



JUDICIAL COUNCIL OF THE NINTH CIRCUIT

MODEL PLAN FOR IMPLEMENTATION AND ADMINISTRATION OF THE CRIMINAL JUSTICE ACT

The Judicial Council of the Ninth Circuit adopted this model plan in response to the 2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act (Cardone Report), which outlined numerous recommendations for improving administration of the system of public defense in federal courts. Many of these recommendations were adopted by the Judicial Conference of the United States and are reflected herein.

The Circuit Model Plan is intended to provide guidance in the implementation and administration of the CJA, as required under 18 U.S.C. § 3006A(b), and reflects the policies of the circuit's Judicial Council and the Judicial Conference of the United States. It is substantially the same as the AO Model Plan but with enhanced panel management provisions the Judicial Council encourages districts to adopt.

Courts must review their CJA plans every five years and amend as needed to ensure compliance with the CJA and any revised circuit or national policies. Courts are encouraged to coordinate with their local federal defender and panel attorney district representative when reviewing or revising their district CJA plan. Because revised plans are vetted by the Circuit CJA Unit before submission to the Judicial Council, courts are further encouraged to enlist a Circuit Case Budgeting Attorney to assist with plan review or revisions.

Once a revised plan is ready for consideration by the Judicial Council, it should be sent to the Chief Circuit Judge and Circuit Executive, accompanied by a letter identifying and explaining substantive changes. Unless the changes are too extensive, a redline comparison to the existing plan or to the circuit model plan also should be included. Non-substantive changes to a CJA plan may be approved by the Chief Circuit Judge without a full Judicial Council vote. For questions or other assistance, contact a Circuit Case Budgeting Attorney or the Circuit CJA Unit at cja@ce9.uscourts.gov.

Approved: March 11, 2019

Revised: August 23, 2023

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

I. AUTHORITY

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), the judges of the United States District Court for the _____ District of _____ adopt this Plan, as approved by the Ninth Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY

A. Objectives

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

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

B. Representational Services

This Plan provides for representational services by the [insert name of Defender Organization] and for the appointment and compensation of private attorneys from an approved panel list ("CJA Panel") and other private attorneys in limited circumstances, in cases authorized under the CJA and related statutes.

C. Panel Administration

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

D. Compliance

The Court, its clerk, the [Defender Organization], 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, and the Pretrial Services Office must comply with the CJA Guidelines, approved by the Judicial Conference or its Committee on Defender Services, the Ninth Circuit's CJA Policies and Procedures, and with this Plan. The Court will ensure that a current copy of the CJA Plan is made available on the [Court's/Defender Organization's] website and provided to counsel upon the attorney's designation as a member of the CJA Panel.

III. DEFINITIONS

- A. "Appointed Attorney"** is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the Defender Organization and its staff attorneys, and attorneys provided by a bar association or legal aid agency.
- B. "CJA Administrator"** is a person employed by the [Defender Organization/Court] to perform tasks related to the administration of the CJA Panel.
- C. ["CJA Supervising Attorney"/ "CJA Resource Counsel"]** is an attorney employed by the [Defender Organization/Court] who [oversees the CJA Department and administration of panel management or voucher review.]

Comment: District plans should define roles of persons involved with CJA administration to whom a Court has delegated any level of voucher review or panel management responsibilities, including a CJA Supervising Attorney, CJA Resource Counsel, or CJA Administrator. For ease, the term "CJA Department" is used in this model plan to refer collectively to all such persons. The term "CJA Supervisory Attorney" is used throughout this model plan to refer to either a "CJA Supervising Attorney" or "CJA Resource Counsel," according to the title used by the district. A CJA Supervisory Attorney may be employed by the Defender Organization, the Court, or a combination of the two.

- D. "Panel Attorney District Representative" (PADR)** is a member of the district's CJA Panel who is selected by the Defender Organization, with approval from the Chief District Judge, to serve a three-year renewable term as a representative of the district's CJA Panel for the Defender Services CJA PADR program and local CJA committees.
- E. "Representation"** includes counsel, service providers (such as paralegals, investigators, or experts), litigation support vendors, and expenses.

