

# Criminal Justice Act Plan for the District Court of Guam

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## **District Court of Guam Criminal Justice Act Plan**

### **I. AUTHORITY**

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

#### D. Compliance

The Court, its clerk, the Federal Public Defender, attorneys provided by a bar association or legal aid agency, private attorneys appointed under the CJA, federal law enforcement officers, the United States Attorney's Office, and the Pretrial Services Office must comply with the CJA Guidelines, approved by the Judicial Conference or its Committee on Defender Services, the Ninth Circuit's CJA Policies and Procedures, and with this Plan. The Court will ensure that a current copy of the CJA Plan is made available on the Court's 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 Office of the Federal Public Defender for the Districts of Guam and the Northern Mariana Islands and its staff attorneys, and attorneys provided by a bar association or legal aid agency.
- B. **"CJA Administrator"** is a person employed by the Court to perform tasks related to the administration of the CJA Panel.
- C. **"CJA Supervising Attorney"** is an attorney employed by the Office of the Federal Public Defender, District of Hawaii, who conducts voucher reasonableness reviews, provides payment recommendations, and reviews and makes recommendations on requests for service provider funding.
- D. **"Panel Attorney District Representative" (PADR)** is a member of the district's CJA Panel who is selected by the Federal Public Defender, with approval from the Chief District Judge, to serve as a representative of the district's CJA Panel for the Defender Services CJA PADR program and local CJA committees.
- E. **"Representation"** includes counsel, service providers (such as paralegals, investigators, or experts), litigation support vendors, and expenses.

### IV. ELIGIBILITY FOR CJA REPRESENTATION

#### A. Subject-Matter Eligibility

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

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when appointed representation is required by law;
- e. is entitled to appointed counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under 18 U.S.C. Chapter 313;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence or when an evidentiary hearing is warranted in a non-capital proceeding under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case, and federal law requires the appointment of counsel.

2. Discretionary. Whenever a district judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;

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

- f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

## **B. Financial Eligibility**

### **1. Presentation of Accused for Financial Eligibility Determination**

#### **a. Duties of Federal Law Enforcement Officers**

- (1) 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, unless the person has retained counsel. Court personnel will in turn notify the Federal Public Defender or CJA panel member, if the Federal Public Defender is unavailable or has a conflict of interest, of the arrest.
- (2) Employees of law enforcement agencies may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

#### **b. Duties of United States Attorney's Office**

- (1) Upon the return or unsealing of an indictment, the filing of a criminal complaint or information, and where the defendant has not retained counsel, the United States Attorney's Office will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the Federal Public Defender or CJA panel member, if the Federal Public Defender is unavailable or has a conflict of interest.
- (2) Upon issuance of a target letter, and where the individual has not retained counsel, the United States Attorney's Office must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the Federal Public Defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the Federal Public Defender, in which case they must promptly initiate the

opening of a miscellaneous case pursuant to Local Criminal Rule of Practice CRLR 44(d).

- (3) Employees of the United States Attorney's Office may not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

c. Duties of 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 Court to facilitate the timely appointment of other counsel.
- (2) Whenever practicable, the 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 counsel appointment.

d. Duties of Pretrial Services Office

- (1) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.
- (2) Unless it is not practicable, the pretrial services officer will not conduct the pretrial services interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived, or the defendant otherwise consents to a pretrial services interview without counsel.

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.
- 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.

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.
- 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.

**V. TIMELY APPOINTMENT OF COUNSEL**

- A.** Eligible persons must receive appointed counsel as soon as feasible. This means as soon as possible after receiving a target letter, after being taken into custody, upon appearing before a judicial officer, when formally charged, when notified of charges if formal charges are sealed, or when a judicial officer otherwise determines appointed counsel is appropriate under the CJA or this Plan, whichever occurs earliest.
- B.** When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial services interview without counsel, financially eligible persons will be provided appointed counsel prior to being interviewed by a pretrial services officer.
- C.** Appointment of counsel may be made retroactive to include representation provided prior to appointment.

