UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY.

Pursuant to the Criminal Justice Act of 1964, as amended, (codified at section 3006A of title 18, United States Code and hereinafter referred to as "the Act" or "the CJA"), section 3005 of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (hereinafter "CJA Guidelines"), the Judges of the United States District Court for the District of Wyoming adopt this amended Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY.

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all criminally accused persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the Act, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to guide the implementation of the Act, other federal statutes pertaining to the provision of counsel, and the CJA Guidelines in a way that meets the needs of this District.

B. Compliance.

1. The Court and other persons and entities involved in the administration of justice - the Office of the Federal Public Defender, private attorneys appointed under the Act, and the United States and its attorneys - shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services, and with this Plan.

2. The Clerk of the Court shall at all times keep posted on the Court's official web site a current copy of this Plan. The Clerk shall maintain a current copy of the "CJA Guidelines" for the use of the members of the Panel of Private Attorneys under the Criminal Justice Act (hereinafter "CJA Panel").

III. DEFINITIONS.

A. "Representation" includes counsel and investigative, expert, and other services.

B. "Judge" includes any United States District Judge, any Circuit Judge assigned to a matters or proceeding in District Court or any United States Magistrate Judge.

IV. PROVISION OF REPRESENTATION.

A. Circumstance.

1. Mandatory. Representation shall 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 section 5031 of title 18, United States Code;
   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, is agreed to by the probationer, and the government has not objected to the proposed change);
   d. is under arrest, when such representation is required by law;
   e. is 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 (unless the modification sought is favorable to the supervised individual, is agreed to by the supervised individual, and the government has not objected to the proposed change);
   f. is subject to a mental condition hearing or determination under chapter 313 of title 18, United States Code (18 U.S.C. section 4241, et seq.);
   g. is in custody as a material witness;
   h. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
   i. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
   j. is identified by the United States Attorney as the "target" of a federal criminal investigation, or a "material witness" in a proceeding that reasonably could result in the person's loss of liberty;
   k. is proposed by the United States Attorney for processing under a pretrial diversion program;
   l. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
   m. faces loss of liberty in a case, and federal law requires the appointment of counsel.

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

a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
b. is seeking relief, other than to set aside or vacate a death sentence, under sections 2241, 2254, and/or 2255 of title 28, United States Code;
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, and face loss of liberty; or
e. who otherwise is determined by the Court, in its discretion, should be appointed counsel under the Act.

3. Ancillary Matters. Representation may also be furnished for financially eligible persons in "ancillary matters appropriate to the proceedings" pursuant to subsection (c) of section 3006A of title 18. In determining whether representation in an ancillary matter is appropriate to the proceedings, the court should consider whether such representation is reasonably necessary to accomplish, inter alia, one of the following objectives:

a. to protect a Constitutional right;
b. to contribute in some significant way to the defense of the principal criminal charge;
c. to aid in preparation for the trial or disposition of the principal criminal charge; or
d. to enforce the terms of a plea agreement in the principal criminal charge.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible. The Court shall initiate the appointment process promptly upon an eligible person's (1) appearance before a Judge, (2) notification by the United States Attorney or a federal law enforcement agency that they are the target of a grand jury proceeding that reasonably could result in their loss of liberty, or (3) when a Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest. Such appointment may be made retroactive to include any representation furnished pursuant to the Plan prior to appointment.

C. Number and Eligibility of Counsel.

1. Number. The CJA Panel is comprised of two distinct panel tiers: the Core Felony tier and the Supplemental Felony and Misdemeanor tier (*see* PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT, also referred to as the "Appendix hereto"). Upon order of the Court, an attorney from one of the Panel tiers shall be appointed. In an unusually complex case and upon

motion of counsel, a second attorney may be appointed by the Court. Additionally, applicants to the Panel and members of the Supplemental Felony and Misdemeanor tier may upon motion of counsel, and where the Court deems it appropriate, be appointed on a limited basis in connection with a mentoring assignment in a particular case. (*see* Appendix hereto). In any case where a defendant by statute may be eligible for imposition of the death penalty, the defendant shall be provided two attorneys under 18 U.S.C. § 3005 and other applicable law.

