U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
March 1, 2013

LAWRENCE K. BAERMAN, CLERK

GENERAL ORDER #1

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

SO ORDERED FOR THE COURT ON **March 1, 2013**

Gary L. Sharpe
Chief Judge
U.S. District Court

APPROVED BY THE JUDICIAL COUNCIL FOR THE SECOND CIRCUIT ON MARCH 13, 2013

TABLE OF CONTENTS

I. AUTHORITY 1

II. STATEMENT OF POLICY 1
- **A. Objectives** 1
- **B. Compliance** 1

III. DEFINITIONS 2

IV. PROVISION OF REPRESENTATION 2
- **A.** Circumstance 2
  - 1. Mandatory 2
  - 2. Discretionary 3
- B. **Timely Appointment of Counsel** 4
- C. Number and Qualifications of Counsel 4
  - 1. Number 4
  - 2. Qualifications 4
- D. Eligibility for Representation 5
- E. Use of Financial Information 5

V. FEDERAL PUBLIC DEFENDER 6
- 1. Establishment 6
- 2. Supervision of Defender Office 6

VI. PRIVATE ATTORNEYS 6
- A. Establishment of CJA Panel 6
- B. Organization 6
- C. Ratio of Appointments 6

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. §2254 7

VIII. DUTIES OF APPOINTED COUNSEL 7
- A. Standards 7
- B. Professional Conduct 7
- C. No Receipt of Other Payment 7
- D. Continuing Representation 7

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES 8
A. Presentation of Accused for Appointment of Counsel 8
B. Pretrial Services Interview 8
C. Notice of Indictment or Criminal Information 8

X. MISCELLANEOUS 9
A. Forms 9
B. Claims 9
C. Supersession 9

XI. Effective Date 9

I. AUTHORITY.

Pursuant to the Criminal Justice Act of 1964, as amended, (*CJA*), section 3006A of Title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, *Volume VII*, *Guide to Judiciary Policies and Procedures* (*CJA* Guidelines), the judges of the United States District Court for the Northern District of New York, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the Criminal Justice Act.

II. STATEMENT OF POLICY.

A. Objectives.

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

2. The further objective of this Plan is to particularize the requirements of the *CJA*, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. Section 3559), and the *CJA Guidelines* in a way that meets the needs of this District.

B. Compliance.

1. The Court, its Clerk, the Federal Public Defender Organization (FPD), and private attorneys appointed under the *CJA* 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 Court shall provide each private attorney with a current copy of this Plan upon the attorney's first appointment under the *CJA* or designation as a member of the panel of private attorneys under the Criminal Justice Act (*CJA* Panel). The clerk shall maintain a current copy of the *CJA Guidelines* for the use of members of the *CJA* Panel and shall make known to such attorneys its availability.

III. DEFINITIONS.

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

B. "Appointed attorney" includes members of the panel of private attorneys (*CJA* Panel) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act, the Federal Public Defender and staff attorneys of the Federal Public Defender, and private attorneys when needed to supplement the *CJA* Panel.

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 §5031 of Title 18, U.S.C.;

   c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);

   d. is under arrest, when such representation is required by law;

   e. is entitled to appointment of counsel in parole proceedings; (See: Guide, Vol 7A, Section 210.20.10(a)(5));

   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 Chapter 313 of Title 18, U.S.C.;

   h. is in custody as a material witness;

   i. is seeking to set aside or vacate a death sentence under §2254 or §2255 of Title 28, U.S.C.;

j. 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 §4109 of Title 18, U.S.C.;

k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; (See: Guide, Vol 7A, Section 210.20.10(a)(9)); or

l. faces loss of liberty in a case and federal law requires the appointment of counsel (See: Guide, Vol 7, Section 210.20.10(a)(9)).

2. Discretionary. Whenever a judge or United States 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, other than to set aside or vacate a death sentence under §2241, §2254, or §2255 of Title 28, U.S.C. (See: Guide, Vol 7A, Section 210.20.20(a)(2));

c. is charged with civil or criminal contempt who faces the 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. is proposed by the United States attorney for processing under a pretrial diversion program;

f. is held for international extradition under Chapter 209 of Title 18, U.S.C. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the *CJA* Plan.

B. **Timely Appointment of Counsel**. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States magistrate judge or judge otherwise considers appointment of counsel appropriate under the *CJA*, whichever occurs earliest.

C. **Number and Qualifications of Counsel.**

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:

   a. Federal Capital Prosecutions. Pursuant to 18 U.S.C. §3005, a person charged with a capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Under 18 U.S.C. Section 3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

   b. Habeas Corpus Proceedings. Under 18 U.S.C. Section 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §2254 or §2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:

   a. Appointment of Counsel Prior to Judgment. Under 18 U.S.C. Section 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. §3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

      Pursuant to 18 U.S.C. §3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the Federal Public Defender.

   b. Appointment of Counsel After Judgment. Under 18 U.S.C.

Section 3599(c), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.

c. Attorney Qualification Waiver. Under 18 U.S.C. Section 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. Section 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the *CJA* is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.

2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel will advise the court.

E. Use of Financial Information The Government may not use as part of its direct case, other than a prosecution for perjury or false statements, any information provided by a defendant in connection with his or her request for the appointment of counsel pursuant to this Plan.

V. FEDERAL PUBLIC DEFENDER.

1. Establishment.

a. The Federal Public Defender Office for the Northern District of New York previously established on September 29, 1997, pursuant to the provisions of the *CJA*, is hereby recognized as the Federal Public Defender Organization for this district.

b. The Federal Public Defender shall be capable of providing legal services throughout the Northern District of New York.

