

DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, [18 U.S.C. § 3006A](#), as amended (“CJA”) and [Volume 7A of the Guide to Judiciary Policy](#) (“CJA Guidelines”), the Chief Judge of the District Court for the Northern Mariana Islands adopts this amended Plan¹ for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives

1. The objectives of this Plan are:
 - to attain the ideal of equality before the law for all persons.
 - to provide all eligible persons with timely appointed counsel and any services necessary to provide effective representation that are consistent with the best practices of the legal profession, are cost-effective without compromising the quality of representation, and protect 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](#), [CJA Guidelines](#), and the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at [18 U.S.C. § 3599](#)), in a way that meets the needs of this Court.
2. This Plan will be administered so that those accused of any crime, or otherwise eligible for services under the CJA, will not be deprived of their right to counsel, or any element of representation necessary to an adequate defense, due to a lack of financial resources.

B. Compliance

1. The Court, the Clerk’s Office, the Pretrial Services Office, the United States Attorney’s Office, federal law enforcement officers, and attorneys appointed under the CJA must comply with the [CJA Guidelines](#) approved by the Judicial Conference of the United States and/or its Committee of Defender Services and with this Plan.

¹ Approved by Ninth Circuit Judicial Council on August 23, 2023. Previous version approved on February 18, 2015.

2. The Court will ensure that a current copy of the CJA Plan is posted on the Court's website.

III. DEFINITIONS

- A. "Appointed attorney or appointed counsel" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys and the Office of the Federal Public Defender for the Districts of Guam and the Northern Mariana Islands and its staff attorneys.
- B. "Court" means the District Court for the Northern Mariana Islands.
- C. "CJA Administrator" is a person designated by the Court to administer the CJA Panel.
- D. "CJA Panel Member" is an attorney appointed to the CJA Panel to represent a financially eligible person under the CJA and this Plan.
- E. "CJA Associate Panel Member" is an attorney participating in a mentorship program with the CJA Panel. See Appendix I.
- F. "CJA Panel Attorney District Representative" leads the CJA Panel by serving as Chairperson of the CJA Panel Committee and acts as liaison between the CJA Panel and the FPDO, the Court, and the AO's Office of Defender Services.
- G. "CJA Resource Counsel" is an attorney retained by the Administrative Office of the U.S. Courts (AO) who assists with panel management and training.
- H. "CJA Supervising Attorney" is an attorney employed by the Court² whose responsibilities include providing educational resources and coordinating training for panel members and CJA voucher review for substantive reasonableness.
- I. "Eligible person" means an individual who establishes financial inability to obtain counsel under Section IV of this Plan.
- J. "FPDO" means the Office of the Federal Public Defender for the Districts of Guam and the Northern Mariana Islands.
- K. "Representation" includes counsel, service providers (such as interpreters, paralegals, investigators, experts, or litigation support vendors), and expenses.

² Employment may include any shared services arrangement with the circuit or another court.

- L. “Judge” means a U.S. District Court Judge, a U.S. Magistrate Judge, or a designated judge pursuant to 48 U.S.C. § 1821(b)(2), unless otherwise stated.

IV. DETERMINATION OF 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 such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under [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 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 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, other than to set aside or vacate a death sentence under [18 U.S.C. § 2241](#), 2254, or [2255](#);
 - c. is charged with civil or criminal contempt who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony and there is reason to believe, either prior to or during testimony, that the witness would 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 the person is the target of a grand jury 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. Representation may also be provided 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:
- a. to protect a constitutional right;
 - b. to contribute in some significant way to the defense of the principal criminal charge;
 - c. to aid in preparation for the trial or disposition of the principal criminal charge;
 - d. to enforce the terms of a plea agreement in the principal criminal charge;
 - e. to 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. to 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. Factual Determination of Financial Eligibility

1. The determination of eligibility for representation under the CJA is a judicial function to be performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the Court may be designated to obtain or verify the facts relevant to determine financial eligibility.
2. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and any dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
3. The initial determination of eligibility 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.
4. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected later.
5. The completed financial eligibility affidavit (Form CJA 23) should reflect relevant information bearing on the person's financial eligibility for appointed counsel.
6. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).
7. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.
8. 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.