2. Eligibility. In general, eligibility to serve as appointed counsel under the CJA will be determined by the Court, after reviewing recommendations of the standing Criminal Justice Act Committee. In any case where the defendant may be eligible for imposition of the federal death penalty, the Court shall under 18 U.S.C. § 3005 consider the recommendation of the Federal Public Defender when appointing counsel for the death-eligible defendant. In capital cases, at least one of the attorneys appointed shall be learned in the law applicable to capital cases, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of capital litigation.

3. Substitution of Counsel. A Judge may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings before the Court.

D. Determination of Need for Counsel.

1. Appearance in Court. In every case in which a person entitled to representation pursuant to this Plan appears without counsel, the Judge shall advise the party of the right to be represented by counsel throughout the case, and that counsel will be appointed on his/her behalf if the party so desires and is financially unable to obtain counsel.

2. Fact Finding. The determination of eligibility for representation under the Act is a judicial function to be performed by a Judge after making appropriate inquiries concerning the person's financial condition. All statements made by a defendant in such financial inquiry shall be either: (a) by affidavit sworn to before a Judge or the Court Clerk or his/her deputy; (b) by certification under penalty of perjury; or (c) under oath in open court before a Judge.

3. Change in Circumstances. If at any stage of the proceedings the Judge finds that the defendant is financially unable to pay his/her retained counsel and is unable to obtain other counsel, the Judge may appoint counsel in accordance with the general procedure set forth in this Plan or, alternatively, the Judge may appoint the attorney previously retained if the Court finds that the interests of justice necessitate the appointment of the previously retained attorney. If previously retained counsel is to be appointed, the Court (i) may make such inquiries as it deems appropriate to assure that counsel is not compensated under the Act for services for which counsel has previously been paid by the defendant, and (ii) may limit the matters for which CJA compensation will be paid.

4. Questions Regarding Financial Eligibility. Under CJA Guideline 2.04, all questions regarding financial eligibility shall be resolved in favor of furnishing representation to the accused. Erroneous determinations may be corrected at a later date through an order requiring the defendant to reimburse the United States Treasury for part or all of such costs.

5. Challenges to Financial Eligibility. In any circumstance where a defendant's financial eligibility under the Act is challenged, the determination of the defendant's right to have appointed counsel shall be made by a Judge of this Court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION.

A. The Federal Public Defender's Office for the combined Districts of Colorado and Wyoming, previously established in this district pursuant to the provisions of the CJA, is the Federal Public Defender Organization for this District and may administer the CJA provisions of the Plan for this District under delegation of the District Court.

B. Ordinarily, in multiple defendant cases, the Federal Public Defender shall be appointed to represent at least one defendant requiring the appointment of counsel.

C. The Federal Public Defender Office shall be primarily responsible for the apportionment and distribution of cases between its Office and the Panel when counsel is appointed for indigent defendants. Notwithstanding this, the Court reserves the right to and shall make appointments directly in capital cases, in habeas proceedings, in matters arising in locales distant from Cheyenne and Casper (e.g. Yellowstone), and otherwise as the interests of justice may require.

D. CJA Panel: Acting under the supervision of the Federal Public Defender or his/her designee, the CJA Panel Administrator within the Wyoming Office of the Federal Public Defender, or such other person within that office as may be designated, shall be responsible for the equitable distribution of cases to the CJA Panel, consistent with the PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT (Appendix hereto).

E. The Federal Public Defender or his/her designee shall assist the Court in managing the CJA Panel by serving as a member of the Court's standing Criminal Justice Act Committee and, with that Committee's assistance, shall coordinate the training of CJA Panel members.

VI. PRIVATE ATTORNEYS.

A. Establishment of CJA Committee. As provided in Section XI hereof, the Court shall establish a CJA Committee.

B. Establishment of CJA Panel(s). Pursuant to an earlier version of this Plan and procedures adopted by the Court, a panel of private attorneys designated to represent persons in felony, capital, and misdemeanor cases has been established and is now recognized under this Plan. Their members shall be appointed in appropriate circumstances to represent persons under the CJA, consistent with the PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT (Appendix hereto). In order to implement the goals of this amended Plan, the CJA Committee shall make recommendations to the Court of placement of the existing Panel members on either the Core Felony tier of the Panel or from the Supplemental Felony and Misdemeanor tier of the Panel.