IV. ELIGIBILITY FOR CJA REPRESENTATION

A. Subject-Matter Eligibility

1. Mandatory. Representation must be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the 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 above IV(A)(1)(i));
 - c. is charged with civil or criminal contempt and faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;
 - f. is proposed by the United States attorney for processing under a pretrial diversion program; or
 - g. is held for international extradition under 18 U.S.C. chapter 209.
3. Ancillary Matters. The Court has the discretion to appoint counsel for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the Court should consider whether such representation is reasonably necessary to:
- a. protect a constitutional right;
 - b. contribute in some significant way to the defense of the principal criminal charge;
 - c. aid in preparation for the trial or disposition of the principal criminal charge;
 - d. enforce the terms of a plea agreement in the principal criminal charge;
 - e. preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
 - f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

- a. Duties of Federal Law Enforcement Officers
 - (1) For the purpose of ensuring that eligible persons have access to counsel as soon as practicable, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel of an arrest, unless the person has retained counsel. Court personnel will in turn notify the Defender Organization of the arrest.
 - (2) Employees of law enforcement agencies may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.
- b. Duties of United States Attorney's Office
 - (1) Upon the return or unsealing of an indictment, the filing of a criminal complaint or information, and where the defendant has not retained counsel, the United States Attorney's Office will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the Defender Organization.
 - (2) Upon issuance of a target letter, and where the individual has not retained counsel, the United States Attorney's Office must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the Defender Organization, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the Defender Organization, in which case they must promptly notify the Court.
 - (3) Employees of the United States Attorney's Office may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.
- c. Duties of Defender Organization
 - (1) In cases in which the Defender Organization may be appointed, the office will immediately investigate and determine whether an actual or potential conflict exists and, if so, must promptly notify the [Court/CJA Administrator] to facilitate the timely appointment of other counsel.

- (2) Whenever practicable, the Defender Organization will discuss with the person the right to appointed counsel, assist with completion of a financial affidavit (Form CJA 23), and arrange to have the matter promptly presented before a judicial officer of this Court to determine financial eligibility and counsel appointment.
- d. Duties of Pretrial Services Office
 - (1) When counsel has been appointed, the pretrial services officer will provide counsel 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.
 - (2) Unless it is not practicable, the pretrial services officer will not conduct the pretrial services interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived, or the defendant otherwise consents to a pretrial services interview without counsel.

Comment: The Judicial Conference recognizes the importance of the advice of counsel for persons subject to proceedings under the Bail Reform Act, [18 U.S.C. § 3142 et seq.](#), prior to their being interviewed by a pretrial services or probation officer. Therefore, the Conference encourages districts to take the steps necessary to permit the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing. [JCUS-MAR 88](#), p. 18–19.

2. Eligibility Determination

- a. In every case where 18 U.S.C. § 3006A(a) and related statutes authorize appointment of counsel, the Court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, the Court will appoint counsel to represent the person if he or she is financially unable to obtain counsel.
- b. The completed financial eligibility affidavit (Form CJA 23) should reflect relevant information bearing on the person's financial eligibility for appointed counsel and should not be included in the public case file.
- c. Determining eligibility for representation under the CJA is a judicial function performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the Court or the Defender Organization may be

designated to obtain or verify the facts relevant to the financial eligibility determination.

- d. If at any time after appointment appointed counsel has reason to believe that a person is financially able to retain private counsel or make partial payment for the appointed representation, and the source of counsel's information is not protected as a privileged communication, counsel will advise the Court.
- e. 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).
- f. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel will be appointed in accordance with the general provisions set forth in this Plan.
- g. 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.

3. Standards

- a. In determining whether a person is "financially unable to obtain counsel," the Court should consider the cost of providing the person and the person's dependents with life's necessities, the cost of securing pretrial release, asset encumbrance, and the likely cost to retain counsel.
- b. The initial eligibility determination must be made without regard to the financial ability of the person's family to retain counsel unless the person's family indicates a 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.

V. TIMELY APPOINTMENT OF COUNSEL

- A. Timing. Eligible persons must receive appointed counsel as soon as feasible. This means as soon as possible after receiving a target letter, after being taken into custody, upon appearing before a judicial officer, when formally charged, when

notified of charges if formal charges are sealed, or when a judicial officer otherwise determines appointed counsel is appropriate under the CJA or this Plan, whichever occurs earliest. The Court, in cooperation with the Defender Organization and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

- B.** Pretrial Services Interview. 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. [OPTION: The [Defender Organization/Court] will establish a schedule of “on call” or “duty day” attorneys, who can be employees of the Defender Organization or CJA 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.** Retroactive Appointment. Appointment of counsel may be made retroactive to include representation provided prior to entry of an appointment order.

