - a. The complainant's identity and contact information;
  - b. A detailed statement of the allegations, including names and contact information for witnesses to the events supporting the complaint; and
  - c. Supporting documentation, if available.
3. Notice. If the FPD determines that the complaint warrants an investigation, the FPD will follow the complaint-review procedures in the CJA Manual.
4. Disposition of Complaint. The CJA Panel Committee will determine the final disposition of the complaint as stated in the CJA Manual, which may include but is not limited to the following: no action, a suspension for a limited time, a remedial plan, or a recommendation for removal. A recommendation for removal requires confirmation by the District Court, through the CJA Standing Committee.
5. Confidentiality. Information about complaints and potential disciplinary action will remain confidential unless otherwise directed by the court or required by applicable ethical standards. Unless the complainant is a member of the judiciary, the complainant will receive only confirmation that the complaint was received.

#### **G. Withdrawal and Inactive Status**

1. Withdrawal. An attorney may withdraw from the CJA Panel by submitting a letter to the FPD, as Chair of the CJA Panel Committee. The letter must include a list of pending appointments. Unless otherwise ordered or relieved, the panel attorney will remain responsible for representing clients in appointed cases until the court enters an order appointing substitute counsel. Withdrawal from the

CJA Panel will become effective upon receipt of the letter by the CJA Panel Committee.

2. Inactive Status. Members of the CJA Panel may voluntarily place themselves on inactive status. Panel attorneys must obtain approval from CJA Resource Counsel to remain on inactive status for more than twelve months during one appointment term. CJA Resource Counsel may place a member of the CJA Panel on inactive status based on the following considerations:
  - a. The need to achieve an appropriate distribution of appointed cases;
  - b. The pendency of an investigation by the CJA Panel Committee; or
  - c. Another specified reason consistent with the objectives and intent of this Plan.

CJA Resource Counsel will notify any attorney who has been involuntarily placed on inactive status for longer than three months of the reason for such placement and the anticipated period of inactivity.

## **IX. APPOINTED-ATTORNEY DUTIES**

### **A. Standards and Professional Conduct**

1. Appointed attorneys must provide high-quality representation consistent with the legal profession's best practices as guided by the following authorities:
  - a. Federal Adaptation of the National Legal Aid and Defender Association's *Performance Guidelines for Criminal Defense Representations*;
  - b. The American Bar Association's *Criminal Justice Standards for the Defense Function* and *Model Rules of Professional Conduct*;
  - c. *Nevada Indigent Defense Standards of Performance*, available on the FPDO's website;

- d. FPD performance standards for criminal-defense representations under the CJA, available on the FPDO's website; and
  - e. Any other standards adopted by the District Court.
2. Attorneys appointed under the CJA must immediately notify, in writing, the FPD and CJA Standing Committee if they are disbarred, suspended, sanctioned, or reprimanded by any court, licensing authority, grievance committee, or administrative body, or if they are removed from a state or federal indigent-defense panel in another district.

**B. Training and Continuing Legal Education**

- 1. Panel attorneys are expected to remain apprised of developments in federal criminal-defense law, practice, and procedure, including electronic-discovery techniques, courtroom technology, and CJA billing and case-funding procedures.
- 2. Panel attorneys must annually attend Continuing Legal Education ("CLE") relevant to federal criminal practice. The FPDO will publish on its website the CLE requirements for panel attorneys as approved by the CJA Standing Committee.
- 3. Failure to comply with these training and legal-education requirements may be grounds for removal from the CJA Panel.

**C. Facilities and Technology Requirements**

- 1. Panel attorneys must have the facilities, resources, and technological capabilities to effectively and efficiently manage their cases, including access to office space to meet with clients and the technological resources to receive, review, organize, and otherwise manage electronic discovery, records, and courtroom technology.
- 2. Panel attorneys must know and comply with the requirements of electronic filing and eVoucher, including how to submit requests for investigative, expert, and other services.

## **X. COUNSEL APPOINTMENT IN NON-CAPITAL CASES**

### **A. Apportionment of Cases**

The FPD CJA Unit will endeavor to balance the workload in case assignments among attorneys on the CJA Panel.

### **B. Number of Counsel**

Upon the recommendation of CJA Resource Counsel, more than one attorney may be appointed in a case determined by the CJA Standing Committee to be extremely difficult or when necessary in the interests of justice to ensure high-quality representation.

Co-counsel who are members of the CJA Panel will be compensated at the non-capital CJA hourly rate. If a non-panel attorney is appointed as co-counsel, the CJA Standing Committee will determine the hourly rate based on that attorney's experience and qualifications.