C. Organization. The PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT is found in the Appendix to this CJA Plan.

D. Appointment of Panel Attorneys. In circumstances where it is necessary and appropriate to appoint a panel attorney in an individual case, selection of the panel attorney to be appointed from either the Core Felony tier of the Panel or from the Supplemental Felony and Misdemeanor tier of the Panel, as appropriate, should be made on a rotational basis, subject to the Court's authority to appoint any licensed attorney as the interests of justice may require. The defendant does not have the right to select appointed counsel from the panel of attorneys or otherwise. Additionally, in those circumstances in which the provision of adequate representation to qualified individuals from the Panel is taxed, either by virtue of the number of defendants or by virtue of the location of the Court where proceedings are conducted (e.g. Yellowstone), the Court authorizes the appointment of Panel members of neighboring Districts' CJA panels who agree to such appointment.

E. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel may be appointed in a reasonable proportion of the cases in which the accused is determined to be financially eligible for representation under the Act. For the sole purpose of allocation of cases between panel attorneys and the Federal Public Defender, a "case" shall be deemed to be (1) each person for whom a separate appointment of counsel has been made by the Court pursuant to the Act, and (2) each new trial following motion, mistrial, reversal, or remand on appeal.

F. CJA Panel Representative. To assist the Court in the discharge of its responsibilities under the Act, and to assist with the administration of the CJA Panel, the Court may call upon the designated CJA Panel Representative for this District. The CJA Panel Representative shall not be an employee of the Federal Public Defender.

VII. APPOINTMENTS IN CONNECTION WITH REQUESTS FOR RELIEF UNDER 28 U.S.C. §§ 2241, 2254, OR 2255.

A. Appointment of Counsel. Any person seeking relief under 28 U.S.C. §§ 2241, 2254 or 2255 may apply to the Court to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially eligible for appointment of counsel.

B. Form of Application. Applications for appointment of counsel under 28 U.S.C. §§ 2241, 2254 and 2255 shall be verified and in such written form as is prescribed by the Judicial Conference of the United States. If the party applicant is not before the Court, the Court may, without requiring the personal appearance of the party for such purpose, act on the basis of the form alone or the form as supplemented by such information as may be made available by an officer or custodian or other responsible person, provided that such information is also made available to the party.

C. Approval of Application for Appointed Counsel. The Court may approve such representation upon a determination that the interests of justice so require and that such person is financially eligible for appointment of counsel. The order for appointment of counsel shall be made by the Court.

VIII. APPOINTMENTS IN CONNECTION WITH CAPITAL HABEAS CASES UNDER 28 U.S.C. §§ 2254 OR 2255.

A. Appointment of Counsel. Upon proper application, counsel shall be appointed to represent financially eligible persons seeking habeas corpus relief in death penalty proceedings. Although not statutorily required, the Court shall, as is required under 18 U.S.C. § 3005 for direct capital prosecutions, seek and consider the recommendation of the Federal Public Defender when appointing counsel for the death-eligible defendant.

B. Number and Qualifications of Counsel. Pursuant to 18 U.S.C. § 3599, upon defendant's request, the Court shall promptly assign one or more attorneys to represent a death-eligible defendant. At least one of the attorneys appointed shall have been admitted to practice in the United States Court of Appeals for the Tenth Circuit for not less than five years and shall have at least three years experience in handling felony criminal appeals in that Court. If additional counsel in appointed, he or she shall have background, knowledge or experience which would permit him or her properly to represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

C. Term of Appointment. Unless replaced by similarly qualified counsel, each attorney appointed in a capital habeas matter shall represent the defendant throughout all stages of available judicial proceedings, including appeals and applications for writ of certiorari to the Supreme Court (including applications for stay of execution) and shall also

represent the defendant in proceedings relating to competency or for such executive or other clemency as may be available.