VI. [INSERT NAME OF DEFENDER ORGANIZATION]

A. Establishment

The [insert name of Defender Organization] is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Staff Supervision and Case Workload

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

C. Standards and Professional Conduct

The Defender Organization must provide high-quality representation consistent with the best practices of the legal profession. The Defender Organization must conform to the highest standards of professional conduct, including but not limited to the [American Bar Association’s Model Rules of Professional Conduct/Code of Conduct for Federal Public Defender Employees/Model Code of

Conduct for Federal Community Defender Employees/other standards for professional conduct adopted by the Court].

D. Private Practice of Law

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

E. Panel Attorney Training

In coordination with the PADR and the CJA Panel Committee, the Defender Organization 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, best practices in federal criminal defense, and presentations on courtroom and office technology.

VII. CJA PANEL COMMITTEE

A. Establishment

1. A CJA Panel Committee [or CJA Panel Committees in [list geographic divisions]] will be established by the [Court/Defender Organization] in consultation with the [Court/Defender Organization] to assist the Court in the selection, oversight, and management of CJA Panel members. The CJA Panel Committee 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.
2. At a minimum, the CJA Panel Committee[s] must consist of:
 - a. the [Federal Public Defender/Community Defender] or delegate, who will be a permanent member of the CJA Panel Committee;
 - b. the district's current PADR or delegate, who will be a permanent member of the CJA Panel Committee;
 - c. the district's [CJA Supervisory Attorney], who will be a permanent member; [This must be included if the district has a CJA Supervisory Attorney].
 - d. two or more criminal defense attorneys, at least one of whom is a CJA Panel member; and
 - e. an ex officio staff member employed by the [Defender Organization/Court Clerk] who will act as administrative coordinator.

Comment: Judicial Conference policy requires every district to form a committee, or designate a CJA supervisory or administrative attorney or a defender office, to manage the selection, appointment, retention, and removal of panel attorneys. The composition of the CJA Panel Committee can be adjusted to reflect the degree of judicial, federal defender, or panel attorney involvement desired by each district court, including the use of state court practitioners or judicial officers. The committee must incorporate judicial input into panel administration. See [JCUS-SEP 2018](#), p. 39. The court should make a diligent effort to ensure that the composition of the CJA Panel Committee reflects the racial, ethnic, gender, and geographic diversity of the district.

3. Except for the Defender Organization, PADR, [CJA Supervisory Attorney] and ex officio administrator, members will serve for [three] years and may be extended for one additional [three-year] term. Terms will be staggered to ensure continuity on the CJA Panel Committee and rotation of members. Vacancies will be filled upon recommendation of the remaining committee members and approval by the Chief District Judge.
4. The CJA Panel Committee will meet at least twice a year and at any time the Court or a committee member asks the committee to consider an issue.

B. Duties

1. CJA Panel Membership. The CJA Panel Committee will examine applications for appointment or reappointment to the CJA Panel and recommend to the Chief District Judge approval of those attorneys deemed qualified to serve on the CJA panel [or any specialized panel], as provided in Sections VIII.C and VIII.D. The 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 engages in conduct that would render continued panel service inappropriate. See also Section VIII.E.
2. Recruitment. The CJA Panel Committee will strive to establish and maintain a diverse CJA Panel of the highest caliber federal criminal defense practitioners. In conjunction with a mentoring program, the Committee will devise a recruitment strategy that identifies and trains a diverse set of viable panel applicants.

