

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CRIMINAL JUSTICE ACT PLAN



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

I. AUTHORITY

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

II. STATEMENT OF POLICY

A. Objectives

The objectives of this Plan are to support 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 Oregon 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 Office of the Federal Public Defender for the District of Oregon and for the appointment and compensation of private attorneys from an approved panel list (“CJA Panel”) and other private attorneys in limited circumstances, in cases authorized under the CJA and related statutes.

C. Panel Administration

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the Federal Public Defender for the District of Oregon.

D. Compliance

The Court, its clerk, the Office of the Federal Public Defender and its staff attorneys, 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 Office of the Federal Public Defender'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 Federal Public Defender and its staff attorneys, and attorneys provided by a bar association or legal aid agency.
- B. "CJA Administrator" is a person employed by the Office of the Federal Public Defender to assist with the administration of the CJA Panel.
- C. "CJA Coordinating Attorney" is an attorney employed by the Office of the Federal Public Defender and has been delegated the authority to review, approve, adjust, or deny vouchers consistent with Standing Order 2025-5, and whose responsibilities include administration of the CJA Plan and panel management.
- D. "Panel Attorney District Representative" (PADR) is a member of the district's CJA Panel who is selected by the Federal Public Defender, in coordination with the CJA Coordinating Attorney and 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 other services.

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 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 or could otherwise be subject to federal prosecution;
 - 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).
4. Other Matters. Representation may be furnished in other circumstances to financially eligible persons who are under federal supervision or in the custody of the Federal Bureau of Prisons or are otherwise in contact with federal law enforcement officials, whenever the interests of justice require and to the extent permissible by law.

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination
 - a. Duties of Federal Law Enforcement Officers
 - (1) 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 issuance of a target letter or pretrial diversion notice, the United States Attorney's Office will include contact information for the Office of the Federal Public Defender.

- (2) 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 the Office of the Federal Public Defender
 - (1) In cases in which the Federal Public Defender may be appointed, the office will immediately investigate and determine whether an actual or potential conflict exists and, if so, must promptly notify the CJA Office to facilitate the timely appointment of other counsel.
 - (2) Whenever practicable, assistant federal public defender 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 the appointment of counsel.
 - (3) In the interests of justice, the Federal Public Defender is authorized to represent all persons arrested in the District before and at the first appearance, bail hearing, and arraignment where, in the judgment of the Federal Public Defender, the person is eligible or likely to be determined eligible for appointed counsel.
- d. Duties of Pretrial Services Office
 - (1) When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer.

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 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 being named as a material witness, 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 Federal Public Defender 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. The Office of the Federal Public Defender will establish a schedule of assistant federal public defender "duty" 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. FEDERAL PUBLIC DEFENDER

A. Establishment

The Office of the Federal Public Defender for the District of Oregon ("Federal Public Defender"), previously established in this district under the

CJA, is responsible for rendering defense services on appointment throughout this district.

B. Staff Supervision and Case Workload

The Federal Public Defender is responsible for supervising and managing the defender organization. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the Federal Public Defender's discretion.

The Federal Public Defender will continually monitor staff workloads to ensure high-quality representation for all clients.

C. Standards and Professional Conduct

The Federal Public Defender must provide high-quality representation consistent with the best practices of the legal profession. The Federal Public Defender must conform to the highest standards of professional conduct, including but not limited to the standards of professional and ethical conduct.

D. 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 Conduct.

E. Training

In coordination with the CJA Coordinating Attorney and the PADR, the Federal Public Defender will assess the training needs of staff and the CJA Panel and provide regularly scheduled training opportunities and other educational resources that include updates regarding substantive law, sharing best practices in federal criminal defense, and presentations on courtroom and office technology.

F. CJA Panel Duties

In coordination with the CJA Coordinating Attorney, the PADR, and the CJA Panel Selection Committee, the Federal Public Defender will assist the Court in the selection, oversight, and management of CJA Panel members.

1. Recruitment. The Federal Public Defender will strive to establish and maintain a diverse CJA Panel of the highest caliber federal

criminal defense practitioners. The CJA Coordinating Attorney will assist the Federal Public Defender in devising a recruitment strategy that identifies and trains a diverse set of viable CJA Panel applicants.