### **C. Appointment List**

The FPD CJA Unit 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. CJA panel attorneys are required to timely provide updated contact information to the FPD CJA Unit.

### **D. Appointment Procedure**

The FPD CJA Unit is responsible for assigning cases to appointed attorneys. Appointment requests must be emailed to [NV\\_CJAResource@fd.org](mailto:NV_CJAResource@fd.org).

1. The FPD CJA Unit will maintain a record of appointments and data reflecting the proportion of appointments among CJA panel attorneys and the FPDO.
2. Assignment of cases to panel attorneys will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the FPD CJA Unit may assign a panel attorney outside of the normal rotation to ensure that the defendant has sufficiently experienced counsel.

3. An attorney who is not a member of the CJA Panel may be appointed in special circumstances, such as when the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation; in a large, multi-defendant case for which an insufficient number of panel attorneys exists in the district, or for any other compelling reason. 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. Appointments made under this section will be reported to the CJA Panel Committee.
4. Attorneys appointed under one or more of the circumstances identified in Section X(D)(3) who are members in good standing of a CJA panel in another district court may be admitted to practice in Nevada *pro hac vice* without submitting an application or fee. The order appointing counsel will reflect that the requirements of LR IA 11-2, including payment of the admission fee, are waived.

**E. Continuing Representation**

1. Once counsel is appointed under the CJA, that representation will continue 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 must first file the notice of appeal to preserve the client's right to appeal and then move to withdraw in the Court of Appeals, asking for the appointment of substitute counsel.

## **XI. CJA ATTORNEY COMPENSATION AND FUNDING FOR SERVICES**

### **A. Court Compensation Policies**

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. Attorneys on the CJA Panel must be compensated for time expended in and out of court and reimbursed for expenses reasonably incurred. In determining the reasonableness of out-of-court time, three factors will be considered:
  - a. Whether the work was performed;
  - b. Whether the work performed was a reasonable means of protecting the client's interests in the litigation; and
  - c. Whether the time spent to accomplish that work was reasonable.
2. Voucher reductions will be limited to mathematical errors, instances in which work billed was not compensable or undertaken, and instances in which the hours billed clearly exceed what was reasonably required to complete the task.
3. Vouchers and funding requests for service providers, excess attorney compensation, and other litigation costs will not be delayed or reduced to lessen costs in response to adverse government-funding circumstances.
4. Absent extraordinary circumstances, review of CJA-related requests will be initiated within 30 days of submission.

### **B. Claim Submission**

1. Claims for compensation must be submitted on the appropriate CJA form using the district's eVoucher program. Instructions are available on the FPDO's website.
2. Claims for compensation must be submitted at 30- to 90-day intervals after the initial appointment, provided the amount claimed exceeds \$500.



3. Final vouchers must be submitted no later than 90 days after final disposition of the case or termination of the appointment, whichever occurs earlier. Final vouchers submitted after this deadline must be accompanied by a letter demonstrating good cause for the untimely submission. Late vouchers submitted with such a letter may still be rejected.
4. Counsel must obtain prior authorization from the CJA Standing Committee before submitting a voucher one year or more after final disposition of the case or termination of the appointment, whichever occurs earlier. Instructions for obtaining prior authorization are found in the CJA Manual.
5. Repeated violations of this claim-submission policy will be reported to the FPD as Chair of the CJA Panel Committee and may result in disciplinary action or removal from the CJA Panel.

**C. Delegated Authority for Claim Approval**

As provided by **General Order 20-\*\*\*\***, the District Court has delegated to the FPD the authority to approve CJA claims for payment, while retaining ultimate review and approval authority. The FPD CJA Unit will review CJA vouchers for accuracy and compensability under the CJA Guidelines, Ninth Circuit CJA Policies and Procedures, this CJA Plan, and related compensability and billing guidelines.

**D. Independent Review of Vouchers and Case-Funding Requests Reduced or Denied by the FPD CJA Unit**

1. Notice of Reduction or Denial. If the FPD CJA Unit determines that a claim for compensation or expense should be reduced by more than \$500, or if a request for case-funding is denied in whole or in part, the FPD CJA Unit will provide counsel with the following:
  - a. Prior notice of the proposed reduction or denial; and
  - b. Instructions for seeking independent review of the reduction or denial.
2. Informal Peer Review. Any request to review a reduction or denial must be presented to the FPD who, as Chair of the CJA Panel Committee, will implement an informal peer review and follow the procedures in the CJA Manual.

