UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Criminal Justice Act Plan

AMENDED PLAN APPROVED BY THE COURT FEBRUARY 27, 2012
APPROVED BY THE NINTH CIRCUIT JUNE 22, 2012

CRIMINAL JUSTICE ACT PLAN

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Criminal Justice Act Plan

I. AUTHORITY

Under the Criminal Justice Act of 1964 as amended (CJA), 18 U.S.C. § 3006A, and the *Guidelines for Administering the CJA and Related Statutes* (*CJA Guidelines*), Volume 7A of the *Guide to Judiciary Policy*, the Judges of the United States District Court for the Eastern District of Washington, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services under the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the *CJA Guidelines* in a way that meets the needs of this District.

B. Compliance.

1. The Court, its Clerk, the Community Defender Organization (Federal Defenders of Eastern Washington), and private attorneys appointed under the CJA must comply with the *CJA Guidelines* approved by the Judicial

Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney will be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA) Panel. The Clerk will maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and will make known to such attorneys its availability.

III. DEFINITIONS

A. Representation

"Representation" includes counsel and investigative, expert, and other services.

B. Appointed Attorney

"Appointed attorney" includes private attorneys, the Federal Defender and staff attorneys of the Federal Defenders of Eastern Washington.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation **shall** be provided for any financially eligible person who:

   a. is charged with a felony or a Class A misdemeanor;
   b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
   c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);

d. is under arrest, when such representation is required by law;
e. is entitled to appointment of 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 Chapter 313 of Title 18, United States Code;
h. is in custody as a material witness;
i. is seeking to set aside or vacate a death sentence 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 United States Constitution; or
l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a United States Judge or Magistrate Judge determines that the interests of justice so require, representation **may** be provided for any financially eligible person who:

a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence of confinement is authorized;
b. is seeking relief, other than to set aside or vacate a death sentence under 28 U.S.C. § 2241, 2254, or 2255;
c. is charged with civil or criminal contempt who 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. is proposed by the United States attorney for processing under a pretrial diversion program;

f. is held for international extradition under Chapter 209 of Title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings under subsection (c) of the CJA.

B. Timely Appointment of Counsel.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States Judge or Magistrate Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States Judge or Magistrate Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the Court to be extremely difficult.

2. Qualifications. Qualifications for appointed counsel shall be determined by the Court.

D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a United States Judge or Magistrate Judge after making appropriate inquiries concerning the person's financial condition.

2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment,

in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel will advise the Court.

V. COMMUNITY DEFENDER ORGANIZATION

A. Establishment. The Federal Defenders of Eastern Washington, a Community Defender Organization, previously established in this District under the provisions of the CJA, is recognized as the federal public defender organization for this District. The Federal Defenders of Eastern Washington are authorized to provide representation throughout the Eastern District of Washington and shall continue to be governed by its Board of Directors. A copy of the Amended Bylaws of the Federal Defenders of Eastern Washington is incorporated as part of this CJA Plan and is attached.

VI. CRIMINAL JUSTICE ACT PANEL

A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized. The Court delegates to the Magistrate Judges the management of the CJA Panel.

B. Organization. The Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the CJA is found at Appendix I of this Plan.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA.

VII. REPRESENTATION IN FEDERAL CAPITAL PROSECUTIONS AND IN FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS

A. Appointment of Counsel in Capital Cases.

1. Number of Counsel.

a. Federal Capital Prosecutions. Under 18 U.S.C. § 3005, a person charged with a federal capital offense is **entitled** to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Under 18 U.S.C. § 3599(a)(1)(B) , if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

b. Habeas Corpus Proceedings. Under 18 U.S.C. § 3599(a)(2) , a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is **entitled** to appointment of one or more qualified attorneys. Due to the complex, demanding and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