2. Mentoring. The CJA Coordinating Attorney will assist the Federal Public Defender in creating and administering 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.
3. Training. In coordination with the CJA Coordinating Attorney and the PADR, the Federal Public Defender will assess the training needs of staff and the CJA Panel and provide regularly scheduled training opportunities and other educational resources that include updates regarding substantive law, sharing best practices in federal criminal defense, and presentations on courtroom and office technology.
4. Voucher Review. The CJA Coordinating Attorney is available to provide a reasonableness recommendation to the Court for any CJA payment voucher.
5. Annual Report. Annually, the CJA Coordinating Attorney will assist the Federal Public Defender in reviewing panel operation and administration for the preceding year and providing 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.
6. Establishment of Ad Hoc Committees. In coordination with the CJA Coordinating Attorney, the Federal Public Defender may establish ad hoc committees to assist the Court in addressing specific CJA-related issues such as recruiting panel members, mentoring, training, reviewing complaints, reviewing voucher reductions, and recommending removal of any CJA Panel member 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.

VII. CJA PANEL SELECTION COMMITTEE

A. Establishment

1. In coordination with the CJA Coordinating Attorney, the Federal Public Defender will establish a CJA Panel Selection Committee to assist the Court in the selection of CJA Panel members.
2. At a minimum, the CJA Panel Selection Committee must consist of the Federal Public Defender, the district's PADR, the CJA Coordinating Attorney, two experienced criminal defense attorneys, and one state court judge.
3. The Federal Public Defender, PADR, and the CJA Coordinating Attorney will be permanent members. Other attorney and state court judicial members may serve for three years and may be extended for one additional three-year term. Vacancies will be filled upon recommendation of the remaining committee members.

B. Duties

1. The CJA Panel Selection 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.

VIII. CJA PANEL MEMBERSHIP

A. Establishment

The existing, previously established panel of attorneys under the CJA is hereby recognized. The Court will approve additional attorneys for membership on the CJA Panel after receiving recommendations from the CJA Panel Selection Committee. Nothing in this Plan creates a property interest in being appointed, or reappointed to, or remaining on the CJA Panel.

B. Panel Lists

The CJA Panel shall be comprised of five lists, Portland Trial Panel, Eugene Trial Panel, Medford Trial Panel, Appellate/Habeas Corpus Panel, and Emeritus Panel. Attorneys on the trial lists are also eligible for assignment on appellate and habeas corpus cases.

C. Size

The CJA Panel size will be determined by the CJA Panel Selection Committee, subject to the Court's review, based on panel member caseloads and activity. The CJA Panel must be large enough to provide enough 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.

D. Qualifications and Membership

1. Equal Opportunity. All qualified attorneys are encouraged to apply for CJA Panel membership. The CJA Panel Selection 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. Applications for membership on the CJA Panel are available on the website of the Office of the Federal Public Defender.
3. Eligibility. CJA Panel applicants must:
 - a. be members in good standing of the state bar of Oregon, the federal bar of the District of Oregon, and, if handling appeals, the Ninth Circuit Court of Appeals. Panel members assigned exclusively to appeals need not be members of the bar of the District of Oregon, provided they are admitted to and in good standing with the Ninth Circuit Court of Appeals;
 - b. maintain a primary, satellite, or shared office in the District of Oregon;
 - c. possess strong litigation and writing skills;
 - d. demonstrate proficiency with the Bail Reform Act, the Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, the United States Sentencing Guidelines, federal sentencing procedures, this District's Local Rules,

and, if handling appeals, the Federal Rules of Appellate Procedure and the Ninth Circuit Rules;

