

Appendix to the CJA Plan for the District of Wyoming

PLAN FOR THE COMPOSITION, ADMINISTRATION, AND
MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS
UNDER THE CRIMINAL JUSTICE ACT

I. CRIMINAL JUSTICE ACT (CJA) COMMITTEE

- A. Composition and Meetings. The CJA Committee shall be composed pursuant to the Court's CJA Plan and shall meet regularly, as deemed appropriate, and attempt at a minimum to adhere to the annual schedule set forth in this Appendix. Meetings may take place via telephone conference.
- B. Annual Schedule. To the extent reasonably possible, the CJA Committee will take up the listed items according to the following schedule:
1. Annual Meeting: At least once per year the CJA Committee shall:
 - a. Review issues relating to Panel performance for the past year and make appropriate recommendations to the Court, if necessary. In conducting its review, the CJA Committee shall give appropriate consideration of any input or feedback received from the Court, clients, or others.
 - b. Review mentor program progress for the past year.
 - c. Inquire as to the continued availability and willingness of each Panel member to accept appointments.
 - d. Review issues relating to the use of Panel members of neighboring Districts' CJA panels.
 - e. Discuss training, long-range planning, and other appropriate matters.
 2. Other Meetings: The CJA Committee shall attempt to meet as additionally necessary to:
 - a. Consider any pending applications to both the Core Felony tier of the Panel and the Supplemental Felony and Misdemeanor tier of the Panel.
 - b. Consider such other matters as may be appropriate.
 3. Annual Meeting With The Chief Judge. The CJA Committee on at least an annual basis shall be afforded a meeting with the Chief Judge to discuss matters of concern to the Panel.

- C. Panel Applications. Applications for membership on the CJA Panel will be made available in the offices of the Clerk of the United States District Court in Cheyenne and Casper, Wyoming. Applicants shall be required to describe their legal background, training, experience, interests and such other matters as may be required by the application. Attorneys on the Panel existing prior to the adoption of this Plan shall be contacted by the CJA Committee as to whether they wish to participate on the Core Felony tier or the Supplemental Felony and Misdemeanor tier of the Panel. Completed applications shall be submitted to the Chair of the CJA Committee.

The CJA Committee shall consider applications to the both the Core Felony tier of the Panel and the Supplemental Felony and Misdemeanor tier of the Panel, on a quarterly basis or as necessary. The CJA Committee shall review each application to insure that the applicant is a member in good standing of the bar of this Court.

- D. Vacancies on Panel. If the CJA Panel Administrator determines, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of a panel, the CJA Panel Administrator shall so advise the CJA Committee. The CJA Committee shall solicit applications for the vacancies, convene to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

II. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA Panel Tiers.

1. Number. The Court has established two tiers within the Panel: the Core Felony tier or the Supplemental Felony and Misdemeanor tier.
2. Approval. The Court shall approve for membership on the respective CJA Panel tiers, those private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act, and who are the best qualified applicants. The Court shall approve attorneys for membership on the respective Panel tiers after receiving recommendations from the CJA Committee. However, final decisions as to panel membership remain exclusively within the province of the Court.
3. Size. The Panel tiers shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation.
4. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District. To be considered for membership on the Core Felony tier of the Panel, attorneys must have demonstrated an appropriate level of experience and ability in federal felony criminal jury trial practice, and

knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Criminal Statutes, and the United States Sentencing Guidelines, along with a commitment to CJA Panel work. Members of the Core Felony tier of the Panel commit to being available to accept multiple appointments throughout the year. Members of the Supplement Felony and Misdemeanor tier of the Panel may, but shall not be required to, accept multiple appointments throughout the year. Members of the Core Felony tier of the Panel also will be required, when called upon by the CJA Committee, to serve as mentors for newer Panel members, or others, as deemed appropriate by the CJA Committee. To be considered for membership on the Supplemental Felony and Misdemeanor tier of the Panel, attorneys must have a commitment to the practice of criminal law, along with knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Criminal Statutes, and the United States Sentencing Guidelines.