**VI. OFFICE OF THE FEDERAL PUBLIC DEFENDER**

**A. Establishment**

The Office of the Federal Public Defender for the Districts of Guam and the Northern Mariana Islands is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district, with headquarters in Guam. The Federal Public Defender is authorized to establish a branch office in the island of Saipan to provide defense services on appointment throughout the District of the Northern Mariana Islands.

**B. Staff Supervision and Case Workload**

The Federal Public Defender is responsible for supervising and managing the Office of the Federal Public Defender for the Districts of Guam and the Northern Mariana Islands. Accordingly, the Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to Assistant Federal Public Defenders 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 Office of the Federal Public Defender for the Districts of Guam and the Northern Mariana Islands must provide high-quality representation consistent with the best practices of the legal profession. The Office of the Federal Public Defender must conform to the highest standards of professional conduct, including but not limited to the American Bar Association’s Model Rules of Professional Conduct/Code of Conduct for Federal Public Defender Employees.

**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. Panel Attorney Training**

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

**VII. CJA PANEL COMMITTEE**

**A. Establishment**

1. A CJA Panel Committee will be established by the Court in consultation with the Federal Public Defender to assist the Court in the selection, oversight, and management of CJA Panel members. The CJA Panel Committee may establish subcommittees that include non-members to address specific CJA-related issues such as recruiting panel members, training, mentoring, and reviewing complaints.
2. At a minimum, the CJA Panel Committee must consist of:
  - a. the Federal Public Defender or delegate, who will be a permanent member of the CJA Panel Committee;
  - b. the district’s current PADR or delegate, who will be a permanent member of the CJA Panel Committee;
  - c. two or more criminal defense attorneys, at least one of whom is a CJA Panel member; and

- d. an ex officio staff member employed by the Clerk of Court who will act as administrative coordinator.
3. Except for the Federal Public Defender, PADR, and ex officio administrator, members will serve for three years and may be extended for one additional three-year term. Terms will be staggered to ensure continuity on the CJA Panel Committee and rotation of members. Vacancies will be filled upon recommendation of the remaining committee members and approval by the Chief District Judge.
4. The CJA Panel Committee will ensure the creation of a diverse workforce.
5. The CJA Panel Committee will meet at least once a year and at any time the Court or a committee member asks the committee to consider an issue.

**B. Duties**

1. CJA Panel Membership. The CJA Panel Committee will examine applications for appointment or reappointment to the CJA Panel and recommend to the Chief District Judge approval of those attorneys deemed qualified to serve on the panel. The committee will also recommend removal of any CJA Panel attorney who fails to satisfy the requirements of panel membership, including failing to provide high quality representation, or engages in conduct that would render continued panel service inappropriate.
2. Recruitment. The CJA Panel Committee will strive to create and maintain a diverse CJA Panel of the highest caliber federal criminal defense practitioners. In conjunction with a mentoring program, the Committee will devise a recruitment strategy that identifies and trains a diverse set of viable panel applicants.
3. Mentoring. Create and administer a mentoring program to help identify and prepare viable candidates to qualify for appointment to the CJA Panel.
4. Training. The CJA Panel Committee will assist the Federal Public Defender and CJA Supervising Attorney in devising and presenting training programs for the CJA Panel.
5. Annual Report. Annually, the committee will review panel operation and administration for the preceding year and provide a report to the Chief District Judge describing efforts to recruit qualified and diverse panel

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

## **VIII. CJA PANEL MEMBERSHIP**

### **A. Establishment**

The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation 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 Committee. Nothing in this Plan creates a property interest in being or remaining on the CJA Panel.

### **B. Size**

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

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

1. Equal Opportunity. All qualified attorneys are encouraged to apply for CJA Panel membership. The CJA Panel Committee shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, national origin, gender identity, sexual orientation, age, religion, or disability.
2. Application. Application forms for CJA Panel membership are available from the Court. Applications may be submitted to the CJA Panel Committee at any time.
3. Eligibility. CJA Panel applicants must:
  - a. be members in good standing of the Guam Bar Association, federal bar of this district, and the Ninth Circuit Court of Appeals;

- b. except for appellate or capital habeas panel members, maintain a primary, satellite, or shared office in the District;
- c. possess strong litigation and writing skills;
- d. demonstrate proficiency with the Bail Reform Act, Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol), Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, United States Sentencing Guidelines, federal sentencing procedures, and this District’s Local Rules;
- e. have the training and ability to manage and effectively utilize electronic case presentation equipment and software in the courtroom and manage electronic discovery;
- f. have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.
  - (1) At a minimum, counsel must have no less than three years of experience in the actual trial of felony prosecutions.
  - (2) Attorneys who do not possess the experience set forth above but believe they have equivalent other experience, or who have completed a mentoring program, are encouraged to apply and set forth in writing the details of that experience for the committee’s consideration.