Comment: The Strategic Plan for the Federal Judiciary (Sept 2020) notes that public trust and confidence are enhanced when the judiciary’s workforce—judges, employees, and CJA attorneys—broadly reflects the diversity of the public it serves. The strategic goals of the Federal Judiciary’s Defender Services Committee include creating a diversified workforce that encompasses all aspects of diversity, including, but not limited to, race, ethnicity, gender identity, sexual orientation, age, and disability. In furtherance of this goal, recruitment efforts to establish a diverse CJA Panel could include the following:

- notifying bar associations comprised of racially and ethnically diverse populations of the availability of panel membership;
- advertising in legal journals directed towards women, people with disabilities, and people of color to encourage panel membership;
- informal person-to-person recruiting of women, people of color, and the disabled community by CJA panel committee members and panel administrators; and
- contacting current or former members of the panel, or other prominent local attorneys who have disabilities or are minorities or women for recommendations of potential panel members.

3. **Mentoring.** The CJA Panel Committee [in collaboration with the Defender Organization] must appoint experienced CJA Panel members to serve on a subcommittee that will create and administer a mentoring program to help prepare viable panel candidates by pairing experienced practitioners with attorneys new to federal criminal practice. Mentoring program participants will be compensated.

Comment: The Judicial Council of the Ninth Circuit encourages courts to develop a mentoring program that, along with a robust recruitment program, will encourage talented attorneys to become qualified for membership on the CJA Panel. The Ninth Circuit’s CJA Unit is available to assist districts in designing a mentoring program that includes an application process, goals or benchmarks for participants, guidance for mentors, program completion requirements, and compensation. Compensation is critical in encouraging program participation. Participants may be compensated in several ways: (1) under the CJA at the prevailing hourly rate when appointed as second counsel in cases determined by the Court to be extremely difficult or when necessary in the interests of justice; (2) under the CJA at a reduced associate rate; or (3) using the Court’s Attorney Admission/Bar and Bench funds at a rate determined by the Court for non-representational services, such as consulting with appointed counsel or attending training sessions. Questions about mentoring programs may also be directed to the AO’s Defender Services Office, Legal and Policy Division Duty Attorney as 202-502-3030.

4. **Training.** The CJA Panel Committee will assist the Defender Organization in devising and presenting training programs for the CJA Panel.
5. **Voucher Review.** The CJA Panel Committee will [be available to/appoint experienced federal criminal defense practitioners to serve on a peer review subcommittee to] review and make a recommendation on any

CJA payment voucher the presiding judge or designee is considering reducing for reasons other than mathematical errors. The presiding judge or designee will, at the time the voucher is submitted to the [CJA Committee/Peer Review Committee], provide a statement describing questions or concerns they have with the voucher. Counsel will be notified of the potential voucher reduction and given the opportunity to provide relevant information or documentation. See Section XI.E.

Comment: Input from a peer review subcommittee can be a valuable tool to assist judges in assessing the reasonableness of billed time or funding requests for experts and other service providers. The Cardone Report encourages using a committee of defense-attorney peers to assist with voucher review to promote the independence of the defense function by obtaining input from other defense practitioners about the reasonableness of counsel's efforts. Report at 121-123 and Interim Recommendation 16. Such review will also alert the committee about areas where substantive training or an eVoucher refresher may be needed. An example of one district's peer/fee review committee's procedures is available in Appendix 8 of the Ninth Circuit CJA Policies and Procedures.

6. Annual Report. Annually, the 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, any proposed changes to panel size, any recurring issues or difficulties panel attorneys or their clients encounter, and any other operating difficulties, along with recommendations for appropriate changes.

VIII. CJA PANEL MEMBERSHIP

A. Establishment

The existing, previously established panel[s] of attorneys who are eligible and willing to be appointed to provide representation under the CJA [is/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.

Comment: Courts and CJA committees should consider establishing specialized panels to address a district's particularized needs. These could include a Misdemeanor Panel, a Complex Felony Panel, a Material Witness Panel, an Appellate Panel, or an Emeritus Panel (for experienced attorneys who prefer a reduced caseload). When creating a specialized panel, the CJA Panel Committee should establish standards for membership, such as Spanish language skills, technological expertise, or years of experience. Courts may also create panels dedicated to serving separate geographic divisions.

B. Size

The CJA Panel size will be determined by the 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 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. The CJA Panel Committee shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, national origin, gender identity, sexual orientation, age, religion, or disability.
2. Application. Application forms for CJA Panel membership are available from the [Defender Organization/Court]. Applications may be submitted to the CJA Panel Committee at any time.
3. Eligibility. CJA Panel applicants must:
 - a. be members in good standing of the [state bar of this district], federal bar of this district, and the Ninth Circuit Court of Appeals;
 - b. except for appellate or capital habeas panel members, maintain a primary, satellite, or shared office in the [District/Division of the District];
 - c. possess strong litigation and writing skills;
 - d. demonstrate proficiency with the Bail Reform Act, Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, United States Sentencing Guidelines, federal sentencing procedures, and 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.