C. Duties of Federal Law Enforcement Officers

1. To ensure 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. Court personnel will initiate the process for appointment of counsel, as needed.

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 counsel.

D. 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 must promptly notify, telephonically or electronically, the appropriate court personnel who will initiate the process for appointment of counsel, as needed.
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. Court personnel will initiate the process for appointment of counsel, as needed.
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 counsel.

E. Duties of Pretrial Services Office

1. In recognition of the importance of the advice of counsel for persons being interviewed by pretrial services officers, the officers, prior to conducting the interview, must notify the defendant, in writing:
 - a. of the nature and purpose of the interview;
 - b. that the defendant is not obligated to speak to the pretrial services officer;
 - c. that the defendant has a right to speak with an attorney before answering any questions; and
 - d. that the defendant has the right to the appointment of an attorney if the defendant cannot afford an attorney.
2. The pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, or the right to counsel has been waived.
3. The Pretrial Services Office must collect, verify, and report information pertaining to the defendant to the judicial officer on a tight schedule before the pretrial release/detention hearing. Taking this into account,

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.

V. APPOINTMENT OF COUNSEL IN NON-CAPITAL CASES

A. Timely Appointment

1. Counsel will be provided to eligible persons as soon as feasible after receiving a target letter, being taken into custody, upon appearing before a judge, when formally charged, when notified of charges if formal charges are sealed, or when a judge otherwise determines appointment of counsel appropriate under the CJA, whichever occurs earliest.
2. Appointment of counsel may be made retroactive to include representation provided prior to appointment.

B. Procedures

1. The Clerk's Office will maintain a current list of all attorneys appointed to the CJA Panel, including emails, office addresses, and phone numbers.
2. Members of the CJA Panel will be appointed on a rotational basis subject to the Court's discretion to make exceptions due to the nature and complexity of the case, and an attorney's experience. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.
3. When there is an insufficient number of CJA Panel Members or Associate Panel Members available or qualified to handle a case, the Court may appoint an attorney who is not a member of the CJA panel. These appointments may include, in order, the FPDO or private attorneys admitted to practice before this Court. See Section VII (D)-(G) for standards expected of all appointed attorneys.

C. Continuing Representation

1. Appointed attorneys 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 and the substitution is approved by the Court;
 - c. an order is entered allowing the client to proceed pro se; or
 - d. the appointment is otherwise terminated by Court order.
2. Appointment as counsel also requires representation of the client in connection with issues concerning probation revocation, supervised release violations, and remand following appeal.
 3. If appointed counsel wishes to withdraw in favor of new counsel on appeal, appointed counsel must first file the notice of appeal in this Court to preserve the client's right to appeal and then move to withdraw in the Ninth Circuit, and thereafter seek appointment of substitute counsel.

D. Number and Qualifications 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 appropriate 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.

VI. FEDERAL PUBLIC DEFENDER

- A. Establishment. The Court has determined that the use of a federal public defender organization, as defined in subsection (g)(2)(A) of the CJA, serving this district as well as the District of Guam, will facilitate the representation of persons entitled to the appointment of counsel under the CJA. Accordingly, the Office of the Federal Public Defender for the Districts of Guam and the Northern Mariana Islands ("FPDO") is hereby recognized and established as the federal public defender organization for this district. The FPDO must be capable of providing legal services throughout the district and shall maintain an office in the island of Saipan.
- B. Supervision. The Federal Public Defender for the Districts of Guam and the Northern Mariana Islands will be responsible for the supervision and management of the federal public defender organization. Therefore, the Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

- C. Private Practice of Law. Neither the Federal Public Defender nor any defender employee may engage in the private practice of law except as authorized by the Federal Public Defender Code of Code.
- D. Training. The Federal Public Defender will assess the training needs of federal public defender staff and, in coordination with CJA Resource Counsel and the CJA Supervising Attorney, the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