- e. have the training and ability to manage and effectively utilize electronic case presentation equipment and software in the courtroom and manage electronic discovery; and
 - f. have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.
 - g. have four years of active, trial-level criminal defense experience, or if not, other relevant experience such as a federal judicial clerkship or sophisticated federal civil litigation practice that may be assessed as substitute experience; tried at least four federal or state felony jury trials, or equivalent experience, such as unusually complex matters settled short of trial, criminal appeals which require unusual knowledge or effort, or substantial civil jury trials;
 - h. except that attorneys who do not possess the experience set forth above but believe they have equivalent other experience, such as a federal judicial clerkship or sophisticated federal civil litigation practice, are encouraged to apply and set forth in writing the details of that experience for the committee's consideration;
 - i. access to space to meet clients and witnesses, unlimited internet and a CM/ECF account; access to online legal research tools, such as Westlaw or Lexis; acceptance of collect calls from clients in prison or jail;
 - j. accept a prescribed number of cases each year to be determined at the time of the panel review;
 - k. attend a minimum of at least five hours of continuing criminal defense legal education each year.
4. Appellate Panel. Eligibility for membership on the appellate panel requires excellent research and writing skills and a demonstrated desire to handle federal criminal appeals and/or habeas corpus cases. Attorneys on a trial panel may also be eligible for membership on the appellate panel.

5. Emeritus Panel. Attorneys will be eligible for inclusion on the emeritus panels when they have served with distinction on an active panel for at least five years and wish to continue to be active in CJA matters but are no longer able to take, or are no longer needed for, a significant number of assignments.

E. Appointment

After considering the recommendations of the CJA Panel Selection Committee, the Court will appoint or reappoint members to the CJA Panel as needed. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. The CJA Panel Selection Committee and/or Court may require panel members, especially those with less experience in federal criminal practice, to demonstrate knowledge, familiarity, and core competencies by attending mandatory and/or other training sessions presented or sponsored by the Office of the Federal Public Defender and/or the Training Division of the Defender Services Office.

F. Reappointment

1. Once appointed, CJA Panel members will serve a term of three years, unless determined by the CJA Panel Selection Committee to no longer possess the qualifications to serve, and the Court approves a discontinuation of service before the end of the term. CJA Panel members may serve an unlimited number of terms and may serve on different panel lists as deemed appropriate by the CJA Panel Selection Committee.
2. The CJA Coordinating Attorney will notify CJA Panel members at least 30 days prior to the expiration of their current term of the need to apply for reappointment to the CJA Panel and set forth the procedures and deadlines for re-applying.
3. A member of the CJA Panel who wishes to be considered for reappointment must reapply by the application deadline.
4. In considering the re-appointment of CJA Panel members, the CJA Panel Selection Committee may:
 - a. solicit input from the legal community and the Court concerning the quality of representation provided by members seeking reappointment;

- b. request a personal interview with the CJA Panel member;
- 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 administration requirements including but not limited to billing accuracy and timeliness, and whether the member continues to meet the prerequisites and obligations of the CJA Panel as set forth in this Plan; and
- d. consider the applicant's attendance at mandatory or other training sessions presented or sponsored by the Federal Public Defender and/or the Training Division of the Defender Services Office.

G. 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.
- 2. Automatic Disciplinary Review. An ad hoc committee may be convened by the Federal Public Defender to 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 contempt, sanction, or reprimand has been made against the panel member by any state or federal court.
- 3. Local Rules. Local rules regarding attorney discipline promulgated by the District of Oregon after approval of this Plan will be considered by the ad hoc committee.

H. Complaints

- 1. Initiation. A complaint about a CJA Panel member's performance may be initiated by a judge, another panel member, a defendant, an attorney, a service provider, or a member of the federal public defender office. Complaints must be initiated in writing and state the

alleged complaint or concern with specificity. The complaint should be directed to the CJA Coordinating Attorney, who will consult with the Federal Public Defender to determine whether further investigation is necessary.