- (1) At a minimum, counsel must have [list requirements—see Comment below].
- (2) Attorneys who do not possess the experience set forth above but believe they have equivalent other experience, or who have completed a mentoring program, are encouraged to apply and set forth in writing the details of that experience for the committee’s consideration.

Comment: These general eligibility requirements may be supplemented or replaced by more detailed and specific standards, depending on the needs of the district. Specific eligibility requirements might include at least two (2) years in a public defender or prosecutor’s office, either state or federal; OR at least three (3) years in private practice during which time the attorney was involved in at least 20 criminal cases in either state or federal court, five (5) of which were state or federal felony trials; OR an applicant should have tried at least two (2) federal felony cases from initial appearance or arraignment through sentencing and have other significant litigation experience as determined by the CJA Committee and/or CJA Supervisory Attorney. Participation in the district’s mentoring program may be a prerequisite. A specific training eligibility requirement also may be imposed prior to appointment to the panel. See CJA Guidelines § 210.10.15(c)(2). Smaller districts that struggle to recruit panel members could consider allowing applicants to be members in good standing of other district courts or state bars.

D. Reappointment

1. Once appointed, CJA Panel members will serve a term of three years. CJA Panel members may serve an unlimited number of terms and may serve on specialized panels as deemed appropriate by the CJA Panel Committee.
2. The [Defender Organization/Court] will notify CJA panel members, within [insert number of months] prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel, and will set forth the procedures and deadlines for re-applying.
3. In considering the reappointment 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 and compliance with continuing legal education requirements, whether the member

continues to meet this Plan's technology and facilities requirements, whether the member has been the subject of any complaints, whether the member has complied with CJA funding authorization and billing procedures and requirements, and whether the member continues to meet the prerequisites and obligations of CJA panel members or applicants as set forth in this Plan.

E. Removal

1. **Mandatory Removal.** Members of the CJA Panel who are suspended or disbarred from the practice of law by their state courts, or who are suspended or disbarred from any federal court, will be removed from the CJA Panel immediately and ordered to withdraw from current CJA representations. The Defender Organization 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 against whom any licensing authority, grievance committee, or administrative body has acted, or when a finding of probable cause, contempt, sanction, or reprimand has been made against the panel member by any state or federal court.

F. Complaints

1. **Initiation.** A complaint about an attorney's performance may be initiated by any concerned individual and should be directed to the CJA Panel Committee and/or CJA Supervisory Attorney, which will determine whether further investigation is necessary. Complaints must be in writing and state the alleged deficiency with specificity.
2. **Notice.** Upon receiving a written complaint, the CJA Panel Committee and/or CJA Supervisory Attorney will notify the panel member and the Chief District Judge of the specific allegations and will advise the panel member whether it has commenced an investigation or dismissed the complaint.
3. **Response.** A panel member under review may be asked to respond in writing and appear before the CJA Panel Committee and/or CJA Supervisory Attorney, or may request to do so.
4. **Protective Action.** Prior to deciding the matter, the CJA Panel Committee and/or CJA Supervisory Attorney may recommend the CJA Panel member's suspension or removal from any pending case, or from the CJA

Panel, and may take any other protective action that is in the best interest of the attorney's clients or the administration of this Plan.