The Court will appoint the Capital Habeas Unit of Federal Defenders of Eastern Washington and Idaho (Capital Habeas Unit) as lead counsel to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 U.S.C. § 2254, but may, when deemed appropriate by the court, appoint as lead counsel, a qualified attorney who is not a member of the Capital Habeas Unit. Upon request of the Capital Habeas Unit, the Court also may appoint an attorney from the Capital Habeas Panel, or other qualified attorney, as second counsel. In the event of conflicts, existing workload, or other special factors, if the Capital Habeas Unit is unable to provide representation, it shall recommend to the Court attorneys from the CJA Capital Habeas Panel to be appointed

pursuant to 18 U.S.C. § 3005 or other applicable provisions of law.

c. Administration of CJA Capital Habeas Panel. The Capital Habeas Unit will prepare a list of private attorneys qualified and willing to accept appointments in death penalty habeas cases. The list of attorneys, along with a summary of their qualifications, will then be forwarded to the Court for final approval and placement of the private attorneys in a first or second chair position for later appointment. Typically, death penalty habeas defendants requesting appointment of counsel will initially be assigned by the Court to the Capital Habeas Unit. If the Capital Habeas Unit determines that the organization cannot accept the appointment because of a conflict of interest, caseload already assigned to staff attorneys, or for any other valid reason, a first and second chair attorney from the Panel shall be recommended by the Capital Habeas Unit for appointment. The Court can either accept the recommendation or select other attorneys from the list.

2. Procedures for Appointment in Federal Capital Prosecutions.

In assigning counsel to provide representation in federal capital prosecutions, the Court will consider the recommendation of the Federal Defenders of Eastern Washington. The recommendation of the Federal Defenders of Eastern Washington shall be made through its Executive Director. The Federal Defenders of Eastern Washington will recommend counsel who meet the requirements of 18 U.S.C. § 3005 and/or 18 U.S.C. § 3599(a)(1)(B).

3. Attorney Qualification Requirements.

a. Appointment of Counsel Prior to Judgment. Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial

of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys must be knowledgeable in the law applicable to capital cases.

b. Appointment of Counsel After Judgment. Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the Ninth Circuit Court of Appeals for not less than five years, and must have had not less than three years' experience in the handling of appeals in felony cases in the court.

c. Attorney Qualification Waiver. Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

4. Submission of Capital Habeas CJA Vouchers

CJA attorneys will submit the original of all partial and final CJA vouchers directly to the Court. The Court may direct that a copy be provided to the Capital Habeas Unit so that the Capital Habeas Unit can conduct an initial review of all partial and final CJA vouchers and investigative expenses by attorneys. The Unit's review would be done within ten days of receiving the voucher and a recommendation then submitted to the Court regarding approval of said vouchers. The Court retains final approval authority over all vouchers and requests for investigative services.

VIII. DUTIES OF APPOINTED COUNSEL

A. Standards. The services to be rendered a person represented by appointed counsel "shall include counsel and investigative, expert and other services necessary for adequate representation." 18 U.S.C. § 3006A.

B. Professional Conduct. Attorneys appointed under the CJA must conform to the American Bar Association's *Model Rules of Professional Conduct*, the Eastern District of Washington's Local Rules and the Washington State Bar Association's *Rules of Professional Conduct*. Counsel shall promptly notify the Court, in writing, in the event any action is taken by any court or bar affecting the standing of the attorney to practice before such court or bar.

C. 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 appointment.

D. Continuing Representation. The Ninth Circuit Court of Appeals' Plan (Ninth Circuit Plan) for compliance with the CJA applies to appeals in each of the categories listed in 18 U.S.C. § 3006A(a). Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order. The existing, previously established appellate panel of attorneys (CJA Appellate Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized. The Court delegates to the Magistrate Judges the management of the CJA Appellate Panel.

E. Record Keeping. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Accused for Appointment of Counsel. As soon as practicable following the arrest of an individual in connection with a federal criminal charge or the appearance of the accused for an initial appearance, whichever occurs first, the Federal Defender shall be responsible for asking the accused whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, discuss with the person the right to representation and right to appointed counsel, and if appointment seems likely, assist in completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a United States Judge or Magistrate Judge of this Court for determination of financial ability and appointment of counsel. Law enforcement, prosecutors or court personnel shall be responsible for notifying the Federal Defenders of Eastern Washington of the arrest of an individual in connection with a federal criminal charge and/or the appearance of the accused for an initial appearance.