D. Case Budgeting. Appointed counsel in a capital habeas case will be required to prepare and submit a proposed budget detailing the costs reasonably expected to be incurred in the representation of the defendant, including attorney fees and expert and other costs. Where employed, the budget process shall be confidential, and representatives of the Executive Branch of the United States government or of the State of Wyoming shall not participate. Final expenditures under the Act in capital habeas cases shall be made public only to the extent required by law. Some elements of the budget may require the approval of the Chief Judge of the U.S. Court of Appeals for the Tenth Circuit or his/her designee. (General Order attached)

IX. APPOINTMENTS IN CONNECTION WITH DIRECT CAPITAL PROSECUTIONS.

A. Notification of Eligibility for Capital Punishment. In order to conserve scarce resources, to facilitate good administration under the Act, and to insure the appointment of qualified counsel, the United States Attorney's Office shall, consistent with other lawful obligations, promptly notify the Court and the Federal Public Defender that a death-eligible offense is charged or is to be charged.

B. Appointment of Counsel. At his/her initial appearance, the defendant shall be advised of his/her right to be represented by two appointed attorneys, at least one of whom shall be learned in the law applicable to capital cases under 18 U.S.C. § 3005. Pursuant to 18 U.S.C. § 3599, at least one attorney appointed shall have been admitted to practice in the district for not less than five years, and must have not less than three years experience in the trial of felony prosecutions in the district. If counsel has not previously been appointed in connection with the investigation or prosecution of the capital matter, the defendant shall promptly be furnished with the same. In capital prosecution cases, the Federal Public Defender shall recommend, and the Court shall consider the recommendation of the Federal Public Defender, when appointing counsel for the death-eligible defendant.

C. Term of Appointment. Unless replaced by similarly qualified counsel, each attorney appointed in a capital matter shall represent the defendant throughout all stages of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court , and all available post conviction processes, together with applications for stay of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available.

D. Case Budgeting. In the discretion of the presiding Judge, appointed counsel in capital prosecutions may be required to prepare and submit a budget detailing the costs reasonably expected to be incurred in the representation of the defendant, including

attorney fees and expert and other costs. Where employed, the budget process shall be confidential, and representatives of the Executive Branch of the United States government or of the State of Wyoming shall not participate. Final expenditures under the Act in such capital cases shall only be made public to the extent required by law. Some elements of the budget may require the approval of the Chief Judge of the U.S. Court of Appeals for the Tenth Circuit or his/her designee.

X. DUTIES OF APPOINTED COUNSEL.

A. Standards. The services and quality of representation provided by appointed counsel to their CJA clients shall be equal to that provided their clients who retain them.

B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Wyoming Rules of Professional Conduct and the Local Criminal Rules of the United States District Court for the District of Wyoming.

C. 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 of their client in the matter for which they have been appointed (or for other contemporaneous representation of their client in any other matter) unless such payment is approved by order of the Court. Appointed counsel must make any such request to accept a fee in writing to the Court. The Court will grant approval only in extraordinary circumstances, since allowing court-appointed counsel to accept payment from a client or his/her family creates an appearance of impropriety that may undermine the integrity of the judicial process and suggests that appointed counsel would not provide effective representation if he/she were compensated only under the Criminal Justice Act.

D. Vouchers. Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. Counsel shall make every effort to submit claims as soon as possible after the completion of the services rendered. The Court will process claims for payment promptly.

E. Continuing Representation. In the event that a defendant is convicted following trial, counsel appointed under the Act shall advise the defendant of any right of appeal and of the right to counsel. **If requested to do so by the defendant, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless and until relieved by the Tenth Circuit Court of Appeals.**

F. Case Budgeting. 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.

XI. CRIMINAL JUSTICE ACT COMMITTEE.

A. Appointment. The Court shall appoint the members of the Criminal Justice Act (CJA) Committee.

B. Duties. The CJA Committee shall work to: (1) assist the Court in generally discharging its duties under the Act, and in so doing shall endeavor to insure that each indigent person entitled to representation under the Act in the District of Wyoming is competently, zealously, and effectively represented; (2) recommend to the Court the names of those attorneys who ultimately should serve on the Panel; (3) receive, review, and make recommendations regarding complaints received from the Court, clients, or others, concerning Panel representation; and (4) perform such other functions identified in or consistent with the PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT (Appendix hereto).