5. Investigation. Any investigation undertaken by the CJA Panel Committee and/or CJA Supervisory Attorney will be concluded within [insert time frame] of receiving the initial complaint. Should the investigation need to continue beyond this prescribed period, the CJA Panel Committee and/or CJA Supervisory Attorney must notify both the attorney and the Chief District Judge in writing.
6. Review and Recommendation. After investigation and review, the CJA Panel Committee and/or CJA Supervisory Attorney may recommend closing the matter with no further action or may recommend appropriate remedial action, including:
 - a. removing the attorney from the panel permanently or temporarily;
 - b. limiting the attorney's participation to certain categories of cases;
 - c. directing the attorney to complete specific training requirements before receiving further panel appointments;
 - d. limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner or assigning a mentor;
 - e. directing the attorney to attend counseling for substance abuse issues; or
 - f. any other appropriate remedial action.
7. Oversight of Remedial Action. Should the CJA Panel Committee and/or CJA Supervisory Attorney recommend any remedial action on the part of the attorney, the CJA Panel Committee and/or CJA Supervisory Attorney will establish, in its recommendation to the Chief District Judge, a plan for overseeing completion of conditions for full panel reinstatement.
8. Final Disposition by the Court. The CJA Panel Committee and/or CJA Supervisory Attorney will forward its recommendation to the Chief District Judge for consideration and final disposition. The Chief District Judge will communicate a final disposition in writing to the attorney and the CJA Panel Committee and/or CJA Supervisory Attorney.
9. Confidentiality. Information acquired concerning complaints and potential disciplinary action will remain confidential unless otherwise directed by the Court or required by applicable ethical standards.

Comment: Districts may create a set of retention policies for records of attorney complaints. The Guide to Judiciary Policy, Vol. 10, Chapter 6 may be useful in developing such a policy.

IX. CJA PANEL MEMBER DUTIES

A. Standards and Professional Conduct

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

B. Training and Continuing Legal Education

1. CJA Panel attorneys are expected to remain current with developments in federal criminal defense law, practice, and procedure, including electronic discovery techniques.
2. CJA panel members must annually attend [insert number] hours of Continuing Legal Education relevant to federal criminal practice, including trainings sponsored by the Defender Organization.
3. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

1. CJA panel attorneys must have the facilities, resources, and technological capability to effectively and efficiently manage assigned cases, including the availability of office space to meet with clients and the technological resources to receive, review, organize, and otherwise manage electronic discovery and records.
2. CJA panel attorneys must know and comply with the requirements of electronic filing and eVoucher, including how to submit requests for investigative, expert, and other services.

Comment: The Cardone Report examined a myriad of challenges defense attorneys face in the age of digital technology. Report at 227-232 and Interim Recommendation 21. Maintaining competence with technology is an important aspect of practicing in federal court, and courts should consider adopting minimum technology requirements. These could include proficiency in using e-mail, word processing, spreadsheets, and keyword searching tools; hardware such as a multimedia player, scanner, and DVD/CD player with read/write capability; and applications to open ZIP files and to create searchable PDF documents. In addition, districts should ensure CJA counsel understand when and how to utilize the resources of the National Litigation Support Team, funded by Defender Services to provide e-discovery assistance to panel attorneys.

X. COUNSEL APPOINTMENT IN NON-CAPITAL CASES

A. Apportionment of Cases

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. “Substantial” will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

B. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be extremely difficult or when necessary, in the interests of justice, to ensure high quality representation. Co-counsel who are members of the CJA Panel will be compensated at the applicable CJA hourly rate. If a non-panel attorney is appointed as co-counsel, the Court will determine the hourly rate, not in excess of the applicable CJA hourly rate, based on the attorney’s experience and qualifications.

C. Appointment List

The [Defender Organization/Court] will maintain a current list of all CJA Panel

attorneys, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

D. Appointment Procedure

The [Defender Organization/Court] is responsible for overseeing the assignment of cases to panel attorneys. The [Defender Organization/Court] will maintain a record of panel attorney appointments and data reflecting the proportion of appointments among the CJA Panel and Defender Organization.

1. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis. However, in a complex or otherwise difficult case, the [Defender Organization/Court] may appoint CJA counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
2. Under special circumstances, the Court may appoint an attorney who is not a member of the District's CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. Other circumstances may include large multi-defendant cases for which there is an insufficient number of CJA Panel attorneys in the District. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Panel Committee.

E. Continuing Representation

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

Comment: While the Ninth Circuit recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. The decision to continue representation should be made by the defendant after consulting with trial counsel, who should assess whether continuity is in the best interests of the client and consistent with counsel's professional skills and obligations. Courts may designate a specialized panel of appellate attorneys available for appointment in the event trial counsel prefers to withdraw.

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.

B. Claim Submission

1. Claims for compensation from counsel or a service provider must be submitted on the appropriate CJA form through the Court's eVoucher

system. Information regarding eVoucher is available [insert source – website, local rule, general order, etc.]