VII. CJA PANEL AND STANDARDS FOR ALL APPOINTED ATTORNEYS

- A. Establishment. The existing, previously established panel of attorneys who are eligible to provide representation under the CJA is hereby recognized. Additional attorneys, including Associate Panel Members following a mentorship program, may be appointed to the panel, as needed. Nothing in this Plan creates a property interest in being or remaining on the CJA Panel.
- B. Size. The size of the panel will be fixed at no more than twelve (12), not including Associate Panel Members, unless otherwise determined by the Chief Judge. The panel will be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide high quality representation.
- C. Membership
 - 1. Diversity and Equal Opportunity. The Court will strive to create and maintain a diverse CJA Panel of the highest caliber federal criminal defense practitioners. All qualified attorneys are encouraged to apply for CJA Panel membership. The Court will 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. Eligibility. CJA Panel Members must:
 - a. Be members in good standing of the federal bar of this district;
 - b. Possess strong litigation and writing skills;
 - c. Demonstrate proficiency with the Bail Reform Act, Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), Federal Rules of Criminal Procedure, Federal Rules of Evidence, Federal Rules of Appellate Procedure, United States Sentencing Guidelines, Federal Rules of Appellate Procedure, and the Court's Local Rules.

- d. Have the training and ability to manage and effectively utilize electronic case presentation equipment and software in the courtroom, use electronic filing and eVoucher system, and manage electronic discovery; and
- e. Have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

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

- 3. Term. CJA Panel Members serve at the pleasure of the Chief Judge. Generally, CJA Panel Members are expected to serve for at least three (3) years.

D. Standards and Professional Conduct

- 1. Appointed attorneys must provide high quality representation consistent with the legal profession's best practices. They 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 American Bar Association's [*Criminal Justice Standards for the Defense Function*](#).
- 2. Appointed attorneys must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's [*Model Rules of Professional Conduct*](#) and [*the Local Rules*](#) of this Court.
- 3. Appointed attorneys must immediately notify the Chief District Judge, in writing, if they are disbarred, suspended, sanctioned, or reprimanded by any licensing authority, grievance committee, or administrative body, or if sanctioned or found in contempt by any territory, state, or federal court judge.

E. Training and Continuing Legal Education

- 1. Appointed attorneys are expected to remain current with developments in federal criminal defense law, practice, and procedure, including electronic discovery techniques.
- 2. Appointed attorneys must comply with the requirements of electronic filing and eVoucher, including how to submit requests for investigative, expert, and other services.

3. Appointed 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.
4. CJA Panel Members and CJA Associate Members must complete at least five (5) hours of continuing legal education (CLE) per calendar year in trial skills, federal sentencing, and/or developments in federal substantive or procedural law. The CLE requirement may be satisfied by trainings arranged by the CJA Committee, the Commonwealth of the Northern Mariana Islands Bar Association or other state or territorial bar association, a Federal Defender service, or other nationally recognized defender service organization, and may include webinars and other online training provided by such organizations. Proof of satisfaction of this requirement must be provided to the Clerk of Court by the end of each calendar year, not including the calendar year in which an applicant is appointed serve as a Panel Member or Associate Member.
5. Failure to comply with these training and legal education requirements may be grounds for suspension or removal from the CJA Panel.

F. Suspension and Removal

Because CJA Panel Members and Associate Members serve at the pleasure of the Chief Judge, they are subject to suspension or removal from the CJA Panel by the Chief Judge at any time. The Chief Judge will provide notice and opportunity to be heard before suspension or removal unless the attorney has committed misconduct which poses a substantial threat of serious harm to any person or the administration of justice.

1. Mandatory Removal. CJA Panel Members and Associate Members who are suspended or disbarred from the practice of law by their territory or state courts, or who are suspended or disbarred from any federal court, will be removed from the CJA Panel and may be ordered to withdraw from current CJA representations.
2. Example of Grounds for Suspension or Removal. The Chief Judge may remove or suspend an attorney from the CJA Panel for failure to fulfill the obligations of Panel membership, including but not limited to failure to complete the required annual CLE, inclusion of false or misleading information in CJA vouchers, unjustified or frequent failure to accept appointments, and failure to provide effective assistance of counsel. In deciding whether to remove or suspend a Panel attorney, the Chief Judge should consult with the CJA Committee.
3. Continued Representation of Existing Clients. An attorney who has been suspended or removed from the CJA Panel must, within seven (7) days of

receipt of notice of suspension or removal, move to withdraw from the representation of clients in any active CJA cases, unless otherwise ordered by the Court. The suspended or removed attorney will continue to represent an existing client in a CJA case until the Court substitutes another attorney.