**D. Reappointment**

- 1. Once appointed, CJA Panel members will serve a term of five years. CJA Panel members may serve an unlimited number of terms and may serve on specialized panels as deemed appropriate by the CJA Panel Committee.
- 2. The Court will notify CJA panel members, within three months prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel, and will set forth the procedures and deadlines for re-applying.
- 3. In considering the re-appointment of CJA Panel members, the CJA Panel Committee may:

- a. solicit input from the legal community and the Court concerning the quality of representation provided by attorneys seeking reappointment;
- b. request a personal interview with the CJA Panel member; and
- c. consider the number of cases the CJA Panel member accepted and declined during the review period, the member's participation in training opportunities, whether the member continues to meet this Plan's technology and facilities requirements, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members or applicants as set forth in this Plan.

**E. Removal**

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

**F. Complaints**

1. Initiation. A complaint about an attorney's performance may be initiated by any concerned individual and should be directed to the CJA Panel Committee, which will determine whether further investigation is necessary. Complaints must be in writing and state the alleged deficiency with specificity.
2. Notice. Upon receiving a written complaint, the CJA Panel Committee will notify the panel member and the Chief District Judge of the specific allegations and will advise the panel member whether it has commenced an investigation or dismissed the complaint.

3. Response. A panel member under review may be asked to respond in writing and appear before the CJA Panel Committee, or may request to do so.
4. Protective Action. Prior to deciding the matter, the CJA Panel Committee may recommend the CJA Panel member's suspension or removal from any pending case, or from the CJA Panel, and may take any other protective action that is in the best interest of the attorney's clients or the administration of this Plan.
5. Investigation. Any investigation undertaken by the CJA Panel Committee will be concluded within 90 days of receiving the initial complaint. Should the investigation need to continue beyond this prescribed period, the CJA Panel Committee must notify both the attorney and the Chief District Judge in writing.
6. Review and Recommendation. After investigation and review, the CJA Panel Committee may recommend closing the matter with no further action or may recommend appropriate remedial action, including:
  - a. removing the attorney from the panel permanently or temporarily;
  - b. limiting the attorney's participation to certain categories of cases;
  - c. directing the attorney to complete specific training requirements before receiving further panel appointments;
  - d. limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner or assigning a mentor;
  - e. directing the attorney to attend counseling for substance abuse issues; or
  - f. any other appropriate remedial action.
7. Oversight of Remedial Action. Should the CJA Panel Committee recommend any remedial action on the part of the attorney, the CJA Panel Committee will establish, in its recommendation to the Chief District Judge, a plan for overseeing completion of conditions for full panel reinstatement.
8. Final Disposition by the Court. The CJA Panel Committee will forward its recommendation to the Chief District Judge for consideration and final



disposition. The Chief District Judge will communicate a final disposition in writing to the attorney and the CJA Panel Committee.

9. Confidentiality. Information acquired concerning complaints and potential disciplinary action will remain confidential unless otherwise directed by the Court or required by applicable ethical standards.

## **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.
3. CJA Panel members 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. CJA Panel members must also notify the Court, in writing, within 30 days, if they are sanctioned or found in contempt by any state or federal court judge.

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

1. CJA Panel attorneys are expected to remain current with developments in federal criminal defense law, practice, and procedure, including electronic discovery techniques.
2. CJA Panel members must annually attend four (4) hours of Continuing Legal Education relevant to federal criminal practice, including trainings sponsored by the Defender Organization.
3. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

**C. Facilities and Technology Requirements**

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

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

**A. Apportionment of Cases**

CJA Panel attorneys will be appointed in a sufficient number of cases per year so that attorneys remain proficient in criminal defense work.