2. Interim claims for compensation from counsel or a service provider may be submitted [insert period of time, such as bi-monthly or quarterly], if the amount of outstanding billable time exceeds [insert dollar amount].
3. Final claims for compensation from counsel or a service provider will be submitted no later than [45, 60, or 90] days after the representation concludes, unless good cause is shown. Every effort should be made to encourage claim submission as soon as possible upon completion of services rendered. While extremely late submissions may impact the ability to adequately substantiate claims, voucher reductions based solely on submissions outside the time limit are not authorized.

C. [OPTION] Delegated Authority for Claim Approval

This Court has delegated to [insert person's title] the authority to [insert scope of delegation authority—see comment box below]. The Court retains ultimate review and approval authority.

Comment: The Cardone Report provides compelling reasons for courts to adopt alternative methods of conducting reasonableness review of payment vouchers, including delegation of voucher review and approval to a CJA Supervisory Attorney with criminal defense experience. Report at 86-133. Delegation has been successfully implemented in several districts. For example, the Districts of Arizona, California Eastern, and California Southern allow vouchers below a specific dollar amount to be approved by a nonjudicial officer. Similarly, the Districts of Central California and Northern California employ CJA Supervising Attorneys who review and approve payment vouchers and service-provider funding requests on behalf of the Court. The May 4, 2018, Memorandum from Sheryl Walter, AO General Counsel, to Chief Ninth Circuit Judge Sidney R. Thomas, explains that districts may delegate these tasks to nonjudicial officers (e.g., CJA administrators) so long as CJA attorneys are able to seek review of reductions or funding denials to a judge and the presiding judge retains ultimate review and approval authority. Courts may also consider delegating their defender organization to conduct an initial review of vouchers and issue a payment recommendation to the presiding judge. To avoid potential conflicts of interest, defender staff reviewing vouchers should work independently and exclusively on CJA panel matters, separate from the remainder of the defender office, and be required to maintain confidentiality of panel attorney submissions. The Circuit's CJA Unit is available to assist districts in developing delegation standards.

D. Voucher Review Procedure

The CJA Department will perform an initial review for accuracy and compensability under the CJA Guidelines, Ninth Circuit CJA Policies and Procedures, and Ninth Circuit CJA Compensability Handbook. 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 this review, vouchers will be forwarded for consideration and action by the presiding judge or designee, who will review claims for overall reasonableness. A voucher may be referred to the [CJA Panel Committee/CJA Supervisory Attorney] for review and recommendation before final action on the claim is taken.

E. Voucher Reductions and Independent Review Procedures

1. Reductions. Claims for compensation under the CJA will not be reduced without affording counsel notice and an opportunity to be heard.
 - a. When contemplating a voucher reduction for other than mathematical or technical reasons, the [Court/CJA Department] will notify CJA counsel of any proposed reduction and offer counsel the opportunity to justify the submission.
 - b. If counsel indicates that the reduction is not contested, or if no response is received within ten days, the [Court/CJA Department] will process the reduced voucher.
 - c. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.
2. Independent Review.
 - a. If after reviewing counsel's response the [presiding judge/CJA Department] reduces the voucher, counsel may seek review of the reduction to the Chief District Judge or designee within ten days. If the Chief District Judge is the presiding judge who reduced the voucher, counsel may seek review by the Chief Circuit Judge or designee within thirty days. Deadline extensions may be granted for good cause.
 - b. If the reviewing judge or designee finds the request for review to be meritorious, the CJA Department will direct counsel to create a new voucher for the appropriate amount.

F. 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.

2. **[OPTION] Delegation.** This Court has delegated to [insert person’s title] the authority to [insert scope of delegation authority—see comment box below].

Comment: Courts may delegate review and recommendation of funding applications for investigative, expert, and other services to a CJA Supervisory Attorney, Defender Organization, Magistrate Judge, or any non-presiding judge to help ensure appointed counsel’s ability to obtain necessary resources in a manner that does not unreasonably compromise or interfere with the exercise of sound independent professional judgment. Delegation may also include authority to approve such applications so long as counsel may seek review of any funding denial and the presiding judge retains ultimate review and approval authority.