B. Pretrial Services Interview. When practical, financially eligible defendants will be furnished appointed counsel prior to being interviewed by a pretrial services officer. If counsel has not been appointed and the defendant so requests, the pretrial services officer will obtain the necessary financial information from the defendant during the pretrial interview. If the interview is conducted in person, the pretrial services officer will have the defendant execute a financial affidavit (Form CJA 23) and submit it to the Clerk of Court. When counsel has been appointed, the pretrial services officer will arrange to interview the defendant with counsel present as schedules permit.

C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment or the filing of a criminal information, the United States Attorney shall immediately mail or personally deliver a copy of the document to the attorney of record. If the defendant is without counsel, a copy shall be provided to the defendant at the address shown on the defendant's Advice of Penalties and Sanctions, A.O. 199C Form or serve the defendant at the jail in which the defendant is incarcerated.

D. Petition to Modify or Revoke Supervised Release or Probation. Upon the filing of a petition to modify or revoke supervised release or probation, the United States probation officer must immediately mail or otherwise deliver a copy of the petition to appointed counsel, or to the defendant if he or she is without counsel, at the current address maintained in the probation officer's file or to the jail in which the defendant is incarcerated. In instances where there is a warrant for the defendant's arrest or a summons to appear is issued, a copy of the petition shall be furnished to the defendant's counsel prior to the initial appearance.

X. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted to the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate United States Judge or Magistrate Judge. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Disclosure of Fees. The amounts paid to appointed counsel, for representation in any case, shall be made available to the public, unless for good cause, counsel petitions the Court for non-disclosure.

D. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. EFFECTIVE DATE

This Plan is hereby adopted this 27th day of February, 2012.

Appendix I:
Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act.

Appendix II:
Plan for Administration of the Mentor Program

Appendix III:
CJA Case Management and Budgeting Policy

/s/_____
Rosanna Malouf Peterson
Chief United States District Judge

/s/_____
Justin L. Quackenbush
Senior United States District Judge

/s/_____
Edward F. Shea
United States District Judge

/s/_____
Wm. Fremming Nielsen
Senior United States District Judge

/s/_____
Lonny R. Suko
United States District Judge

/s/_____
Fred Van Sickle
Senior United States District Judge

/s/_____
Robert H. Whaley
Senior United States District Judge

Appendix I

Plan for the Composition, Administration, and Management of the Plan of Private Attorneys under the Criminal Justice Act

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court approves attorneys for membership on the panel pursuant to Section II(A) below. Members of the CJA Panel shall serve at the pleasure of the Court.

2. Size. The Court shall fix, periodically, the size of the CJA Panel. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and provide a high quality of representation.

3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the United States Sentencing Guidelines, the Bail Reform Act and the local criminal procedures for the Eastern District of Washington. Qualified attorneys shall have practiced law for at least three years, and shall be residents of this state. In addition, qualified attorneys must complete training in the CJA automated payment system prior to the attorney's first appointment.

Subsection (b) of the Act provides, in part, that:

"Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan."

However, when the District Judge presiding over the case, or the Chief Judge if a District Judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the District, should possess such qualities as would qualify the attorney for admission to the District's CJA Panel in the ordinary course of panel selection. Finally, the Court may require an attorney seeking *pro hac vice* appointment to the CJA Panel to accept two other appointments.

4. Equal Opportunity. All qualified attorneys are to be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.

5. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of Court. Completed applications shall be submitted to the Clerk of Court. Applications must be accompanied by two letters of reference. The Clerk will provide the applications to the United States Magistrate Judge, who will transmit the applications to the Panel Review Committee.

II. ADMINISTRATION

A. SELECTION FOR APPOINTMENT

1. Maintenance of List and Distribution of Appointments. A current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience, shall be maintained by the court. A copy of this list will be furnished to each Judge and Magistrate Judge and to the Clerk of Court upon request. A record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Defenders of Eastern Washington and private attorneys, according to the formula described in the CJA Plan for the District, also will be maintained.