2. Committee. If further investigation is necessary, the Federal Public Defender may convene an ad hoc committee to investigate the complaint.
3. Notice. The Federal Public Defender or the investigating committee, at his, her, or its discretion, may notify the panel member and/or the Chief District Judge of the specific allegations.
4. Response. A panel member under investigation may be asked to respond in writing and appear before an investigating committee or may request to do so.
5. Protective Action. Prior to the disposition of the complaint, the investigating committee may recommend the panel member's suspension or removal from any pending case or from the CJA Panel and may take any other formal or informal protective action that is in the best interest of the panel member's clients or the administration of this Plan.
6. Investigation. Any investigation undertaken by the investigating committee will be concluded within 60 days of receiving the initial complaint. Should the investigation need to continue beyond this prescribed period, the committee must notify in writing the member, the Chief District Judge, the Federal Public Defender, and the CJA Coordinating Attorney.
7. Review and Recommendation. After investigation and review, the investigating committee may recommend dismissing the complaint with no further action, or may recommend appropriate remedial action, including:
 - a. directing the member to complete specific training requirements before receiving further CJA Panel appointments;
 - b. limiting the member's participation to certain categories of cases;

- c. limiting the member's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner or assigning a mentor;
 - d. directing the member to attend counseling for substance abuse issues;
 - e. removing the member from the CJA Panel permanently or temporarily; or
 - f. any other appropriate remedial action.
8. Oversight of Remedial Action. If the investigating committee recommends any remedial action, the investigating committee will include in its recommendation a plan for overseeing completion of conditions for full panel reinstatement.
 9. Final Disposition by the Court. The Committee will forward its recommendation to the Chief District Judge, the Federal Public Defender, and the CJA Coordinating Attorney for consideration and final disposition. The Chief District Judge or designee will communicate a final disposition in writing to the member, the investigating committee, the Federal Public Defender, and the CJA Coordinating Attorney.
 10. Confidentiality. Information acquired concerning complaints and potential disciplinary action will remain confidential unless otherwise directed by the Court or required by applicable ethical standards.
 11. Nothing in this procedure creates a property interest in being appointed, or reappointed to, or remaining on the CJA Panel.

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 and the Oregon Rules of Professional Conduct.
3. CJA Panel members must immediately notify the CJA Coordinating 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 CJA Coordinating 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 members are expected to remain current with developments in federal criminal defense law, practice, and procedure, including electronic discovery techniques.
2. The Office of the Federal Public Defender will offer CJA Panel trainings for all panel members.
3. CJA Panel members must annually attend six hours of continuing legal education relevant to federal criminal practice, including required and/or other trainings sponsored by the Office of the Federal Public Defender and Defender Services Office Training Division, including at least one hour of electronic discovery training. The CJA Committee will consider panel members' attendance at CJA meetings when reviewing applications for reappointment to the CJA Panel.

C. Facilities and Technology Requirements

1. CJA Panel members must have the facilities, resources, and technological capability to manage assigned cases effectively and efficiently.
2. CJA Panel members must know and comply with the requirements of electronic filing and eVoucher, including how to submit requests for investigative, expert, and other services.

X. COUNSEL APPOINTMENT IN NON-CAPITAL CASES

A. Apportionment of Cases

Where practical and cost effective, CJA Panel members 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 non-Capital 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 Office of the Federal Public Defender will maintain a current list of all CJA Panel members, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

D. Appointment Procedure

The Office of the Federal Public Defender is responsible for overseeing the assignment of cases to attorneys. The Office of the Federal Public Defender will maintain a record of all panel attorney appointments and data reflecting the proportion of appointments between the CJA Panel and the Office of the Federal Public Defender.

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 Office of the Federal Public Defender may appoint CJA counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
2. Under special circumstances, and at the request of the Federal Public Defender, 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 appointed.

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 been appointed;
 - c. an order is entered allowing the client to proceed pro se; or
 - d. the appointment is otherwise terminated by Court order.
2. Appointed counsel must submit a Substitution of Counsel request to the CJA Panel Office prior to moving to withdraw from a representation or requesting a hearing on the status of counsel before the matter is resolved.
3. 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. Counsel must submit a Substitution of Counsel request to the CJA Panel Office prior to moving to withdraw.

XI. CJA ATTORNEY COMPENSATION AND FUNDING FOR NEEDED SERVICES

A. CJA Compensation

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA Panel members 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. Payment vouchers and amounts paid to counsel or service providers will not be disclosed except as required by law or the CJA Guidelines.