3. **Applications.** Requests to authorize funds for investigative, expert, and other services must be submitted using the Court’s [eVoucher system/existing system] and must not be disclosed except with the consent of the person represented or as required by law or CJA Guidelines.
4. **Cost Considerations.** Appointed counsel is expected to use lower-cost service providers such as investigators or paralegals to undertake tasks not requiring attorney expertise. In multi-defendant cases with multiple CJA attorneys, counsel must make all reasonable efforts to coordinate with each other to reduce costs, including coordinating and sharing discovery and utilizing shared investigators and other services to the extent possible.
5. **Compliance.** Counsel must comply with Judicial Conference policies set forth in CJA Guidelines, Ch. 3.

G. Case Budgeting

Consistent with CJA Guidelines, Ch. 2 §§ 230.26.10–20, CJA counsel are encouraged to use case-budgeting techniques in non-capital representations where combined attorney and service provider costs are likely to exceed [insert specific amount determined by the district to be reasonable or “the equivalent of 300 times the prevailing CJA panel attorney non-capital hourly rate” (e.g., if the non-capital hourly rate is \$150 per hour, case budgeting should be considered if the case is likely to exceed 300 times that, or \$45,000)]. The Court or appointed counsel should contact [insert title of contact person—Ninth Circuit Case Budgeting Attorney or CJA Supervisory Attorney] to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget. Non-capital representations that may exceed \$100,000, must be budgeted by a Circuit Case Budgeting Attorney pursuant to Ninth Circuit Judicial Council policy.

H. 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.

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].

C. Counsel Qualifications

1. In addition to the requirements for Panel membership set out in Section VIII of this Plan, counsel appointed in capital cases to represent financially eligible persons will meet the statutory requirements set out in 18 U.S.C. §§ 3005 and 3599(b)-(d) as expanded upon below, as well as any applicable circuit rules.
2. All attorneys appointed in capital cases must (1) be well qualified as demonstrated by their training, commitment to the defense of capital cases, and distinguished prior criminal defense experience at the relevant stage of the proceeding; (2) have sufficient time and resources to devote to the representation, considering their current caseload and the extraordinary demands of a capital case; (3) meet all applicable guidelines adopted by the American Bar Association concerning representation of persons in death penalty cases; and (4) consult regularly with the appropriate Death Penalty Resource Counsel project available through the Defender Services division of the Administrative Office of the United States Courts.

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

D. Appointment of Counsel

1. Pre-Trial. No later than when a defendant receives a target letter alleging the commission of a capital offense, or is charged with a federal criminal offense where the penalty of death is possible, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel.” If necessary for adequate representation, more than two attorneys may be appointed. Consistent with Section IV.A.1 of this Plan, the Court may appoint capital qualified counsel for an individual that, although uncharged, is the subject of an investigation in a federal death-eligible case. In appointing counsel, the judge should consider and give due weight to the recommendations made by the [Defender Organization] and Death Penalty Resource Counsel and articulate reasons for not doing so.
2. Direct Appeals. Counsel representing a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.

When appointing counsel, the Court should consider and give due weight to the recommendations of the [Defender Organization] and Federal Capital Appellate Resource Counsel and articulate reasons for not doing so.

3. Post-Conviction Proceedings. In any post-conviction proceeding under 18 U.S.C. §§ 2255 or 2254, the Court must appoint at least one qualified attorney and may consider appointing at least two given the complex, demanding, and protracted nature of death penalty proceedings. When appointing counsel, the Court should consider and give due weight to the recommendations of the [Defender Organization] and the appropriate Resource Counsel project, including out-of-district appointment of another defender organization's Capital Habeas Unit, and articulate reasons for not doing so. For § 2255 proceedings, appointment should take place, if possible, prior to denial of certiorari on direct appeal by the United States Supreme Court. For § 2254 proceedings, appointment should take place at the earliest time permissible by law to permit federal counsel to avail themselves of the full statute-of-limitations period to prepare a petition.

E. Case Budgeting and Resources

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

XIII. EFFECTIVE DATE

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

ENTERED FOR THE COURT ON [DATE].

CHIEF JUDGE, _____ DISTRICT OF _____

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON [DATE].

CHIEF JUDGE, NINTH CIRCUIT COURT OF APPEALS