3. Formal Review by CJA Standing Committee. A formal, independent review by nonconflicted members of the CJA Standing Committee will be available to any panel attorney or service provider seeking judicial review of the decision following the informal peer review by the CJA Panel Committee. The panel attorney or service provider must provide a written request to the CJA Standing Committee by emailing [NV\\_CJAResource@fd.org](mailto:NV_CJAResource@fd.org) within 10 days of notice of the CJA Panel Committee's decision.
4. Result of Independent Review. Nonconflicted members of the CJA Standing Committee will review the information considered during the CJA Panel Committee's informal peer review and issue a written decision to the panel attorney or service provider within 30 days of the request. Any written decision issued by the CJA Standing Committee will be made a part of the case record ex parte and under seal.

**E. Investigative, Expert, and Other Services, and Litigation Expenses**

1. Financial Eligibility Counsel for a person financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request CJA funding in an ex parte application to the court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA, by following the procedures in the CJA Manual.
2. Delegation. As provided in **General Order 20-\*\*\***, the District Court has delegated to the FPD the authority to approve requests for service providers and litigation expenses, while retaining ultimate review and approval authority.
3. Applications. Requests to authorize funds for investigative, expert, and other services must be submitted using the district's eVoucher program and must not be disclosed except with the consent of the person represented or as required by law or the CJA Guidelines.
4. Cost Considerations. Appointed counsel is expected to use lower-cost service providers such as investigators or paralegals to undertake tasks not requiring attorney expertise. In multi-defendant cases with multiple CJA attorneys, counsel must make all reasonable efforts to coordinate with each other to reduce costs, including

coordinating and sharing discovery and utilizing shared investigators and other services to the extent possible.

5. Compliance. Counsel must comply with the policies established by the Judicial Conference that appear in Chapter 3 of the CJA Guidelines and are available on the FPDO's website.

**F. Case Budgeting**

Consistent with CJA Guidelines, Ch. 2 §§ 230.26.10–20, panel attorneys are encouraged to use case-budgeting techniques in non-capital representations if combined attorney and service-provider costs are likely to exceed the equivalent of 300 times the prevailing CJA panel attorney non-capital hourly rate. The court or appointed counsel should contact CJA Resource Counsel or the Ninth Circuit CJA Case Budgeting Attorney to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget.

**G. No Receipt of Other Payment**

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

**H. Disclosure**

Payment vouchers and amounts paid to counsel or service providers must not be disclosed except as required by law or the CJA Guidelines.

**XII. SPECIAL PROVISIONS FOR CAPITAL CASES**

**A. Capital Cases**

For purposes of this Plan, “capital cases” are those involving the death penalty and include: (1) prosecutions under any provision of federal law carrying a potential penalty of death; (2) direct appeals from cases in which 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; (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; and (5) all appropriate ancillary motions,

proceedings and procedures, as outlined in 18 U.S.C. § 3599 and as defined in Section IV.A.3 of this Plan.

## **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.

## **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 must meet the statutory requirements set out in 18 U.S.C. §§ 3005 and 3599(b)-(d) as explained 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 must 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 28 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 FPDO staff, who possess the requisite expertise may be considered for appointment in capital cases to achieve high-quality representation.

#### **D. Appointment of Counsel**

1. Trials. As soon as practicable after a defendant is charged with a federal criminal offense where the penalty of death is possible, the court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel.” If necessary for an adequate representation, more than two attorneys may be appointed. Consistent with Section IV.A.1 of this Plan, the court may appoint capitally 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 and should give due weight to the recommendation of the FPD, 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 attorney who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal. When appointing counsel, the court should consider and give due weight to the recommendation of the FPD, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
3. Post-Conviction Proceedings. In any post-conviction proceeding under 28 U.S.C. §§ 2255 or 2254, the court must appoint at least one qualified attorney and may consider appointing at least two given the complex, demanding, and protracted nature of death-penalty proceedings. When appointing counsel, the court should consider and give due weight to the recommendation of the FPD, 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 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 FPDO, must be budgeted. As early as practicable after appointment, counsel or the court should refer the case to CJA Resource Counsel or the Ninth Circuit CJA Case Budgeting 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.

**XIII. EFFECTIVE DATE**

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

ENTERED FOR THE COURT on this 21<sup>st</sup> day of October 2020.




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CHIEF JUDGE, DISTRICT OF NEVADA

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APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH

CIRCUIT: DATE: December 22, 2020



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CHIEF JUDGE, NINTH CIRCUIT COURT OF APPEALS