5. Appointments. Generally, an attorney must be a member of the CJA Panel to be appointed on a CJA case. However, when the Court determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interests of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his/her appointment, an attorney may be appointed to represent the CJA defendant. Generally, such an attorney shall be a member of the CJA panel of another U.S. District Court or previously have been retained by the defendant in the matter before the Court. The Court may waive the requirement that appointed attorney associate, under L.Cr.R. 61.1. Consideration for preserving the integrity of the Panel selection process requires that such appointments be made only in necessary circumstances. Further, the attorney need not maintain an office in the District.
 6. Equal Opportunity. Qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases and shall be considered for panel membership without regard to race, color, religion, sex, age, national origin, or disability.
 7. Education Requirement. Members of the Panel are expected to maintain current knowledge of matters pertinent to the provision of representation in criminal cases in federal court. As such, all Panel members are encouraged to attend training sessions and CLE programs as may from time to time be sponsored by the Federal Public Defender Organization or the CJA Committee.
- B. Mentor Program. The CJA Committee may refer applicants for the CJA Panel and members of the Supplemental Felony and Misdemeanor tier of the Panel to the mentor program. The applicants will be assigned to a Felony Core tier Panel member as a mentor in the Mentor Program. The Mentor Program is designed to insure that counsel have sufficient expertise in federal criminal procedure and the sentencing guidelines to effectively represent federal criminal defendants. It is also intended that the mentor be available to discuss case strategy, law, and other issues that may arise in the course of

representation. Upon motion of counsel, an applicant or member of the Supplemental Felony and Misdemeanor tier of the Panel also may be assigned to an Assistant Federal Defender within the Federal Public Defender's Office or a Felony Core tier Panel member to "second chair" a particular case in an effort to provide needed trial experience. In making such an appointment, the Court may direct that the mentee be compensated at an hourly rate below the current rate in effect.

- C. The CJA Committee shall receive and consider complaints, information, or input concerning Panel attorney performance from the Court, client, or other sources. This procedure is designed to provide the CJA Committee with pertinent information concerning individual attorney performance before the Court, such that the CJA Committee hopefully will remain better informed as to Panel attorneys' experience and continued ability to effectively represent federal criminal defendants, and also is designed to assist the CJA Committee in making its initial and subsequent recommendations to the Court concerning membership of the Core Felony tier and membership of the Supplemental Felony and Misdemeanor tier. Any recommendations made to the Court with respect to individual Panel members or other matters shall be solely the product of the independent judgment of the CJA Committee, which may differ from the opinion of the Court or others. All recommendations made by the CJA Committee to the Court shall remain confidential.

III. SELECTION FOR APPOINTMENT

- A. Appointments. Acting under the supervision of the Federal Public Defender, the CJA Panel Administrator within the Wyoming Office of the Federal Public Defender Organization shall be responsible for the distribution of cases to the CJA Panel, with appropriate consideration given to the nature and complexity of the case, the particular Panel attorney's experience, and geographical and timing considerations. Appointments from the list of private attorneys within the Panel tiers should be made, to the extent practicable, on a rotational basis, subject to the need to make exceptions due to the nature and complexity of the case, an attorney's experience, geographical and timing considerations, and subject to the commitment and repeated availability of members of the Core Felony tier of the Panel. This procedure is designed to achieve a relatively balanced distribution of appointments and compensation among the members of the Core Felony tier of the Panel and similarly among the members of the Supplemental Felony and Misdemeanor tier of the Panel, while insuring good quality of representation for each defendant. Notwithstanding the foregoing, the District Court retains the discretion to make appointments directly when deemed necessary in the interests of justice, for continuation of counsel, or for other appropriate reason.
- B. Notification of Need For Appointment of Counsel. Upon determination of need and qualification for appointment of counsel, the Judge then presiding in the case, or his/her designee, shall order the appointment of counsel. Other participants in the criminal justice process shall assist the Judge to the full extent appropriate given their role in the overall process.

- C. Notification of Conflicts. It is the duty of the Assistant United States Attorney (AUSA) assigned to the case to notify the deputy clerk and/or the Court as to those Panel members (or the Federal Public Defender) the AUSA reasonably believes have conflicts that preclude their representation in any particular case.
- D. Complex Cases. In any large or multiple defendant case where the trial is expected to last more than two weeks, the AUSA assigned to the case should contact the CJA Panel Administrator within the Wyoming Office of the Federal Public Defender Organization in advance of formal charges so that he/she may begin to arrange for counsel to be appointed in a timely manner.

IV. COMPENSATION: FILING AND PAYMENT OF VOUCHERS

- A. General. Claims for compensation shall be submitted on the appropriate CJA form, to the Clerk of the United States District Court. The Clerk or his/her designee shall review the claim form for mathematical and technical accuracy and for conformity with the *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to Judiciary Policies and Procedures*) and, if correct, shall forward the claim form for the consideration of the appropriate District Judge or United States Magistrate Judge. The Court will exert its best effort to avoid delays in reviewing payment vouchers and submitting them for further processing.
- B. In those cases in which the appropriate District Judge or United States Magistrate Judge disallows or reduces a claim for payment submitted by appointed counsel, a statement of reasons for such disallowance or reduction of payment shall be provided to the appropriate designee of the Clerk of the United States District Court for retention by the Clerk designee and forwarding to the affected appointed counsel and the Chairperson of the CJA Standing Committee. Affected counsel shall have ten (10) days from the date of forwarding of statement of reasons within which to respond to the disallowance or reduction, and the Court in turn shall then make all reasonable efforts to consider the response without further delay. In those cases where no response is received from affected counsel within the ten (10) day period, the claim shall be considered final and submitted to the Administrative Office of the Courts for final payment.