4. Reinstatement and Reappointment. An attorney who has been suspended or removed from the Panel may apply to the Chief Judge to be reinstated (after suspension) or reappointed (after removal) no sooner than six (6) months after the attorney was suspended or removed. In deciding whether to reinstate or reappoint an attorney to the Panel, the Chief Judge should consult with the CJA Committee.

G. Complaints

A complaint about an appointed attorney's professional conduct or performance should be initiated in accordance with this [Court's Disciplinary Rules](#).

VIII. CJA PANEL COMMITTEE

- A. Establishment and composition. The Court will establish a CJA Panel Committee (Committee) consisting of the Magistrate Judge, the Federal Public Defender, and three CJA Panel attorneys. To be eligible to serve on the Committee, an attorney must have at least three years' continuous service on the CJA Panel. Selection of CJA Panel members to serve on the Committee will be at the sole discretion of the Chief Judge, and for an indefinite term.
- B. Chairperson. The Chief Judge will appoint CJA Resource Counsel who will serve as the chairperson of the Committee and as the CJA Panel Attorney District Representative.
- C. Duties. The Committee will meet at least once a year to discharge the following duties:
 1. Recommend to the Chief Judge whether the size of the CJA Panel should remain the same or should be increased or decreased; and to recommend whether any vacancies that have arisen over the course of the year should be filled.
 2. Consider all applications for membership on the CJA Panel and recommend to the Chief Judge those applicants best qualified to serve on the CJA Panel.

3. Develop a mentoring program and devise a recruitment strategy that identifies and trains a diverse set of viable panel applicants. See Appendix I.
4. Review the operation and administration of the CJA Panel and make recommendations for improvement, including but not limited to amendments to the CJA Plan.
5. Assess the training needs of the CJA Panel and coordinate with the CJA Supervising Attorney about the delivery of relevant information, educational materials, and training programs to CJA Panel members.
6. Recommend removal of any CJA Panel attorney who fails to satisfy the requirements of panel membership, including failing to provide high quality representation, or engaging in conduct that would render continued panel service inappropriate.
7. If requested, provide a reasonableness recommendation to the Court for any CJA payment voucher that the Court is considering reducing.

IX. 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 must be submitted on the appropriate CJA form through the Court's eVoucher system. Information regarding eVoucher is available on the Court's website <https://www.nmid.uscourts.gov/cja>.
2. Claims for compensation will be submitted no later than 45 days after final disposition of the case, unless good cause is shown.

C. Voucher Review Procedure

1. The CJA Administrator or designee will perform an initial review for accuracy and compensability under the CJA Guidelines and Ninth Circuit CJA Policies and Procedures.
2. If errors are found, the voucher will be reviewed by the CJA Supervising Attorney, to whom the Court delegates second level voucher review for accuracy and compensability.
3. 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.
4. After second level review, vouchers will be forwarded for consideration and action by the presiding judge or designee, who will review claims for overall reasonableness.

D. 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, the CJA Administrator and/or the CJA Supervising Attorney will notify CJA counsel of any proposed non-technical 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 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 CJA Administrator or the CJA Supervising Attorney 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 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 Administrator or the CJA Supervising Attorney will direct counsel to create a new voucher for the appropriate amount.

E. 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 a sealed 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. Applications. Requests to authorize funds for investigative, expert, and other services must be submitted using the Court's eVoucher system and must not be disclosed except with the consent of the person represented or as required by law or CJA Guidelines.
- 3. 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.

4. Compliance. Counsel must comply with Judicial Conference policies set forth in CJA Guidelines, Ch. 3.

F. 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 the equivalent of 300 times the prevailing CJA panel attorney non-capital hourly rate. The Court or appointed counsel should contact the CJA Supervising Attorney to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget.

G. No Receipt of Other Payment

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

X. 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; and (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.

- 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; and CJA Guidelines, Ch. 6.