2. Method of selection. Two Panel Review Committees (one for the Spokane-assigned CJA Panel selections and one for the Yakima and Tri-Cities-assigned CJA Panel selections) shall review applications for placement on and renewal to the CJA Panel. Each Review Committee shall consist of at least one judicial officer, three (3) CJA panel members and one attorney from the Federal Defenders' office. The committees shall meet in person, by phone, or through email, at such times as proper to timely address the appointment process, but at least once every six (6) months. Prior to placement on the CJA Panel, the committee recommendations for placement on the Panel shall be provided to the District Judges for comments, if any. Selection for placement on the CJA Panel is subject to approval by the District Judges. Administration of the CJA Panel for the Spokane area is delegated to the Magistrate Judge assigned to the Spokane Duty Station. Administration of the CJA Panel for the Tri-Cities and Yakima areas is delegated to the Magistrate Judge assigned to the Yakima Duty Station.

Panel members who wish to be considered for mentoring duties must agree to serve as mentors to attorneys who are less experienced in federal criminal practice in at least one felony assignment per year, if needed, and agree to mandatory reporting and attendance at additional yearly training, including

possible specialized training, as designated by the Court. Panel members who choose not to be considered for mentoring assignments will be appointed on a less frequent rotating basis than those designated as mentors. All panel members shall reapply for placement on the Panel on a staggered, rotating three (3) year basis to coincide with the panel members' continuing legal education reporting requirements to the State Bar Association. Any mandatory training to continue membership on the panel must be reported at the time of reapplication. In the event that the Review Committee members disagree as to the membership of an applicant, the applicant's name will be forwarded to the District Judges for final decision of that application.

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This process should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon a determination of a need for the appointment of counsel, the designated Magistrate Judge shall so appoint. If the Magistrate Judge decides to appoint an attorney from the panel, the Magistrate Judge will determine the name and availability of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding United States District Judge or Magistrate Judge may appoint any attorney from the list. In all such cases, the presiding United States District Judge or Magistrate Judge will notify the designated Magistrate Judge as to the name of the attorney appointed and the date of appointment.

B. INVESTIGATIVE, EXPERT AND OTHER SERVICES

Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his or her case, may request such services in an ex parte application before a judge, as provided in 18 U.S.C. § 3006A(e)(1). Upon finding that the services are necessary, and that the defendant is financially unable to obtain them, the judge shall authorize counsel to obtain the services.

Counsel may obtain, subject to later review, investigative, expert, or other services without prior authorization, pursuant to 18 U.S.C. § 3006A(e)(1). Expenditures without prior court authorization are not favored.

Counsel shall comply with all provisions regarding financial limitations and requests for services, as set forth in 18 U.S.C. § 3006A(e), and any guidelines or regulations approved by the Judicial Conference of the United States.

C. COMPENSATION - FILING OF VOUCHERS

Payment of fees and expenses to counsel appointed under this Plan (other than to the Community Defender's Office), and payment for investigative, expert, and other services incurred, will be made consistent with any statutory limitations and such rules, regulations and guidelines, as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts.

Claims for compensation must be submitted, on the appropriate CJA form, to the Clerk of Court no later than forty-five days following final disposition of the case. A motion establishing good cause and proposed order shall be filed with the Court requesting payment of those vouchers which are submitted later than forty-five days following final disposition of the case.

The Clerk of the Court or his designee will review the claim form for mathematical and technical accuracy, and for conformity with the *Guidelines for Administering the CJA and Related Statutes* (CJA Guidelines) (Volume 7A , *Guide*

to Judiciary Policy). Any inaccuracies shall be brought to the attention of the presiding judicial officer and a corrected copy shall be provided to counsel. Except in cases involving mathematical or technical corrections, no claim for compensation submitted for services provided under the CJA shall be reduced without affording counsel the opportunity to be heard. If the voucher is correct, the Clerk or his designee will forward the claim form for the consideration and action of the presiding United States District Judge or Magistrate Judge.

When appropriate, counsel should seek a ruling from the presiding judge as soon as feasible as to whether a case is "complex" or "extended." See Appendix III for Case Management and Budgeting Policy. For cases that are determined to be complex or extended, the attorney may request and justify periodic or interim payments rather than waiting to bill at the end of the case. The approval of the trial judge, and the Circuit, must be obtained on these interim payment orders. Counsel claiming compensation in excess of the statutory case limitation must submit with the voucher a detailed memorandum supporting and justifying counsel's claim that representation was provided in a complex or extended case and that the excess payment is necessary to provide fair compensation. The presiding judge, after approval of claims for compensation which are in excess of the statutory maximum, shall certify the excess amount to the Chief Judge of the Ninth Circuit Court of Appeals for approval. Payment of vouchers in excess will not be made until approved by the Chief Judge of the Ninth Circuit.

The Clerk of Court or his designee shall enter the appropriate data into the CJA automated payment system for all vouchers which have been approved for payment. The Administrative Office of the Courts will disburse payment thereafter.

III. MANAGEMENT

A. EFFECTIVE ASSISTANCE OF CJA COUNSEL

1. Processing Concerns. Any person should communicate concerns about a CJA Panel attorney directly to the assigning United States Magistrate Judge and United States District Judge assigned to the case. The Magistrate Judge will convey the concerns, including the identity of the person who communicated those concerns (complainant), in writing to the CJA attorney and request a written response. Depending on the seriousness and/or number of concerns, the magistrate judge at his or her discretion may terminate the process or further initiate action by forwarding the written documents from both the complainant and the CJA attorney to a Review Committee.

2. Panel Review Committee. The Panel Review Committee (Review Committee) will be comprised of three (3) CJA counsel, one (1) Federal Defender attorney, and one (1) Judicial Officer.

In the event that a complaint has been lodged to or by the Court about the effectiveness of a panel member's representation, the Review Committee members will review the complaint. The CJA attorney may appear before the Review Committee, if the attorney so requests, to address the concerns. The Review Committee will make any appropriate recommendation to resolve the concerns, including taking no action, ordering mentoring, training, reduced CJA assignments, referral to lawyer assistance programs, suspension from the CJA Panel, or removal from the CJA Panel.

3. Review Committee Recommendation. The Review Committee's recommendation shall be communicated to the CJA attorney and to the District Judges, who will instruct the assigning Magistrate Judge to enforce the Review Committee's recommendation, if the District Judges deem it appropriate. The Magistrate Judge may seek the assistance of the Federal Defender's Office and CJA Panel members to implement the decision.

Appendix II

Criminal Justice Act Mentoring Program for the Eastern District of Washington

I. OBJECTIVE

To improve the skill level and diversity of the Criminal Justice Act Panel ("CJA Panel") through a mentoring program ("Program").

II. MENTORS AND MENTEES

A. The CJA Review Committees will select a pool of Mentors from the CJA Panel. No Mentor will be assigned more than one Mentee, as long as there are willing Mentors who have not yet been assigned a Mentee.

B. The profile of a Mentor will be an experienced and respected member of the Panel. Panel members who wish to be considered for mentoring duties must agree to serve as Mentors to attorneys who are less experienced in federal criminal practice in at least one felony assignment, if needed, and must agree to mandatory reporting and attendance at additional yearly training, including possible specialized training, as designated by the Court. The Mentor is the primary attorney and, therefore, is responsible for the representation, to both the CJA client and the Court.

III. PARAMETERS

A. Both the Mentor and Mentee will be appointed as counsel of record.

B. In the typical Program case, the Mentor will receive a regular CJA appointment in a matter which appears to present a full spectrum of representation (e.g., bail and release; discovery review; guideline calculation sentencing factors; plea negotiation; research and writing). The Mentor shall train and supervise the Mentee during each stage of the federal criminal prosecution. The Mentor shall have discretion regarding the extent of the Mentee's involvement depending on the

unique needs of the case and the experience of the attorney. The Mentor will have the ultimate responsibility for any case involved in the Program, including the final decision-making authority about legal strategy. The Mentor also will have the primary responsibility for communication with the client.

C. The Mentee will be appointed as associate counsel and will be expected to and permitted to appear and argue on the record as counsel for the defendant, with the Mentor, as counsel of record, present. The Mentee also may confer, on behalf of the defendant and under the direction of the Mentor, as counsel or record, with the government; chambers; the U.S. Probation office and other agencies; and defendant's family, friends, potential witnesses, and interpreters. Under the direction of the Mentor, the Mentee may participate in hearings and trials.

D. The Mentee shall serve in the training capacity for one year or through one jury trial, whichever comes first, unless a presiding judge determines the Mentee needs additional Mentee training.

IV. PAYMENT

A. Both the Mentor and Mentee will submit their billings through the automated payment process. The Mentor shall receive the current CJA hourly rate; the Mentee shall receive $75.00 per hour.

B. The only expenses allowed to be incurred by the Mentee are travel related expenses, such as mileage and parking. Any other expenses, such as costs associated with experts (including interpreters), investigators, reproduction of transcripts/briefs, computer-assisted legal research, filing fees, etc., shall not be reimbursable to the Mentee. Rather, it is the responsibility of the Mentor to bear these expenses and seek reimbursement when appropriate, as described in the pertinent portions of the Guide to Judiciary Policies and Procedure(see Chapter II, Part C -– Compensation and Expenses of Appointed Counsel, and Chapter III, Parts A & B – Authorization and Payment for Investigative, Expert or Other Services).

V. REVIEW OF THE PROGRAM

After the Program has been in effect for one year, the Court will review the progress of the Program and decide whether the Program should undergo changes, continue in its present form, or be discontinued completely.

Appendix III

Criminal Justice Act
Case Management and Budgeting Policy[1]

NON-CAPITAL REPRESENTATIONS

The Ninth Circuit Judicial Council has approved the following case management and budgeting policies applicable to non-capital representations for counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A. These policies apply to all CJA criminal and post-conviction appointments that do not involve capital criminal or capital habeas representations. The policies also apply to those appointments that initially involved capital criminal representations that were later dismissed or not certified. The policies implement the statutory authorization for fair compensation of legal services reasonably necessary for such indigent legal representation.

The policies should be read in conjunction with the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume 7, Guide to Judiciary Policies and Procedures ("CJA Guidelines") which apply to all CJA representations. To the extent these policies conflict with the CJA Guidelines, the policies prevail.

Nothing in these policies is intended to restrict the authority of the court to approve variations as needed in a particular case.

1. Case Budgeting. According to the U.S. Judicial Conference's resolution and under the CJA Guidelines § 230.26.10, courts are encouraged to budget any representation of a defendant anticipated to exceed 300 attorney hours or $30,000 in fees and costs paid by CJA funds for appointed counsel and services other than counsel. Courts are further encouraged to enlist the assistance of the Ninth Circuit's case budgeting attorney (**see Attachment C**). The development of a case budget in larger non-capital representations helps ensure that defense

[1] Adopted by the Judicial Council of the Ninth Circuit, October 20, 2010; Adopted by the U.S. District Court, Eastern District of Washington, January 10, 2011, and became effective February 14, 2011.

counsel receive the resources necessary to effectively represent the accused. A case budget and supporting documentation provides the reviewing court with sufficient information to assess the reasonableness, monitor fairness and more effectively oversee the expenditure of CJA funds.

Once it is determined that the cost of representation for a defendant will likely exceed 300 hours or the $30,000 threshold, the court may request the development of a complete or staged budget for the defendant's representation. It may be difficult for counsel to anticipate case costs, particularly in the early stages. The court may grant counsel a finite amount of "seed money" to allow the defense to become familiar with the case, develop strategy, gather a team, and develop and file budgets for attorneys and service providers during the first days after arraignment. The seed money is part of the overall budget and not money in addition to the budget; therefore, the seed money should be included in the Stage 1 budget. As the case progresses, budgeting should become more precise. The court may order variations in a case budget to meet the needs of a particular case.

Courts should require that budgets be submitted using the circuit's Excel budgeting system. The circuit is developing an internet-based budgeting and case billing system to replace the current Excel system and this internet-based system should be used when it becomes available. Using these systems will provide uniformity of submissions which will benefit the judges and court staff along with expediting CJA attorney and service providers' payments (**see Attachment C**).

Counsel, investigators, experts or service providers may not exceed the budget authorized by the court. Expending additional hours or incurring additional costs without prior court approval may result in the denial of payment. If it is anticipated that the compensation will exceed the budgeted amount by either $5,000 or 10 percent, whichever is less, advance approval should be obtained from the court.

2. Establish and Adhere to Approved Rates. The current maximum hourly rates for Criminal Justice Act attorneys are established by Congress, adopted by the Judicial Conference of the United States and may be found at 18 U.S.C. § 3006A(d)(1) as amended and incorporated in the CJA Guidelines at §230.16(a). The current maximum hourly rates for paralegals, investigators, support staff and some categories of experts are listed in **Attachment A** of this policy. Rates for members of the defense team may not exceed the maximum rates

established by this policy unless authorized in advance by the court and the Chief Judge of the Ninth Circuit or the Chief Judge's delegate (hereinafter, Chief Judge).

In the interest of justice, the court and the Chief Judge may find that the timely procurement of necessary services could not await prior authorization of rates that exceed the maximum rates established in this policy. In these circumstances, nunc pro tunc approval may be granted.

The statutory CJA attorney hourly rate is intended to include compensation for general overhead costs. CJA Guidelines § 230.66.20(a). Therefore, except in extraordinary circumstances (CJA Guidelines § 320.70.30) additional fees for work performed by counsel or other personnel, rent, telephone service and secretarial expenses associated with CJA representation are not reimbursable. CJA Guidelines § 230.66.10(b).

In most cases, only one CJA-compensated attorney is authorized for each client representation. CJA Guidelines § 230.53.10(a). Appointed counsel are encouraged to use lower-billing associates, contract lawyers, paralegals or other means to minimize costs where lead attorney expertise may not be required, such as for legal research and file review. However, use of associates, contract lawyers and paralegals generally must be pre-approved. Requests must specify the tasks, projected number of hours, the hourly rate and the total anticipated expenditure.

Once funding for investigative, expert or other specialized services has been approved, counsel is responsible for communicating with the service provider to ensure compliance with specific terms of the court order and to ensure that charges do not exceed the amount authorized. Counsel should be required to provide an engagement letter to the service provider specifying the terms and limits of the engagement. The letter shall include a warning that fees and costs may not exceed the contracted amount absent court approval for the additional amount.

Payments to service providers should only be authorized at the appropriate rate for the type of task performed. For example, a paralegal or investigator could gather and organize records to be provided to the expert rather than paying the expert to perform that function. The expert may perform the function, but charge the appropriate lower rate.

Any experts testifying at a court proceeding shall be paid for the actual number of hours they are in attendance at court, plus their travel time and expenses. Absent court and circuit approval, experts may not exceed the maximum rates set forth in Attachment A.

3. Geographic Proximity. To minimize travel, counsel should select local investigators and experts when possible. Courts should try to appoint CJA panel attorneys who are located reasonably near to where the case will be heard to avoid unnecessary travel time.

4. Document Review. It is difficult to accurately project costs and time for the review of voluminous documents and data prior to the completion of the investigation or discovery process. Courts and attorneys should confer with the National Litigation Support Administrator in the Office of Defender Services (**see Attachment C**). Courts should use discovery status conferences in conjunction with *ex parte* review of the CJA budget to make adjustments as circumstances require. Counsel should present a preliminary budget detailing an efficient and cost-effective method to review documents and data, such as electronic evidence review platforms, and the use of paralegals and document technicians. If the court appoints consultants or attorneys skilled in electronic discovery to assist appointed counsel in developing the budget and discovery plan, the costs of these appointments should also be included in the budget.

5. Division of Labor. Counsel should not spend unnecessary time on conferences and memos among multiple attorneys, and between counsel and staff, such as investigators and paralegals. Such meetings and communications may be necessary and will be compensable if the frequency and time billed are reasonable given the needs of a multi-defendant case.

6. Specificity in Supporting Timesheets. Each time entry shall reflect discrete individual tasks. Information shall be provided in detail sufficient to permit meaningful review, without violating the canons of ethics or disclosing client confidences. Counsel shall provide the court sufficient information with enough specificity to permit reviewers to determine the necessity of the work performed and to demonstrate that the amounts sought in the voucher are fair compensation for the services rendered.

7. Record Keeping. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, contract lawyers and support staff, as well as expense records. Such records may be subject to audit and must be retained for at least three years after approval of the final voucher for any appointment. CJA Guidelines § 230.76.

Attachment A

Reimbursement Rates (per hour)

Counsel are expected to negotiate reasonable hourly rates with service providers depending upon market rates in each district.[2] In no event may the rates exceed those set forth below without court approval. In the interest of justice, the Chief Judge may find that the timely procurement of necessary services could not await prior authorization of rates that exceed the maximum rates established in this policy. In these circumstances, nunc pro tunc approval may be granted.

Paralegal[3]	Up to $45
Document Technician[4]	$15–25
Investigator[5]	Up to $75
Mitigation Specialist (non-testifying)[6]	Up to $100
Expert Rates (non-testifying) Psychiatrists, Neurologists and medically licensed experts	$150–275

[2]The range of rates for each service provider reflects the market rates among the fifteen districts in the Ninth Circuit.

[3]Tasks which will be reimbursed at the paralegal rate include transcript summarization, subjective coding of documents, internet and legal research, client contact, drafting and analysis, review and collection of medical, criminal history, sentencing mitigation or other records.

[4]Tasks which will be reimbursed at the document technician rate include filing, indexing and transmittal of documents.

[5]The policy contemplates higher hourly rates for investigators who possess foreign language expertise.

[6]See footnote 3 above. Mitigation specialists performing document technician tasks will be reimbursed at the document technician rate.

Forensic Experts	$200
Psychologists (with Ph.D.)	$200
Accountants	$150–350
Interpreters/Translators[7]	$25–75

[7] Counsel should attempt to negotiate rates for translation and interpreting which provide for billing for the actual time spent rather than flat rates or billing for blocks of time. If payment is sought for services billed at any rate other than for actual time spent, counsel must provide an explanation and the billing rate is subject to approval by the court.

Attachment B

Expense Policies

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

● In-house copying is reimbursable at a rate not to exceed ten cents per page. If using a copy service, counsel are expected to negotiate the lowest rate possible. Counsel should utilize the special rates made available to the U.S. Courts by contract (**see Attachment C**).

● General office overhead expenses are not reimbursable, including, but not limited to flat-fee computerized research plans, land and cellular telephone maintenance fees, books and publications, office supplies and equipment and all costs related to educational seminars.

● All fees for experts and services should be billed for actual hours spent, rather than standardized charges or fixed unit billing for specific tasks. Hourly rates for service providers are intended to include overhead, administrative, or special project management charges. Exceptions may be approved by the court where market conditions warrant.

Attachment C

- Ninth Circuit Case Budgeting Attorney – Ms. Nancy Rutledge, 415-355-8982, nrutledge@ce9.uscourts.gov

- Assistance with Excel spreadsheets or the Ninth Circuit's Internet-based CJA billing system – Ms. Sandy Andrews, 415-355-8984, sandrews@ce9.uscourts.gov

- Government copying rates (currently at Kinko's) contact: Ms. Diane L. Abeyta, dabeyta@gpo.gov

- National Litigation Support Administrator in the Office of Defender Services, 415-436-7700