B. Claim Submissions

1. Claims for compensation must be submitted on the appropriate CJA form in eVoucher.
2. Interim claims for compensation from counsel or a service provider must be submitted quarterly, if the amount of outstanding billable time exceeds \$1,500. Defense counsel shall make all reasonable efforts to arrange for the concurrent submission of defense team vouchers, including paralegals and investigators.
3. Final claims for compensation must be submitted within 90 days after the entry of judgment, or conclusion of representation if there is no judgment, unless good cause is shown.

C. Voucher Review

1. The CJA Administrator or Panel Assistant will perform an initial review for completeness, accuracy, and compensability under the

CJA Guidelines, Ninth Circuit CJA Policies and Procedures, the Ninth Circuit CJA Compensability Handbook, and the District's Panel Attorney and Service Provider Manual. 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 Coordinating Attorney for review and recommendation before final action on the claim is taken.

2. This Court delegates to the CJA Coordinating Attorney the authority to review, approve, adjust, or deny claims for compensation, pursuant to Standing Order 2025-5. The CJA Coordinating Attorney will consult with the presiding judge on requests for atypical or high-cost services, and may consult with the presiding judge on any request. CJA Panel members and service providers may seek review of the CJA Coordinating Attorney's funding reduction or denial to the presiding judge. The presiding judge retains final review and approval authority.
3. Absent extraordinary circumstances, the CJA Office will endeavor to act on compensation claims within 30 days of submission.

D. Voucher and Funding Reductions and Denials

1. Purpose. The Court has created these review processes to assist in ensuring compliance with mandated billing guidelines and accurate recordkeeping, to assess the reasonableness of vouchers and individual time entries, to assess the reasonableness of funding requests for attorney and expert services, and to provide due process and ensure fairness in voucher review and funding authorizations.
2. Reductions. Claims for compensation under the CJA will not be reduced in excess of three hours, other than for technical or mathematical reasons, without affording notice and an opportunity to be heard.
 - a. When contemplating a voucher reduction in excess of three hours, other than for technical or mathematical reasons, the CJA Office will notify CJA counsel or the service provider of any proposed reduction and offer an opportunity to justify the submission.

- b. If the CJA Office finds the justification to be meritorious, the voucher or funding request will be approved as submitted. If the reduction is found to be meritorious, not contested, or if no response is received within seven days of notice of the reduction, the voucher will be processed with the reduction.
- 3. Judicial Review.
 - a. CJA counsel or the service provider may seek review by the presiding judge of voucher reductions in excess of three hours, other than for technical or mathematical reasons. Counsel will submit a written request for judicial review to the CJA Coordinating Attorney within ten days of notice of the reduction.
 - b. If the presiding judge finds the justification to be meritorious, the voucher will be approved as submitted. If the presiding judge finds the proposed reduction to be meritorious, the reduction is not contested, or if no response is received within ten days, the reduced voucher will be processed. The presiding judge's decision is final.
- 4. Peer Review.
 - a. CJA counsel or the service provider may seek review, by an ad hoc peer review committee of attorneys convened by the Federal Public Defender, of reductions in excess of ten hours, other than for technical or mathematical reasons, within fourteen days of notice of the reduction. Counsel will submit a written request for peer review to the CJA Coordinating Attorney within fourteen days of notice of the reduction.
 - b. The peer review committee's recommendation will be forwarded to the presiding judge with the voucher.
 - c. If the presiding judge finds the justification to be meritorious, the voucher will be approved as submitted. If the presiding judge finds the peer review committee's recommendation for reduction to be meritorious, the reduction is not contested, or if no response is received within fourteen days, the reduced voucher will be processed. The presiding judge's decision is final.