C. Counsel Qualifications

1. In addition to the requirements for Panel membership set out in Section VII.C. 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. § 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. The Court may appoint capitally qualified counsel for an individual that, although uncharged, is the

subject of an investigation in a federal death-eligible case. When appointing counsel, the judge must consider the recommendation of the AO Defender Services Office, who will consult with Death Penalty Resource Counsel to recommend qualified counsel.

2. Direct Appeals. Counsel representing a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal. When appointing counsel, the Court must consider the recommendation of the AO Defender Services Office, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
 3. Post-Conviction Proceedings. In any post-conviction proceeding under 18 U.S.C. § 2255, the Court must appoint at least one qualified attorney and may consider appointing at least two given the complex, demanding, and protracted nature of death penalty proceedings. When appointing counsel, the Court should consider the recommendation of the AO Defender Services Office, who will consult with the appropriate Resource Counsel project to recommend qualified counsel. For § 2255 proceedings, appointment should take place, if possible, prior to denial of certiorari on direct appeal by the United States Supreme Court.
- E. Case Budgeting and Resources. All capital cases, unless staffed only by a defender organization's office, must be budgeted. As early as practicable after appointment, counsel or the Court should refer the case to the CJA Supervising Attorney and Circuit CJA 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.

XI. EFFECTIVE DATE

This Plan will become effective when approved by the Judicial Council of the Ninth Circuit and supersede all prior Criminal Justice Act Plans of this Court.³

³ Approved by the Judicial Council for the Ninth Circuit on August 23, 2023.

APPENDIX I

CRIMINAL JUSTICE ACT MENTORING PROGRAM

I. PURPOSE

The purpose of the Mentorship Program (Program) is to improve the skill level and diversity of the Criminal Justice Act (CJA) Panel. Generally, attorneys with little or no federal criminal experience are expected to complete the Program before applying for membership on the Panel.

II. SELECTION PROCESS

- A. Mentees. Qualified attorneys of any race, color, ethnicity, religion, sex, gender identity, sexual orientation, age, national origin, or disability are encouraged to apply for the CJA Panel and the Program. The CJA Committee will place applicants who could benefit from a mentoring program in the Program.
- B. Mentors. The CJA Panel Committee members may act as mentors or select other experienced and respected members of the Panel. Mentors must train and supervise mentees and appear in court for all court appearances while acting as a Mentor.
- C. Future Placement on the Panel. Participation in the Mentor Program does not guarantee future approval to be placed on the CJA Panel, nor does the program have a guaranteed or set length of time to complete.
- D. Removal from the Program. Mentees and mentors may be removed by the Chief Judge if they are unable to meet the expectations of the Program or if they engage in unethical or illegal conduct.

III. TRAINING

A. Case Appointment.

- 1. When a case appears appropriate for the Program,⁴ the Mentor will move the Court for appointment of Associate Counsel (the Mentee).
- 2. Both the Mentor and the Mentee will be appointed as counsel of record in the matter. The Mentor is the primary attorney responsible for the

⁴ The typical case should involve the full spectrum of representation including pretrial services interview, release/detention proceeding, discovery review, evidentiary hearing, sentencing calculation, plea negotiations, and research and writing.

representation, both to the client and the court.

- B. Mentor's Responsibilities. The Mentor will train and supervise the Mentee during each stage of the prosecution. The Mentor will 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.
- C. Mentee's Responsibilities. Under the supervision of the Mentor, the Mentee will appear and may argue on the record as counsel for the defendant. The Mentee may also appear on behalf of the defendant, under the direction of the Mentor, with the government; chambers; the Pretrial/Probation Office and other agencies; and the defendant's family, friends, potential witnesses, and interpreters.
- D. Training Expectations. Mentee must comply with the Training and Continuing Legal Education Requirements set forth in Section VII(E) of the NMI's CJA Plan and attend meetings of the CJA Panel. Mentees are expected to second-chair at least one felony jury trial before completing the Program.

IV. PAYMENT

- A. The Mentor will receive the current CJA hourly rate. The Mentee will receive 75% of the non-capital attorney rate.
- B. Billings must be submitted at the same time through the eVoucher system. The Mentor must review and approve the Mentee's billable time before submission.
- C. 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., will not be reimbursable to the Mentee. It is the responsibility of the Mentor to bear these expenses and seek reimbursement when appropriate in accordance with established policies and procedures.