**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 based on the attorney's experience and qualifications.

**C. Appointment List**

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

**D. Appointment Procedure**

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

1. Appointment of cases to CJA Panel members will ordinarily be made on a rotational basis. However, in a complex or otherwise difficult case, the

Court may appoint CJA counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.

2. Under special circumstances, the Court may appoint an attorney who is not a member of the District's CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. Other circumstances may include large multi-defendant cases for which there is an insufficient number of CJA Panel attorneys in the District. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Panel Committee.

#### **E. Continuing Representation**

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

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

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

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA Panel attorneys must be compensated for time expended in court and time reasonably expended out of court and reimbursed for expenses reasonably incurred. In determining the reasonableness of out-of-court time, the Court must consider three factors:

- a. whether the work was performed;
  - b. whether the work performed was a reasonable means of achieving the client's aims in the litigation; and
  - c. whether the time spent to accomplish that work was reasonable.
2. Voucher reductions will be limited to mathematical errors; instances in which work billed was not compensable, undertaken, or completed; and instances in which the hours billed clearly exceed what was reasonably required to complete the task.
  3. Vouchers and funding requests for service providers and other litigation costs will not be delayed or reduced to lessen Defender Services program costs in response to adverse financial circumstances.
  4. Absent extraordinary circumstances, the Court will act on compensation claims within 30 days of submission.
  5. Payment vouchers and amounts paid to counsel or service providers will not be disclosed except as required by law or CJA Guidelines.

**B. Claim Submission**

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's eVoucher system. Information regarding eVoucher is available on the Court's website at <http://www.gud.uscourts.gov>.
2. Claims for compensation will be submitted no later than 60 days after final disposition of the case, unless good cause is shown.

**C. Delegated Authority for Voucher Review**

This Court has delegated to the CJA Supervising Attorney the authority to conduct reasonableness reviews, provide payment recommendations, and review and make recommendations on requests for service provider funding. The Court retains ultimate review and approval authority.

**D. Voucher Review Procedure**

The Office of the Clerk of Court will perform an initial review for accuracy and compensability under the CJA Guidelines and Ninth Circuit CJA Policies and Procedures. In determining whether services provided by counsel are compensable, the guidelines for ancillary appointment of counsel in Section IV.A.3 of this Plan may be considered. Vouchers will then be referred to the CJA

Supervising Attorney for input regarding reasonableness. After this review, vouchers will be forwarded for consideration and action by the presiding judge or his or her designee.

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

1. Reductions. Claims for compensation under the CJA will not be reduced without affording counsel notice and an opportunity to be heard.
  - a. When contemplating a voucher reduction, the Court or CJA Supervising Attorney will notify CJA counsel of any proposed reduction and offer counsel the opportunity to justify the submission.
  - b. If counsel indicates that the reduction is not contested, or if no response is received within ten days, the Court will process the reduced voucher.
  - c. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.
  
2. Independent Review.
  - a. If after reviewing counsel's response the presiding judge reduces the voucher, counsel may seek review of the reduction to the Chief District Judge or his or her designee within 10 days. If the Chief District Judge is the presiding judge who reduced the voucher, counsel may seek review by the Chief Circuit Judge or his or her designee within 30 days. Deadline extensions may be granted for good cause.
  - b. If the reviewing judge or his or her designee finds the request for review to be meritorious, the Office of the Clerk of Court will direct counsel to create a new voucher for the appropriate amount.

**F. Investigative, Expert, and Other Services; Litigation Expenses**

1. Financial Eligibility. Counsel for a person financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request CJA funding in an *ex parte* application to the Court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary

and that the person is financially unable to obtain them, the presiding judge or designee must authorize the funding.

2. 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.

**G. Case Budgeting**

Consistent with CJA Guidelines, Ch. 2 §§ 230.26.10–20, CJA counsel are encouraged to use case-budgeting techniques in non-capital representations where combined attorney and service provider costs are likely to exceed the equivalent of 300 times the prevailing CJA panel attorney non-capital hourly rate (e.g., if the non-capital hourly rate is \$150 per hour, case budgeting should be considered if the case is likely to exceed 300 times that, or \$45,000). The Court or appointed counsel should contact the CJA Supervising Attorney or a Ninth Circuit Case Budgeting Attorney to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget.