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 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, reasonable, 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 eVoucher and must not be disclosed except with the consent of the person represented or as required by law or CJA Guidelines.
3. Delegation. This Court has delegated to the CJA Coordinating Attorney the authority to review, approve, adjust, or deny applications for investigative, expert, or other services, pursuant to with Standing Order 2025-5. The CJA Coordinating Attorney will consult the presiding judge on requests for atypical or high-cost services, and may consult the presiding judge on any request. CJA Panel members may seek review of the CJA Coordinating Attorney's funding reduction or denial to the presiding judge. The presiding judge retains ultimate review and approval authority.
4. Cost Considerations. Appointed counsel is expected to engage 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. Associate Attorneys. It is the District of Oregon's policy to encourage using associate attorneys, consistent with the CJA Guidelines, to assist with representations upon the presiding judge's prior approval. The purpose of this policy is to reduce costs and to enlarge the pool of potential CJA Panel applicants. Lead counsel maintains primary responsibility for the representation and associated work-product.
6. Engagement Letters. CJA Panel attorneys should use an engagement letter when hiring service providers. A sample letter can be found in

the appendices of the Ninth Circuit Criminal Justice Act Policies and Procedures.

7. Services Obtained by Person Represented by Retained Counsel. Pursuant to 18 U.S.C. § 3006A(e), upon an *ex parte* application, the Court may authorize a person represented by retained counsel to obtain investigative, expert, or other services. The retained attorney must submit to the CJA Panel Office a letter explaining the expected proposed expenses and the financial circumstances that cause the defendant to be unable to pay for the services, along with a copy of the retainer agreement between counsel and client, a statement of the number of hours worked by the attorney, and a financial eligibility affidavit (Form CJA 23) completed by the client. If the court determines that the fee arrangement is unreasonable or was “made in gross disregard of the defendant's trial expenses,” the court may decline to provide compensation and may instead order the retained attorney to pay needed costs and expenses out of the retainer fees. If the request is granted in full or in part, retained counsel must make funding requests and submit vouchers for payment through eVoucher. Retained counsel must use engagement letters for service providers funded in this manner and inform third parties of the proper billing practices for submission of vouchers. All funding requests and vouchers made pursuant to this provision are subject to the same reasonableness review as any CJA request or voucher.
8. Compliance. Counsel must comply with Judicial Conference policies set forth in CJA Guidelines, Ch. 3.

F. Case Budgeting

Consistent with CJA Guidelines, Vol. 7A, Ch. 2 §§ 230.26.10-20, CJA counsel are encouraged to use case-budgeting techniques in non-capital representations in cases of unusual complexity, including cases in which combined attorney and service provider costs are likely to exceed 300 times the prevailing CJA Panel attorney non-capital hourly rate (e.g., if the non-capital hourly rate is \$175, case budgeting should be considered if the case is likely to exceed 300 times that hourly rate, or \$52,500). The Court or appointed counsel should contact the CJA Resource 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. CJA Panel members and the United States Attorney’s Office are encouraged to inform the CJA

Coordinating Attorney if a case appears to meet the criteria for case budgeting.

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.

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; 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; 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 Office 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 Federal Public Defender 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).) Out-of-district counsel must be eligible for admission *pro hac vice* based on their qualifications. If eligible, *pro hac vice* fees and the requirement for local counsel are waived for the appointed case. Appointment of out-of-district counsel is common in federal capital cases due to possible conflicts and to achieve cost and other efficiencies, together with high-quality representation.

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.I of this Plan, the Court may appoint capably 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 Federal Public Defender, who will consult with Death Penalty Resource Counsel to recommend qualified 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 must consider the recommendation of the Federal Public Defender, 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 and give due weight to the recommendation of the Federal Public Defender, who will consult with the appropriate Resource Counsel project to recommend qualified counsel, 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 attorneys at the Office of the Federal Public Defender, must be budgeted. As early as practicable after appointment, counsel or the Court should refer the case to a Ninth Circuit CJA Case Budgeting Attorney.

Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in capital cases also may be directed to the appropriate Death Penalty Resource Counsel project or the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030.

XIII. EFFECTIVE DATE

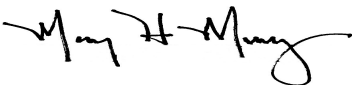
This plan is effective as of the date approved by the Ninth Circuit Judicial Council.



MICHAEL J. McSHANE
CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

7/9/2025

DATE



MARY H. MURGUIA
CHIEF JUDGE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

08/26/2025

DATE

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT
ON 08/26/2025.