2. Supervision of Defender Office. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Office. Accordingly, the Federal Pubic Defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

VI. PRIVATE ATTORNEYS.

A. Establishment of CJA Panel. The existing previously established panel of attorneys (*CJA* Panel) who are eligible and willing to be appointed to provide representation under the *CJA* will be considered for membership on the *CJA* Panel.

B. Organization. The Plan for the composition, administration, and management of the Panel of private attorneys under the Criminal Justice Act is found at Appendix of this *CJA* Plan.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the *CJA* Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the *CJA*. "Substantial" shall usually be defined as approximately 25% of the appointments under the *CJA* annually throughout the district.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. §2254.

The Court shall appoint a member or members of the Special Death Penalty Habeas Corpus Panel, or the Federal Public Defender with his or her consent, or a qualified attorney recommended by the Federal Public Defender, or any other attorney who qualifies for appointment under §3599 of Title 18, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under §2254 of Title 28, United States Code.

VIII. DUTIES OF APPOINTED COUNSEL.

A. **Standards**. The services to be rendered to a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

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 New York State Rules of Professional Conduct, as adopted from time to time by the Appellate Divisions of the State of New York, and as interpreted and applied by the United States Court of Appeals for the Second Circuit, and any other standards for professional conduct adopted by this court.

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 under the appointment, unless such payment is approved by order of the court.

D. **Continuing Representation**. Once counsel is appointed under the *CJA*, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit *CJA* Plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

A. **Presentation of Accused for Appointment of Counsel**. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the *CJA*, whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, notify the public defender who will discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a United States magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel. Law enforcement and related agencies must also comply with the provisions of Local Rule 5.1 of the Rules of Criminal Procedure for the Northern District of New York.

B. **Pretrial Services Interview**. This Court recognizes the importance of the advice of counsel for persons subject to proceeding under 18 U.S.C. §3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the United States Attorney shall include notification to the accused with the issuance of any criminal summons or appearance letter of their obligation to contact the Pretrial Services Office for the Northern District of New York at least forty-eight hours prior to their scheduled appearance with the Court to arrange for a pretrial services report to be completed. If the accused does not have retained counsel, the notification shall also include contact information for the office of the Federal Public Defender. Upon execution of an arrest warrant, law enforcement and related agencies shall comply with the requirements set forth in IX A. Early notification to the Federal Public Defender and Pretrial Services office will assist in the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the initial appearance and bail hearing.

C. **Notice of Indictment or Criminal Information**. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney or the probation officer, as appropriate, must immediately mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. 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, shall be used, where applicable, in all proceedings under this Plan.

B. Claims. Claims for compensation of private attorneys providing representation under the *CJA* shall be submitted on the appropriate *CJA* form to the office of the Clerk of the court. That office shall review the claim form for mathematical and technical accuracy, and for conformity with the *CJA Guidelines*, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The Court may also direct the Office of the Federal Public Defender to review claim forms for mathematical and technical accuracy, and for conformity with the *CJA Guidelines*. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans for this court.

XI. Effective Date.

This Plan and Appendix I, the Plan for the composition, administration, and management of the Panel of private attorneys under the *CJA* shall become effective when approved by the Judicial Council of the Second Circuit.

SO ORDERED FOR THE COURT ON March 1, 2013

Gary L. Sharpe
Chief Judge
U.S. District Court

APPROVED BY THE JUDICIAL COUNCIL FOR THE SECOND CIRCUIT ON MARCH 13, 2013

Doc Creation Date: December 1, 2005
Amended on October 9, 2012
Amended on March 1, 2013

TABLE OF CONTENTS

APPENDIX I

I. COMPOSITION OF THE PANEL OF PRIVATE ATTORNEYS 1

A. CJA PANEL. 1
1. Approval 1
2. Size 1
3. Eligibility. 1
4. Equal Opportunity. 2
5. Terms 2
6. Removal from the Panel 2
7. Required Training 2
8. Application. 3

B. CJA PANEL COMMITTEE 3
1. Membership 3
2. Duties 3

C. CJA TRAINING PANEL - 2ND CHAIR PROGRAM. 4
1. Objective 4
2. Immediate Approval 4
3. Additional Training 4
4. 2nd Chair Program 5

II. SELECTION FOR APPOINTMENT 7

A. Maintenance of List and Distribution of CJA Appointments. 7
B. Method of Selection. 7
C. Special Circumstances 8
D. Investigative, Expert and Other Services 8
1. Upon Request. 8
2. Without Prior Request. 8
3. Necessity of Affidavit. 9
E. Compensation - Filing of Vouchers 9
1. Maximum Amounts for Counsel 9
2. Waiver of Limits on Counsel Fees 9
3. Reduction of CJA Payment. 9
4. Reimbursement Restriction 10

TABLE OF CONTENTS

APPENDIX II

GUIDELINES FOR CLAIMS SUBMITTED FOR REIMBURSEMENT TO THE CRIMINAL JUSTICE ACT

1. Actual and Reasonable Work and Expenses 1

2. Tasks Not Compensable 2

3. Record Keeping 3

4. Description of Tasks 3

5. Travel 3

6. Expert and Non-Expert Services Over $800 4

7. Compensation and Filing of Vouchers 5

8. Violation of Guidelines 6

APPENDIX I

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF NEW YORK

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

I. COMPOSITION OF THE PANEL OF PRIVATE ATTORNEYS.

A. CJA PANEL.

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "*CJA* Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel on a quarterly basis after receiving recommendations from the "Panel Selection Committee," established pursuant to paragraph B of this Plan. Members of the *CJA* Panel shall serve at the pleasure of the Court.

2. Size. The Court shall fix, periodically, the size of the *CJA* Panel. The panel 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.

3. Eligibility. Attorneys who serve on the *CJA* Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. In addition to the above, attorneys who serve on the *CJA* Panel must attend one *CJA* