



**Criminal Justice Act Plan  
United States District Court Eastern  
District of Washington**

**Amended Plan Approved by the Court - August 24, 2022**

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
CRIMINAL JUSTICE ACT PLAN**

**I. AUTHORITY**

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

**II. STATEMENT OF POLICY**

**A. Objectives**

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

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

**B. Representational Services**

This Plan provides for representational services by the Federal Defenders of Eastern Washington and Northern Idaho ("Federal Defenders"), and for the appointment and compensation of private attorneys from an approved 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 CJA Panel Committee and the CJA Supervising Attorney.

**D. Compliance**

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

**III. DEFINITIONS**

- A. "Appointed Attorney"** is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the Federal Defenders and staff attorneys of the Federal Defenders, and attorneys provided by a bar association or legal aid agency.
- B. "CJA Supervising Attorney"** is an attorney employed by the Court who assists the Court in the administration of Panel management, implementation of the district's CJA Plan, and voucher review and processing.
- C. "Panel Attorney District Representative" (PADR)** is a member of the district's CJA Panel who is recommended by the Panel committee and selected by the Chief Judge, to serve as a representative of the District's CJA Panel for the Defender Services CJA PADR program and local CJA committees. The PADR will serve a term of three years, subject to re-appointment for one additional term for a total of a six years maximum service as a PADR.
- D. "Representation"** includes counsel, service providers (such as paralegals, investigators, or experts), litigation support vendors, and expenses.
- E. "Federal Defenders"** is the existing community defender – the Federal Defenders of Eastern Washington and Northern Idaho.

#### IV. ELIGIBILITY FOR CJA REPRESENTATION

##### A. Subject-Matter Eligibility

1. Mandatory. Representation must be provided for any financially eligible person who:
  - a. is charged with a felony or with a Class A misdemeanor;
  - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
  - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - d. is under arrest, when appointed representation is required by law;
  - e. is entitled to appointed counsel in parole proceedings;
  - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
  - g. is subject to a mental condition hearing under 18 U.S.C. Chapter 313;
  - h. is in custody as a material witness;
  - i. is seeking to set aside or vacate a death sentence or when an evidentiary hearing is warranted in a non-capital proceeding under 28 U.S.C. § 2254 or § 2255;
  - j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
  - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
  - l. faces loss of liberty in a case, and federal law requires the appointment of counsel.
2. Discretionary. Whenever a district judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
  - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;

- b. is seeking relief under 28 U.S.C. § 2241, 2254, or 2255 other than to set aside or vacate a death sentence, unless an evidentiary hearing is warranted (*see* IV(A)(1)(i));
  - c. is charged with civil or criminal contempt and faces loss of liberty;
  - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission 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 a criminal prosecution or a civil or criminal contempt proceeding, or face loss of liberty;
  - e. has been advised by the United States attorney or a law enforcement officer that they are the target of a federal grand jury or federal criminal investigation;
  - f. is proposed by the United States Attorney for processing under a pretrial diversion program;
  - g. is held for international extradition under 18 U.S.C. Chapter 209;
3. Ancillary Matters. The Court has the discretion to appoint counsel for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the Court should consider whether such representation is reasonably necessary to:
- a. protect a constitutional right;
  - b. contribute in some significant way to the defense of the principal criminal charge;
  - c. aid in preparation for the trial or disposition of the principal criminal charge;
  - d. enforce the terms of a plea agreement in the principal criminal charge;
  - e. preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
  - f. effectuate the return of real or personal property belonging to the CJA client 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 and Initial Appointment Procedure**

### **1. Duties of Arresting Agencies and the United States Marshals Service**

- a. Following an arrest, an arresting law enforcement agency must promptly notify, telephonically or electronically, the U.S. Attorney's Office of the arrest. If the arrest was by the United States Marshals Service, the USMS must promptly notify, telephonically or electronically, the appropriate Magistrate Judge's chambers of the arrest. Employees of law enforcement agencies including the United States Marshals Service may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

### **2. Duties of the United States Attorney's Office**

- a. Upon the return or unsealing of an indictment or the filing of a criminal complaint or information, or when notified by an arresting agency of a person's arrest, and when the defendant does not have known retained counsel, the United States Attorney's Office will promptly notify, telephonically or electronically, the appropriate Magistrate Judge's chambers, which in turn will notify the Federal Defenders unless the United States Attorney's Office is aware of and communicates an actual or potential conflict with the defendant and the Federal Defenders, in which case the Court will instead notify the CJA Supervising Attorney to facilitate the appointment of counsel.
- b. Upon issuance of a target letter, and when the individual does not have known retained counsel, the United States Attorney's Office will promptly notify, telephonically or electronically, the appropriate Magistrate Judge's chambers, which in turn will notify the Federal Defenders unless the United States Attorney's Office is aware of and communicates an actual or potential conflict with the target and the Federal Defenders, in which case the Court will instead notify the CJA Supervising Attorney to facilitate the appointment of counsel.
- c. Employees of the United States Attorney's Office may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

### **3. Duties of the Federal Defenders Office**

- a. In cases in which the Federal Defenders may be appointed, the Federal Defenders will immediately investigate and determine



whether an actual or potential conflict exists and, if so, will promptly notify the Court or the CJA Supervising Attorney to facilitate the timely appointment of other counsel.

- b. Whenever practicable, an attorney from the Federal Defenders 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 Magistrate Judge to determine financial eligibility and appointment of counsel.

4. Duties of the Pretrial Services Office

- a. When counsel has been appointed, the assigned pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.
- b. The assigned pretrial services officer will not conduct a pretrial services interview of a defendant without the participation or consent of counsel.

5. Eligibility Determination

- a. In every case when 18 U.S.C. § 3006A(a) and related statutes authorize appointment of counsel, the Court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, the Court will appoint counsel to represent the person if he or she is financially unable to obtain counsel.
- b. The completed financial eligibility affidavit (Form CJA-23) should reflect relevant information bearing on the person's financial eligibility for appointed counsel.
- c. Determining eligibility for representation under the CJA is a judicial function performed by the Court after appropriate inquiries are made concerning the person's financial eligibility. Other employees of the Court or the Federal Defenders may be designated to obtain or verify the facts relevant to the financial eligibility determination if an attorney from the Federal Defenders is not available.

6. 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 of retaining counsel.

- b. The initial eligibility determination must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.
- c. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected later.
- d. If, at any time after the appointment of counsel, a judge finds that a person provided representation is financially able to retain private counsel or make partial payment for the appointed representation, the judge may terminate the counsel appointment or direct the defendant to pay available funds as provided in 18 U.S.C. § 3006A(f).
- e. If, at any stage of the proceedings, a judge finds that a person is no longer financially able to pay retained counsel, counsel will be appointed in accordance with the general provisions set forth in this Plan.
- f. If, at any stage of the proceedings, a judge finds that a pro se or privately represented person is not financially able to pay other representation costs including investigative, expert, or other services, funding may be authorized for those costs in accordance with the general provisions set forth in this Plan.

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

- A.** Eligible persons must receive appointed counsel as soon as feasible. This means as soon as possible after receiving a target letter, after being taken into custody, upon appearing before a judicial officer, when formally charged, when notified of charges if formal charges are sealed, or when a judicial officer otherwise determines that appointed counsel is appropriate under the CJA or this Plan, whichever occurs first.
- B.** When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial services interview without counsel, financially eligible persons will be provided appointed counsel prior to being interviewed by a pretrial services officer. The Federal Defenders will establish a schedule of on-call "duty day" or "duty week" attorneys to advise persons who are in custody, or who otherwise may be entitled to counsel under the CJA, during the pretrial services interview process.
- C.** Appointment of counsel may be made retroactive to include representation provided prior to appointment.

## **VI. COMMUNITY DEFENDER ORGANIZATION**

### **A. Establishment**

The Federal Defenders of Eastern Washington and Northern Idaho (“Federal Defenders”), 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 organization is authorized to provide representation throughout the Eastern District of Washington and Northern Idaho and shall continue to be governed by its Board of Directors. The Bylaws of the Federal Defenders are at Appendix 1.

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

The Federal Defenders’ Executive Director is responsible for supervising and managing the Defender Organization. Accordingly, the Federal Defenders will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the Federal Defenders’ office. The Federal Defenders and its Executive Director will continually monitor staff workloads to ensure high-quality representation for all clients.

### **C. Private Practice of Law**

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

### **D. Standards and Professional Conduct**

The Federal Defenders must provide high quality representation and conform to the highest standards of professional conduct, including but not limited to the Model Code of Conduct for Federal Community Defender Employees in Appendix 4B of the CJA Guidelines.

### **E. Panel Attorney Training**

The CJA Panel Committee, the PADR, the CJA Supervising Attorney, and the Federal Defenders will assess the training needs of the CJA Panel and provide regularly scheduled training opportunities and other educational resources that include updates regarding substantive law, sharing best practices in federal criminal defense, and presentations on courtroom and office technology. *See also* Section IX.B.

## **VII. CJA PANEL COMMITTEE**

### **A. Establishment**

1. Two CJA Panel Committees will be established by the Court in consultation with the CJA Supervising Attorney and the Federal Defenders' Executive Director to assist the Court in the selection, oversight, and management of CJA Panel members. One committee will be established to serve the Spokane Court ("Northern Division"), and a second committee will be established to serve the courts in Yakima and Richland ("Southern Division"). The CJA Panel Committees may establish subcommittees that include non-members to address specific CJA-related issues such as recruiting panel members, training, mentoring, reviewing complaints, and reviewing voucher reductions. The composition of the CJA Panel Committees shall be approved by the District Judges. For ease of reference herein, the committees will be referred to in the singular, as the "Panel Committee." Activities and actions set forth in this Plan refer to the relevant Panel Committee in either the Northern Division or the Southern Division.
2. At a minimum, the CJA Panel Committees must each consist of:
  - a. at least one judicial officer;
  - b. the Federal Defenders' Executive Director (or delegate approved by the Chief Judge), who will be a permanent member of the CJA Panel Committee;
  - c. the district's current PADR (or delegate approved by the Chief Judge), who will be a permanent member of the CJA Panel Committee;
  - d. the district's CJA Supervising Attorney, who will be a permanent member of the CJA Panel Committee; and
  - e. three CJA Panel members from the respective Panels serving Spokane and Yakima/Richland.
3. Except for the judicial officers, Federal Defenders' Executive Director, PADR, and CJA Supervising Attorney, members will serve for 3 years and may be extended for one additional 3-year term. Terms will be staggered to ensure continuity on the CJA Panel Committee and rotation of members. Vacancies will be filled upon recommendation of the remaining committee members and approval of the Chief District Judge, who shall consult with the District Judges.
4. The CJA Panel Committee will meet at least once per year and at any time the Court or three or more committee members ask the committee to

consider a CJA-related issue. The Northern Division and Southern Division Panel Committees will meet at least once per year in a joint session. Decisions of the Committee will be by simple majority vote.

5. Recusal.

- a. A member of the CJA Panel Committee (“committee member”) must recuse himself or herself from all participation in the consideration of a matter concerning a Panel member and must refrain from attempting to influence others with respect to such consideration when the committee member is aware of a personal conflict of interest.
- b. In the event that a committee member does not voluntarily recuse himself or herself, the committee must, upon becoming aware of factors that may indicate a potential conflict of interest, initiate an inquiry and determine whether the committee member should be recused. Any resulting determination by the committee on recusal is final and binding.

**B. Duties**

1. CJA Panel Membership. The relevant CJA Panel Committee will examine applications for appointment or reappointment to the Non-Capital CJA Panel, Capital CJA Panel, and CJA Appellate Panel, and recommend to the Chief District Judge approval of those attorneys deemed qualified to serve on these panels. The relevant CJA Panel Committee will also recommend removal of any CJA Panel attorney who fails to satisfy the requirements of Panel membership, including failing to provide high-quality representation, or who engages in conduct that would render continued Panel service inappropriate.
2. Recruitment. The CJA Panel Committee will strive to create and maintain diverse CJA Panels of the highest-caliber federal criminal defense practitioners. In conjunction with a mentoring program, the committee will devise a recruitment strategy that identifies and trains a diverse set of viable Panel applicants.
3. Mentoring. The CJA Panel Committee will review and decide mentor and mentee applicants in accordance with the district’s mentorship program.
4. Training. The CJA Panel Committee is encouraged to assist the CJA Supervising Attorney and Federal Defenders in devising and presenting training programs for the CJA Panel.
5. Voucher Review. The CJA Panel Committee will exercise independent review of disputed voucher reductions pursuant to Sections XI.D..

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

## **VIII. CJA PANEL MEMBERSHIP**

### **A. Establishment**

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

### **B. Size**

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

### **C. Qualifications and Membership**

1. Equal Opportunity. All qualified attorneys are encouraged to apply for CJA Panel membership.
2. Application. Applications for CJA Panel membership are available on the District Court and Federal Defenders' websites. Applications must be submitted to the Court by December 31 of each year. Unless exigent circumstances exist, the CJA Panel Committee will meet in January to review applications.
3. Eligibility for Non-Capital CJA Panel. Applicants must:
  - a. Unless otherwise approved by the Court, be members in good standing of The United States District Court for the Eastern District of Washington. Panel members assigned exclusively to

appeals need not be members of the bar of the Eastern District of Washington, provided they are admitted to and in good standing with the Ninth Circuit Court of Appeals;

- b. except for Appellate or Capital Panel members, maintain a primary, satellite, or shared office in the Eastern District of Washington or Northern Idaho;
- c. possess strong litigation and writing skills;
- d. demonstrate proficiency with the Bail Reform Act, Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, United States Sentencing Guidelines, federal sentencing procedures, and this District's Local Rules;
- e. have the training and ability to manage and effectively utilize electronic case presentation equipment and software in the courtroom and manage electronic discovery;
- f. have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney;
- g. at a minimum, have practiced law for at least three years;
- h. have tried at least two felony jury cases to verdict in either state or federal court (alternatively, an applicant must have appeared as defense counsel of record in at least two federal felony cases from initial appearance or arraignment through sentencing and have other significant litigation experience as determined by the CJA Panel Committee); and
- i. not be actively engaged in the prosecution of any criminal charges by, or on behalf of, a state, county, city, or other entity with authority to prosecute criminal offenses.

With the exception of Section i, above, attorneys who do not possess the criteria set forth above, but believe they have equivalent other experience, are encouraged to apply and set forth in writing the details of that experience for the Committee's consideration.

4. Eligibility for Capital CJA Panel. Applicants must:

- a. be qualified and willing to accept appointments in death penalty prosecutions and/or capital habeas cases; and
- b. meet the requirements set out in Section XII.

#### **D. Reappointment**

1. All Panel members shall reapply for placement on the Panel on a staggered, rotating, 3-year basis. For members of the Washington State Bar Association, the Panel member's term shall coincide with the Panel members' continuing legal education reporting requirements to the Washington State Bar Association. Other Panel members, Appellate, and Capital Panel members who are not members of the Washington Bar must establish that they meet the CLE requirements of the Bar or Bars to which they belong. Any mandatory training for continued membership on the Panel must be reported at the time of reapplication.
2. The Court will notify CJA Panel members, within 3 months prior to the expiration of their current terms, of the need to apply for reappointment to the CJA Panel, and will set forth the procedures and deadlines for re-applying.
3. In considering the re-appointment of CJA Panel members, the CJA Panel Committee may:
  - a. solicit input from the legal community and the Court concerning the quality of representation provided by attorneys seeking reappointment;
  - b. request a personal interview with the CJA Panel member; and
  - c. consider the number of cases the CJA Panel member accepted and declined during the review period, the member's participation in training opportunities, whether the member continues to meet this Plan's technology and facilities requirements, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA Panel members or applicants as set forth in this Plan.
4. If the CJA Panel Committee is considering the denial of an application for re-appointment of an existing Panel member, the CJA Panel Committee will notify the Panel member and the Court and provide to the Panel member an opportunity to respond in writing. The Court, in its discretion, may provide an opportunity for the Panel member to appear before the Court concerning the denial of the member's reapplication.
5. Renewed Panel membership is not guaranteed. The CJA Committee reserves the right to deny renewal for reasons other than poor performance. The reasons for non-renewal include but are not limited to 1) decreasing the number of Panel members to provide the existing Panel members with a sufficient number of cases to maintain proficiency; and



2) opening up spaces for new attorneys on the Panel in order to create a diversified and vibrant Panel membership.

#### **E. Removal**

1. **Mandatory Removal.** Members of the CJA Panel who are suspended or disbarred from the practice of law by any state or federal court will be removed from the CJA Panel immediately without a review process and ordered to withdraw from current CJA representations. The Federal Defenders will be immediately notified when any member of the CJA Panel is removed.
2. **Automatic Disciplinary Review.** The CJA Panel Committee will conduct an automatic disciplinary review of any CJA Panel member when (i) the Panel member has been disciplined by any attorney licensing authority or Bar grievance committee; or (ii) any state or federal court has made a finding of ineffective assistance of counsel against the Panel member.
3. **Discretionary Review.** The CJA Panel Committee has the discretion to conduct a disciplinary review of any CJA Panel member where any state or federal court has made a finding of contempt or imposed a sanction against the Panel member, or where the CJA Panel Committee has received a complaint under Section VIII.F, below.

#### **F. Complaints**

1. **Initiation.** A complaint about the performance of any CJA Panel member may be initiated by any concerned individual and will be directed to the CJA Supervising Attorney who will be responsible for directing the complaint to the CJA Panel Committee, which will determine whether further investigation is necessary. Complaints must be in writing and state the alleged deficiency with specificity. A complainant will receive acknowledgement of the receipt of the complaint, but further notice to the complainant is not required. A complainant's request for anonymity will be respected but cannot be guaranteed.
2. **Notice.** Upon receiving a written complaint, the CJA Panel Committee will notify the Panel member and the Chief District Judge of the specific allegations and will advise the Panel member whether the committee is dismissing the complaint or commencing an investigation.
3. **Response.** A Panel member under review may be asked to respond in writing and appear before the CJA Panel Committee. A Panel member may also request the opportunity to appear or respond in writing.

4. Protective Action. Prior to completing its review and making its recommendation, the CJA Panel Committee may take any other protective action that is in the best interest of the Panel member's clients or the administration of this Plan, including without limitation, recommending the Panel member's suspension or removal from any pending case or from the CJA Panel.
5. Investigation. Any investigation undertaken by the CJA Panel Committee will be concluded within 60 days of receiving the initial complaint. Should the investigation need to continue beyond this prescribed period, the CJA Panel Committee must notify in writing both the Panel member and the Chief District Judge. The CJA Panel Committee has the right to examine witnesses, formally or informally, and take any other investigative action deemed necessary and reasonable before making a recommendation.
6. Review and Recommendation. After investigation and review, the CJA Panel Committee will make a recommendation in writing to the Chief Judge and will contemporaneously provide the Panel member with a copy of the recommendation. The recommendation may include:
  - a. closing the matter with no further action;
  - b. remedial action, including temporary or permanent removal of the attorney from the Panel;
  - c. limiting the attorney's participation to certain categories of cases;
  - d. directing the attorney to complete specific training requirements before receiving further Panel appointments;
  - e. limiting the attorney's participation to handling cases that are directly supervised or overseen by another Panel member or other experienced practitioner;
  - f. assigning a mentor;
  - g. directing the attorney to attend counseling or treatment for substance abuse issues; or
  - h. any other appropriate remedial action.
7. Oversight of Remedial Action. Should the CJA Panel Committee recommend any remedial action by the Panel member, the CJA Panel Committee will establish a plan for overseeing completion of conditions for full Panel reinstatement.
8. Final Disposition by the Court. The CJA Panel Committee will forward its recommendation to the Chief District Judge for consideration and final disposition by the judges of the Court. The Chief District Judge will

communicate a final disposition in writing to the attorney and the CJA Panel Committee.

9. Confidentiality. Information acquired concerning complaints, including the investigation and any potential disciplinary action, will remain confidential unless otherwise directed by the Court or required by applicable ethical standards. The CJA Panel Committee is obligated to ensure the confidentiality of the committee's records and the committee members are obligated to ensure the confidentiality of their records.
10. Additional Appointments. If formal action is pending under Section VIII.F. by the CJA Panel Committee or Court, that Panel member will not receive any new appointments until the complaint is resolved.
11. Records Retention. The Court and CJA Supervising Attorney shall maintain its records for 6 years after final disposition pursuant to The Guide to Judiciary Policy, Vol. 10, Chapter 6, Part F.1 (related to the procurement of contract services).

## **IX. CJA PANEL MEMBER DUTIES**

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

1. CJA Panel members must provide high-quality representation and be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association *Performance Guidelines for Criminal Defense Representations* and the ABA's *Criminal Justice Standards for the Defense Function*.
2. CJA Panel members must conform to the Eastern District of Washington's Local Rules and the Washington State Bar Association's Rules of Professional Conduct.
3. CJA Panel members may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under a CJA appointment. This includes funds for any investigative, expert, or other services.
4. Counsel shall promptly notify the CJA Supervising Attorney in writing in the event any action is taken by any court or bar association affecting the standing of the attorney to practice before such court or bar association. CJA Panel members must immediately notify the CJA Supervising Attorney in writing if they are disbarred, suspended, or disciplined by any bar association. CJA Panel members must also notify the CJA Supervising

Attorney in writing, within 7 days, if they are sanctioned, found in contempt, or found to have provided ineffective assistance of counsel by any state or federal court.

5. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, expert service providers, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for 3 years after approval of the final voucher for an appointment. Time is to be recorded in one-tenth hour (6-minute) increments.
6. Appointed counsel must, unless otherwise ordered by the Court, notify all CJA expert service providers that they should keep contemporaneous time records of their work in one-tenth hour increments. Appointed counsel must notify expert service providers that CJA policies require them to maintain copies of their timekeeping records for 3 years after approval of the final voucher for an appointment.

#### **B. Training and Continuing Legal Education**

1. CJA Panel members must complete training in the CJA automated payment system (“eVoucher”) and the Court’s Case Management/Electronic Case Files system (“CM/ECF”) prior to the attorney’s first appointment.
2. CJA Panel members are expected to remain current with developments in federal criminal defense law, practice, and procedure, including electronic discovery techniques.
3. CJA Panel members must attend, virtually or in person, a minimum of 24 hours every 3 years, of training relevant to federal criminal practice, such as events sponsored by the Federal Defenders and the CJA Supervising Attorney. Training events sponsored by the Federal Defenders and the CJA Supervising Attorney may or may not be CLE accredited by the WSBA.
4. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

#### **C. Facilities and Technology Requirements**

1. CJA Panel attorneys must have the facilities, resources, and technological capability to effectively and efficiently manage assigned cases, including the availability of office space to meet with clients and the technological

resources to receive, review, organize, and otherwise manage electronic discovery and records.

2. CJA Panel attorneys must know and comply with the requirements of CM/ECF and eVoucher, including the submission of requests (Form AUTH) for investigative, expert, and other services. CJA Panel attorneys shall aim to maintain competence with technology relevant to their practice and maintain the minimum technology equipment requirements for CJA counsel described in Appendix 2.

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

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

CJA Panel attorneys will be appointed in a sufficient number of cases per year so that attorneys remain proficient in criminal defense work. Private attorneys from the Non-capital CJA Panel will be appointed in at least 25% of cases in which the accused is determined to be financially eligible for representation under the CJA.

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

More than one attorney may be appointed in any case determined by the Court to be unusual or complex, 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 Court will determine the hourly rate based on the attorney's experience and qualifications.

### **C. Mentee Counsel**

Mentee counsel may be appointed as co-counsel in appropriate cases as determined by the Court and the CJA Supervising Attorney, as provided in Section XI.F below.

### **D. Appointment List**

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

### **E. Appointment Procedure**

1. The CJA Supervising Attorney is responsible for overseeing the assignment of cases to Panel attorneys in collaboration with the Magistrate Judges. The CJA Supervising Attorney will maintain a record of Panel attorney appointments and data reflecting the proportion of

appointments among the CJA Panel and Federal Defenders. A copy of this list will be furnished to each District Judge and Magistrate Judge and to the Clerk of Court upon request.

2. Assignment of cases to CJA Panel members will ordinarily be made on a rotational basis; however, in a complex or unusual case, the CJA Supervising Attorney may assign CJA counsel outside of the normal rotation to ensure that the defendant has sufficiently experienced counsel. The CJA Supervising Attorney has authority to determine individual case assignments based on appropriate considerations.
3. To minimize travel, the CJA Supervising Attorney should try to assign CJA Panel attorneys who are located reasonably near where the case will be heard to avoid unnecessary travel time.

**F. Non-Panel Attorney Appointments**

1. 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 interests of justice, judicial economy, or continuity of representation, or there is another 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. In such cases, the Court will waive any *pro hac vice* fee.
2. 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.

**G. Continuing Representation**

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

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

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

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

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA Panel attorneys must be compensated for time expended in court and time reasonably expended out of court, and reimbursed for expenses reasonably incurred. In determining the reasonableness of out-of-court time, the Court must consider three factors:
  - a. whether the work was performed;
  - b. whether the work performed was a reasonable means of achieving the client's aims in the litigation; and
  - c. whether the time spent to accomplish that work was reasonable.
2. Voucher reductions will be limited to mathematical errors; instances in which work billed was not compensable, undertaken, or completed; and instances in which the hours billed clearly exceed what was reasonably required to complete the task.
3. Vouchers and funding requests for service providers and other litigation costs will not be delayed or reduced to lessen Defender Services program costs in response to adverse financial circumstances.
4. Absent extraordinary circumstances, the Court will act on compensation claims within 30 days of submission.
5. Payment vouchers and amounts paid to counsel or service providers will not be disclosed except as required by law or CJA Guidelines.
6. Counsel and service providers should refer to the District of Eastern Washington Billing Guide for further information on specific billing standards, rules, and policies.

### **B. Claim Submission**

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's online eVoucher system. Information regarding eVoucher is available on the [Court's website](#).

2. Claims for compensation by appointed counsel and all expert service providers shall be submitted no later than 45 days after final disposition of the case, unless good cause is shown.

**C. Voucher Review Procedure**

The CJA clerks will perform an initial technical review for accuracy and compensability under the CJA Guidelines and Ninth Circuit CJA Policies and Procedures. In determining whether services provided by counsel are compensable, the guidelines for ancillary appointment of counsel in Section IV.A.3 of this Plan may be considered. After clerk review, vouchers will be forwarded for consideration and action by the CJA Supervising Attorney, who will review claims for overall reasonableness. Unless otherwise ordered, the voucher will then be sent to the assigned district or magistrate judge for further approval.

**D. Voucher Reductions and Independent Review Procedures**

Claims for compensation under the CJA will not be reduced without affording counsel notice and an opportunity to be heard unless the reductions are for mathematical, typographical, or non-compensable reasons.

1. When contemplating a voucher reduction based on reasonableness, the CJA Supervising Attorney will notify CJA counsel of any proposed reduction and offer counsel the opportunity to justify the submission.
2. If counsel indicates that the reduction is not contested, or if no response is received within 10 days, the CJA Supervising Attorney will process the reduced voucher.
3. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.
4. If after considering the additional information the CJA Supervising Attorney concludes that the claimed time or expense remains unjustified, the voucher will be forwarded to the presiding judge with the CJA Supervising Attorney's recommendation, and the additional information provided by counsel. If the judge agrees with the CJA Supervising Attorney's recommended reduction, counsel may invoke the independent review process for reductions over \$1,000 by submitting a written request within 10 days of the Court's voucher reduction. Deadline extensions may be granted for good cause. A request for independent review shall be directed to the CJA Supervising Attorney and in turn will be provided to the CJA Panel Committee for an independent review.



5. If the CJA Panel Committee finds the request for review to be meritorious, a supplemental voucher in the amount determined by the CJA Panel Committee to be justified will be approved. The CJA Supervising Attorney will notify counsel of the Committee's findings.

**E. Associate Counsel**

Because in most cases only one CJA-compensated attorney is authorized for each client representation (CJA Guidelines § 230.53.10(a)), appointed counsel may utilize the services of an in-house or contract associate to assist with the representation and are encouraged to use lower-billing associates, contract lawyers, paralegals, or other means to minimize costs when lead attorney expertise may not be required, such as for legal research and file review. However, use of associates, contract lawyers, and paralegals must be pre-approved. Requests must specify the tasks, the projected number of hours, the hourly rate, and the total anticipated expenditure. In addition, by accepting appointment pursuant to the CJA, appointed counsel is obligated to ensure that the aggregate hours expended by appointed counsel and others working on the case are reasonable and not duplicative. Associate counsel may appear in court with the Court's prior permission. Appointed counsel is ultimately responsible for the representation.

**F. Mentee Counsel**

The Eastern District of Washington maintains a Mentorship Program which allows Mentees the opportunity to gain knowledge and experience in the practice of federal criminal defense, with the goal that the Mentee will successfully apply to become a member of the CJA Panel.

1. The CJA Panel Committee will select a pool of Mentors from the CJA Panel.
2. 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.
3. 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; and 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.

4. The Mentee will be appointed as co-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 may confer, on behalf of the defendant and under the direction of the Mentor, as counsel of record with the government; chambers; the U.S. Probation Office and other agencies; the defendant's family and friends; potential witnesses; and interpreters. Under the direction of the Mentor, the Mentee may participate in hearings and trials.
5. The Mentee shall serve in the training capacity for one year or through one jury trial, whichever comes first, unless a presiding judge determines that the Mentee needs additional Mentee training.
6. 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 the current rate set by the Court.
7. 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 this Plan and the Guide to Judiciary Policies and Procedure.

#### **G. Investigative, Expert, and Other Services; Litigation Expenses**

1. Financial Eligibility. Counsel for a person financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request CJA funding in an *ex parte* application to the Court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary and that the person is financially unable to obtain them, the presiding judge or designee must authorize the funding. (*See* Guide to Judiciary Policy, Vol 7, Part A; Guidelines for Administering the CJA and Related Statutes, Chapter 3, § 310.10.10.)

2. Applications. Requests to authorize funds for investigative, expert, and other services (Form AUTH) must be submitted using eVoucher and must not be disclosed, except with the consent of the person represented or as required by law or CJA Guidelines.
3. Cost Considerations. CJA representation is provided at public expense. 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 Panel 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, while maintaining the best interests of the client. 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 authorization and to ensure that charges do not exceed the amount authorized. Counsel is 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 authorized amount, absent court approval for any additional amount. The letter shall also instruct the service provider to maintain contemporaneous timekeeping records in one-tenth hour increments, describing the work performed with specificity. The service provider shall maintain such records even if the Court has approved a “flat fee” compensation agreement. “Flat Fee” compensation is generally disfavored and will only be authorized if the Court determines, in advance, that the “flat fee” will clearly conserve public funds. If, at the conclusion of the case, the Court determines that the service provider’s hourly fee rate would have resulted in lower compensation than the “flat fee” rate, the Court will revert to hourly compensation.
4. Geographic Proximity. To minimize travel and avoid unnecessary travel time, when possible, counsel should select investigators and experts who are located near where the case will be heard or where the proposed services are to be performed if such providers are available.
5. Testifying Experts. 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.
6. Compliance. Counsel must comply with Judicial Conference policies set forth in the CJA Guidelines, Ch. 3.

#### **H. Voluminous Discovery**

Courts and attorneys should confer with the CJA Supervising Attorney, the Circuit Case Budgeting Attorney, and the National Litigation Support Team in the Office of Defender Services on cases for which discovery is unusually voluminous and/or complex. The Court should refer to FRCP 16.1 to ensure that parties meet and confer to discuss discovery production schedules and formats.

**I. Case Budgeting and Litigation Planning**

Consistent with CJA Guidelines, Ch. 2 §§ 230.26.10–20, CJA counsel are **required** to use case-budgeting techniques in non-capital representations for which combined attorney and service provider costs are likely to exceed the equivalent of **300** times the prevailing CJA Panel attorney non-capital hourly rate. Case budgets are **recommended** if the case is likely to exceed **150** times the prevailing CJA Panel attorney non-capital hourly rate. The Court or appointed counsel should contact the CJA Supervising Attorney or the Circuit Case Budgeting Attorney to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget. The development of a case budget in larger non-capital representations helps ensure that defense counsel receives the resources necessary to effectively represent the accused. A case budget and supporting documentation provides the reviewing court with sufficient information to assess reasonableness, monitor fairness, and more effectively oversee the expenditure of CJA funds. In all cases where counsel anticipates that the case will exceed the statutory maximum or previously approved case budget, counsel should submit a CJA-26 *before* the case maximum is exceeded to obtain court approval to exceed the statutory maximum or any previously authorized case budget.

**J. Establish and Adhere to Approved Rates**

The current maximum hourly rates for CJA Panel 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, and other service providers should not exceed the maximum rates established by the Ninth Circuit unless otherwise approved by the Court. 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.

**K. Overhead Costs**

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

non-compensable administrative tasks 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)).

**L. No Receipt of Other Payment**

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

**XII. SPECIAL PROVISIONS FOR CAPITAL CASES**

**A. Capital Cases**

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

**B. Applicable Legal Authority**

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

**C. Counsel Qualifications**

1. In addition to the requirements for CJA Panel membership set out in Section VIII of this Plan, counsel appointed in capital cases to represent financially eligible persons will meet the statutory requirements set out in 18 U.S.C. §§ 3005 and 3599(b)-(d) as expanded upon below, as well as any applicable Circuit rules.
2. All attorneys appointed in capital cases must (1) be well qualified as demonstrated by their training, commitment to the defense of capital cases, and distinguished prior criminal defense experience at the relevant stage of the proceeding; (2) have sufficient time and resources to devote to the representation, considering their current caseload and the

extraordinary demands of a capital case; (3) meet all applicable guidelines adopted by the American Bar Association concerning representation of persons in death penalty cases; and (4) consult regularly with the appropriate Death Penalty Resource Counsel project available through the Defender Services division of the Administrative Office of the United States Courts. Unless otherwise ordered by the Court, 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 of experience in the actual trial of felony prosecutions in that Court.

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

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

1. Number of Counsel in Federal Capital Cases. 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. In 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 attorneys.

2. Pre-Trial. No later than when a defendant receives a target letter alleging the commission of a capital offense, or is charged with a federal criminal offense for which the penalty of death is possible, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel.” Consistent with Section IV.A.1 of this Plan, the Court may appoint capably qualified counsel for an individual whom, although uncharged, is the subject of an investigation in a federal death-eligible case. When appointing counsel, the Court must consider the recommendation of the Federal Defenders through its Executive Director, who will consult with Death Penalty Resource Counsel to recommend qualified counsel. In cases for which there are multiple defendants, and the Federal Defenders represents one defendant, the Court should contact the Federal Death Penalty Resource Counsel Project for recommendations for counsel rather than the Federal Defenders’ office because of the potential conflict of interest.
3. Direct Appeals. Counsel representing a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal. When appointing counsel, the Court must consider the recommendation of the Federal Defenders through its Executive Director, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
4. Post-Conviction Proceedings. In any post-conviction proceeding under 18 U.S.C. § 2255 or 2254, the Court will appoint the Capital Habeas Unit of the Federal Defenders 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 CJA Capital 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 Panel to be appointed pursuant to 18 U.S.C. § 3005 or other applicable provisions of law. For 28 U.S.C. § 2255 proceedings, appointment should take place, if possible, prior to denial of certiorari on direct appeal by the United States Supreme Court. For 28 U.S.C. § 2254 proceedings, appointment should take place at the earliest time permissible by law to permit federal counsel to avail themselves of the full statute-of-limitations period to prepare a petition.

5. Attorney Qualification Waiver. Under 18 U.S.C. § 3599(d), the presiding judicial officer may, for good cause, 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.

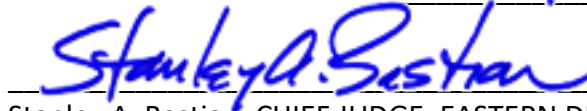
#### **E. Case Budgeting and Resources**

All capital cases, unless staffed only by the Federal Defenders, must be budgeted. As early as practicable after appointment, counsel or the Court should refer the case to the CJA Supervising Attorney in consultation with the 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**

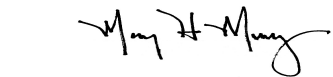
This Plan will become effective when approved by the Judicial Council of the Ninth Circuit.

**ENTERED FOR THE COURT ON** July 22, 2022.



Stanley A. Bastian, CHIEF JUDGE, EASTERN DISTRICT OF WASHINGTON

**APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT.**



Mary H. Murguia, CHIEF JUDGE, NINTH CIRCUIT COURT OF APPEALS

**DATED** August 24, 2022.



## **APPENDIX 1: BYLAWS OF FEDERAL DEFENDERS OF EASTERN WASHINGTON**

### **AMENDED BYLAWS OF FEDERAL DEFENDERS OF EASTERN WASHINGTON AND IDAHO (Adopted March 12, 2013)**

#### **ARTICLE I**

##### **PRINCIPAL OFFICE**

The principal office for the transaction of business of the corporation is hereby fixed and located at Spokane, Washington. The Board of Directors may at any time or from time to time change the location of the principal office from one location to another in the Counties of the Eastern District of Washington.

#### **ARTICLE II**

##### **MEMBERSHIP**

The corporation shall have no members.

#### **ARTICLE III**

##### **BOARD OF DIRECTORS**

###### **Section 1. Number, Quorum and Qualifications of Directors.**

A. The Board of Directors shall consist of ten to fifteen (15) members, a majority of which shall be attorneys. There shall be representation of the lay community. To the extent possible, the board shall be representative of the geographic locations the organization serves. It is anticipated that not all of the Directors may be appointed and serving at all times. Five members of the Board shall constitute a quorum for the transaction of business.

###### **Section 2. Powers of Directors**

All corporate powers of the corporation shall be exercised by or under the authority of and the business and affairs of the corporation shall be managed under the direction of the Board of Directors. Without limiting the generality of the foregoing, the Board of Directors shall have the following powers:

- A. To select and remove the Executive Director;
- B. To select and remove all the other officers and agents of the corporation,

prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation or the Bylaws, fix their compensation and require from them security for faithful service;

- C. To conduct, manage and control the affairs and business of the corporation, and to make such rules and regulations therefore not inconsistent with law, with the Articles of Incorporation or the Bylaws, as they may deem best;
- D. To change the principal office for the transaction of business of the corporation from one location to another within the Eastern District of Washington; to fix and locate from time to time one or more subsidiary offices of the corporation; to designate any place within or without the State of Washington for the holding of any Directors' meetings; and;
- E. To borrow money and incur indebtedness for the purpose of the corporation, and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities thereof.

### **Section 3. Directors and Term of Office.**

The fifteen-member Board of Directors shall be divided into three groups. Each group shall consist of five directors with only one lay director per group. Directors shall be elected to serve three-year terms. The election of Directors shall be staggered so that the term of five directors expires each year. Directors shall not serve more than three consecutive terms.

### **Section 4. Successors and Vacancies.**

Successors and vacancies in the Board of Directors resulting from death, incapacity, resignation, expiration of term of office, removal, or otherwise, shall be filled by the Board of Directors.

### **Section 5. Place of Meetings.**

The annual meetings and regular meetings of the Board of Directors shall be held at any place within or without the State which has been designated from time to time by resolution of the Board or by written consent of all Directors. In the absence of such designation, regular meetings shall be held at the principal office of the corporation. Special meetings of the Board may be called and held either at a place so designated or at the principal office.

**Section 6. Annual Meeting.**

The annual meeting of the Board of Directors shall be held in May at a date, time and location to be determined by the Board.

**Section 7. Other Regular Meetings.**

Regular meetings of the Board of Directors shall be held on the second Tuesday of every other month at a location determined by the Board. Notice of all such regular meetings of the Board of Directors is hereby dispensed with.

**Section 8. Special Meetings.**

Special Meetings of the Board of Directors for any purpose or purposes shall be called at any time by the President or by any two Directors. Special meetings of the Board shall be held upon four days' notice by first-class mail or forty-eight hours' notice delivered personally or by telephone, telegraph, or facsimile transmittal.

**Section 9. Meetings.**

Directors may participate in meetings of the Board of Directors in person or by telephone conference call.

**Section 10. Waiver of Notice; Consents and Approvals.**

The transactions of any meeting of the Board of Directors, however called and noticed and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if either before or after the meeting each of the Directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the Minutes of the meeting.

**Section 11. Adjournment**

In the absence of a quorum at any meeting of the Board of Directors, the majority of the Directors present may adjourn the meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time and place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

**Section 12. Compensation.**

The Directors shall receive no compensation for their services as such.

## **ARTICLE IV**

### **OFFICERS**

#### **Section 1. Officers.**

The officers of this corporation shall be a president, president-elect, secretary/treasurer, and such other officers as the Board of Directors may appoint. When the duties do not conflict, one person, other than the president, may hold more than one of the offices. Officers other than the president need not be members of the Board of Directors.

#### **Section 2. Election.**

The Board of Directors shall elect all officers of the corporation for terms of one year, or until their successors are elected and qualified.

#### **Section 3. Vacancies.**

A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board of Directors.

#### **Section 4. President.**

Subject to the control of the Board of Directors, the president shall have general supervision, direction and control of the business and affairs of the corporation. He shall preside at all meetings of the Directors, and shall have such other powers and duties as may be prescribed from time to time by the Board of Directors.

#### **Section 5. President-elect.**

In the absence or disability of the president, the president-elect shall perform all the duties of the president, and in so acting shall have all the powers and perform such other duties as may be prescribed from time to time by the Board of Directors. The president-elect shall succeed the president upon the expiration of the president's term of office.

#### **Section 6. Secretary/Treasurer.**

The secretary/treasurer shall keep a full and complete record of the proceedings of the Board of Directors, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the books of the corporation, and shall discharge such other duties as pertain to the office or as prescribed by the Board of Directors. The secretary/treasurer shall review the financial records and insure that regular financial reports are presented to the Board of Directors. The secretary/treasurer shall also review the annual audit and report to the Board on the status of the annual audit. The secretary/treasurer shall have

such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors.

## **ARTICLE V**

### **COMMITTEES**

#### **Section 1. Committees of Directors.**

The Board of Directors, by resolution adopted by the majority of the Directors then in office, may designate one or more committees, each of which shall consist of two or more Directors, which committees, to the extent provided in the said resolution, shall have and exercise the authority of the Board of Directors in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law. Appointments to committees which have the authority of the Board of Directors shall be made by a vote of the majority of Directors then in office.

#### **Section 2. Standing Committees.**

There shall be three standing committees: Finance, Personnel/Nominating and Executive. The president may appoint members to the standing committees as needed.

- A. Finance Committee: Responsible for working through budget reviews and proposals before they are presented to the Board, development of an employee pension plan, and any other financial issues as requested by the Executive Director.
- B. Personnel/Nominating Committee: Responsible for review of personnel policy; assist with specific personnel issues as requested by the Executive Director; and responsible for resolving Board membership issues such as staggering of terms, nomination of new Board members, yearly nomination of Board officers.
- C. Executive Committee: The executive committee shall be comprised of the officers.

#### **Section 3. Other Committees.**

Other committees not having and exercising the authority of the Board of Directors in the management of the corporation may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. The president of the corporation shall appoint the members of such committees. Any member thereof may be

removed by the person or persons authorized to appoint such member whenever in his, her or their judgment the best interests of the corporation shall be served by such removal.

**Section 4. Term of Office.**

Each member of a committee shall continue as such until the next annual organizational meeting of the Directors and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

**Section 5. Chairperson.**

One member of each committee shall be appointed chairperson by the person or persons authorized to appoint the members thereof.

**Section 6. Vacancies.**

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

**Section 7. Quorum.**

Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

**Section 8. Rules.**

Each committee may adopt rules for its own government not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

**ARTICLE VI**

**CONTRACTS, CHECKS, DEPOSITS AND FUNDS**

**Section 1. Contracts.**

The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and any such authority may be general or confined to specific instances.

**Section 2. Checks, Drafts, etc.**

All checks, drafts or orders for the payment of money, notes or other evidences of

indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the secretary/treasurer or an assistant treasurer and countersigned by the president or president-elect of the corporation.

**Section 3. Deposits.**

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select by name or by class.

**Section 4. Gifts.**

The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the corporation.

**Section 5. Books and Records.**

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the corporation may be inspected by any Director, or a Director's agent or attorney, for any proper purpose at any reasonable time.

**ARTICLE VII**

**AMENDMENTS OF BYLAWS**

These Bylaws may be amended or repealed and new Bylaws adopted by the vote of a majority of the members of the Board of Directors at any Directors' meeting.

  
Secretary

## **APPENDIX 2: TECHNOLOGY REQUIREMENTS FOR THE EASTERN DISTRICT OF WASHINGTON**

Each lawyer in this District shall aim to maintain competence with technology relevant to their practice. This will include working to keep abreast of changes in technology as it relates to case management, discovery, investigation, and in-court advocacy. It will also include understanding the benefits and risks associated with current and emerging technology.

In accordance with the above mission, those attorneys, and their staff, appointed under the CJA should be proficient in the use of e-mail programs, word processing, spreadsheets, ECF filing, the searching of electronic data, or any other software programs that may be used in any federal criminal case.

The following are minimum technology equipment requirements for CJA counsel:

- PC or Mac computer, including a DVD/CD writer, speakers, and USB ports to utilize external hard drives and thumb drives
- Printer
- Scanner with ability to convert paper documents to PDF/A format
- Secure high-speed Internet connection
- A modern web browser that is compatible with CM/ECF and CJA eVoucher software
- Multi-media player such as Windows Media Player
- Word processing program – Microsoft Word preferred
- Presentation, database, and spreadsheet software – similar to what is available in the Microsoft Office Suite
- A PDF program with writing and reading capability, plus the ability to create searchable PDF documents (OCR)
- Anti-virus software configured to automatically run security updates
- A Zip file application
- An individual e-mail address for the attorney that is private and secure

Regardless of whether CJA counsel use Apple or Windows based computers, their computer hardware should support the minimum requirements for current releases of the Windows operating system and Microsoft Office applications. Since some litigation support programs do not work with Apple operating systems, CJA counsel who primarily use Apple based computers should have access to a computer that uses a Windows operating system. Attorneys should anticipate the need to upgrade their computer and peripheral equipment a minimum of every five years. Upgrade decisions should be based on what hardware and software will provide the best functionality and compatibility with future versions of CM/ECF and CJA eVoucher.

*NOTE: Computer equipment, software, and training are a part of each lawyer's overhead expenses and are not expenses that will be paid by the Court.*