**H. No Receipt of Other Payment**

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

**XII. SPECIAL PROVISIONS FOR CAPITAL CASES**

**A. Capital Cases**

For purposes of this plan, “capital cases” are those involving the death penalty and include: (1) prosecutions under any provision of federal law carrying a potential penalty of death; (2) direct appeals from cases wherein the death

penalty was imposed by a federal court; (3) post-conviction proceedings in which an individual sentenced to death by a federal court is seeking to set aside or vacate the conviction or sentence under 28 U.S.C. § 2255; and (4) habeas corpus proceedings in which an individual sentenced to death by a state court is seeking to set aside or vacate the conviction or sentence under 28 U.S.C. § 2254.

**B. Applicable Legal Authority**

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

**C. Counsel Qualifications**

1. In addition to the requirements for Panel membership set out in Section VIII of this Plan, counsel appointed in capital cases to represent financially eligible persons will meet the statutory requirements set out in 18 U.S.C. §§ 3005 and 3599(b)-(d) as expanded upon below, as well as any applicable circuit rules.
2. All attorneys appointed in capital cases must (1) be well qualified as demonstrated by their training, commitment to the defense of capital cases, and distinguished prior criminal defense experience at the relevant stage of the proceeding; (2) have sufficient time and resources to devote to the representation, considering their current caseload and the extraordinary demands of a capital case; (3) meet all applicable guidelines adopted by the American Bar Association concerning representation of persons in death penalty cases; and (4) consult regularly with the appropriate Death Penalty Resource Counsel project available through the Defender Services division of the Administrative Office of the United States Courts.
3. In trial-level capital cases requiring the appointment of “learned counsel,” such counsel must meet the minimum standards in 18 U.S.C. §§ 3005 and 3599(b) or (d). Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal or state death-penalty cases that, in combination with co-counsel, will assure high-quality representation. “Distinguished prior experience” contemplates excellence, not simply prior experience.
4. In direct appeals and post-conviction proceedings under 18 U.S.C. §§ 2254 or 2255, appointed counsel must meet the minimum standards

required by 18 U.S.C. § 3599(c) or (d) and should have distinguished prior experience in federal criminal appeals, capital appeals, federal post-conviction proceedings, or capital post-conviction proceedings.

5. Out-of-district counsel who possess the requisite expertise may be considered for appointment in capital cases to achieve high-quality representation.
6. An attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal capital habeas corpus relief may be appointed if the attorney is fully qualified. This appointment may be in place of, or in addition to, the appointment of a federal defender organization or a CJA Panel attorney or an attorney appointed pro hac vice. (See 18 U.S.C. § 3006A(a)(3).)

**D. Appointment of Counsel**

1. Pre-Trial. No later than when a defendant receives a target letter alleging the commission of a capital offense, or is charged with a federal criminal offense where the penalty of death is possible, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel.” If necessary for adequate representation, more than two attorneys may be appointed. Consistent with Section IV.A.1 of this Plan, the Court may appoint capital qualified counsel for an individual that, although uncharged, is the subject of an investigation in a federal death eligible case. 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.
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 or 2254, the Court must appoint at least one qualified attorney and may consider appointing at least two given the complex, demanding, and protracted nature of death penalty proceedings. When appointing counsel, the Court should consider the recommendation of



the Federal Public Defender, 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. 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.

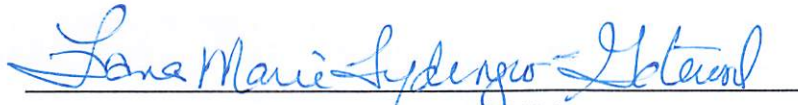
**E. Case Budgeting and Resources**

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

**XIII. EFFECTIVE DATE**

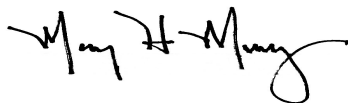
This plan will become effective when approved by the Judicial Council of the Ninth Circuit.

ENTERED FOR THE COURT ON AUGUST 22, 2023.



CHIEF JUDGE, DISTRICT COURT OF GUAM

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON AUGUST 23, 2023.



CHIEF JUDGE, NINTH CIRCUIT COURT OF APPEALS