V. CASE BUDGETING

- A. Capital Prosecutions.
 - 1. Attorney Fees. After appointment in a capital case, attorneys must begin the budgeting process. The budget process prior to the death-authorization hearing at the Department of Justice will focus on expert fees, as the attorneys at this stage of the proceedings often do not have sufficient information to frame a knowledgeable request for counsel fees. The Court will contact defense counsel following their appointment in a death-eligible case and provide them with information on the budgeting process during the pre-authorization phase of a capital case.

2. Expert or Investigative Fees. Appointed counsel are urged to consider the statutory maximums for expert and investigative fees when submitting a proposed budget for the pre-authorization phase of a capital case. As with attorney fees, if the Department of Justice authorizes the United States Attorney's Office to seek the death penalty and a full case budget including all expert and investigative expenditures has not yet been approved, a post-authorization budget will be required.
3. Case Budget. No later than thirty days following DOJ authorization to seek the death penalty, counsel shall submit a budget request, if one has not yet been submitted. A budget meeting shall be held as soon as possible following the receipt of the budget request. The budget meeting shall be held *ex parte*. The budget meeting shall be on the record but, under seal. Any budget agreement on expert witnesses and investigators, along with counsel's *ex parte* motion seeking authorization for investigative and expert expenses, shall be forwarded to the Chief Judge of the Tenth Circuit, or his/her designee, for review and approval. Following approval of a case budget, the case budget order shall be signed by counsel and approved by the presiding judicial officer. The order along with counsel's *ex parte* proposed case budget for attorney's fees and expenses shall be filed under seal.
4. Compliance. The Clerk of the United States District Court or his/her designee shall monitor compliance with the budget and shall periodically advise the Court regarding the state of the budget. The Court views the expert and investigative budgets as a total budget allocation. Thus, within reason and justification, counsel will be allowed to reallocate funds from one expert expenditure to another expert expenditure in the same case, but only provided the net total is not increased.
5. Budget Modifications. Counsel are urged to view the case budget as an agreement between counsel and the Court that will not be modified except under the circumstances outlined in the agreement, or if an unanticipated change in circumstances materially alters the scope of the case. To this end, when submitting a budget, counsel should include any underlying assumptions upon which the budget request is based. This provides budget certainty but also allows counsel to seek a modification of the budget under enumerated circumstances or in the event there are significant changed circumstances materially altering the assumptions upon which the original budget agreement is reached.
6. Budget Philosophy. The philosophy of case budgeting in this District is to provide predictability as to expenses in capital cases, not to limit or impair the scope of effective representation by appointed counsel.

B. Capital Habeas Case Budgets.

1. Initial Appointment to Represent a Petitioner. At the initial appointment meeting, the hourly rates for appointed counsel will be negotiated, and an appointment order will be entered by the Court.

2. Budget Request. Within ninety days of the initial appointment meeting, counsel shall file a case budget detailing the expected attorney's fees and expert expenses. Counsel are urged to note any special circumstances that might cause them to seek to amend the budget after it is approved.
 3. Case Budget Meeting. A meeting with the Court shall be held as soon as possible following the case budget submission. The meeting shall be held *ex parte*. The meeting shall be held on the record but under seal. The approved case budget will be filed under seal in the court file.
 4. Compliance. The Clerk of the United States District Court or his/her designee shall monitor compliance with the budget and shall periodically advise the Court on the state of the budget.
 5. Budget Modifications. Counsel are urged to view the case budget as an agreement between counsel and the Court that will not be modified except under the circumstances outlined in the agreement, or if an unanticipated change in circumstances materially alters the scope of the case. To this end, when submitting a budget, counsel should include any underlying assumptions upon which the budget request is based. This provides budget certainty but also allows counsel to seek a modification of the budget under enumerated circumstances or in the event there are significant changed circumstances materially altering the assumptions upon which the original budget agreement is reached.
 6. Budget Philosophy. The philosophy of case budgeting in this District is to provide predictability as to expenses in capital habeas cases, not to limit or impair the scope of effective representation by appointed counsel.
- C. Complex Cases. The Court in its discretion may require appointed counsel to prepare and submit budgets in non-capital cases, particularly when such cases involve multiple defendants or otherwise appear to be complex.