C. Membership. The CJA Committee shall consist of the CJA Panel Representative, at least three CJA Panel members selected by the Court, and a Federal Public Defender designee.

D. Meetings. The CJA Committee shall meet regularly and attempt at a minimum to adhere to an annual schedule as set forth in the Appendix.

XII. FUNDING FOR EXPERT, INVESTIGATIVE OR OTHER SERVICES.

The Court recognizes that expert, investigative and other services are often necessary to provide an adequate defense to financially eligible persons under the Act. In making ex parte requests for expert, investigative, or other necessary services, counsel should include an estimate of costs of the requested services and provide an explanation as to why the services are deemed necessary to an adequate defense.

XIII. MISCELLANEOUS.

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts or standard forms approved by the CJA Committee, shall be used, where applicable, in all proceedings under the Plan.

B. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

XIV. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the Tenth Circuit.

ENTERED FOR THE COURT ON THE 13 DAY OF June, 2012.

CHIEF JUDGE, DISTRICT COURT

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2012 MAY 7 PM 3 05
STEPHAN HARRIS, CLERK
CHEYENNE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

Administrative General Order 2012-01	**GENERAL ORDER DIRECTED TO APPOINTED CJA PANEL ATTORNEYS REPRESENTING CRIMINAL DEFENDANTS IN THE DISTRICT OF WYOMING**

ORDER

For all appointed CJA panel attorneys representing criminal defendants pursuant to the Criminal Justice Act of 1964 before all judges in the District of Wyoming, the following rules shall apply:

1. Attorney Fees: For all non-capital felony cases that **do not** require case budgeting, immediately upon anticipating that attorneys fees will exceed the current attorney case compensation maximum, currently $9,700.00, appointed CJA counsel shall file an ex parte notice with documentation and explanation that this amount is expected to be exceeded.

2. Costs and Services: For all cases that **do not** require case budgeting, immediately upon anticipating that costs, such as copy, fax, phone, research and postage, will exceed $300.00, counsel shall file an ex parte notice with documentation and explanation that this amount is expected to be exceeded. Similarly, immediately upon anticipating that services, such as investigative or

interpretive services, will exceed $800.00, counsel shall seek the required court approval, providing documentation and explanation for why this amount is expected to be exceeded.

3. Capital and Non-Capital Mega-Cases: For all capital cases and all cases where counsel anticipates total expenditures will exceed $30,000.00 for appointed counsel and for services other than counsel on behalf of an individual CJA defendant, the Court will require case budgeting. Counsel shall submit a proposed initial litigation budget for court approval, subject to modification in light of developments that emerge as the case proceeds. All case budgets shall be submitted ex parte and sealed. Recognizing that investigative, expert or other services may be required before counsel has an opportunity to submit a case budget, or the court to approve it, the court will act upon requests for services where prompt authorization is necessary for adequate representation. It is expected that counsel will use cost saving measures, such as paralegal time and investigator time where appropriate. Counsel should contact John Lang, 307-433-2130 or go to www.uscourts.gov/FormsAndFees/Forms/CourtFormsByCategory.aspx, under CJA Forms and Instructions, for assistance in developing and submitting a proposed initial litigation budget for the Court's approval.

4. Neither the ex parte notice nor case budgeting shall affect the obligation of attorneys to comply with CJA voucher requirements, nor does it guarantee payment of CJA vouchers. Failure

to follow this Order may result in a notice from the Court of non-payment of CJA vouchers for attorneys fees, costs and/or services pursuant to the District of Wyoming's Criminal Justice Act Plan.

Dated this 7 day of May, 2012.

Nancy D. Freudenthal
Chief United States District Judge

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.

MINUTES OF THE JUDICIAL COUNCIL OF THE TENTH CIRCUIT

July 19, 2012

The Judicial Council has approved the proposed amendments to the CJA Plan of the United States District Court for the District of Wyoming, which were submitted on June 26, 2012. The court may choose the effective date of the new plan, and should send a copy of the final CJA Plan to the Circuit Executive.

The Judicial Council

By:

Victoria M. Parks
Deputy Circuit Executive

for David Tighe
Circuit Executive and Secretary to the
Judicial Council of the Tenth Circuit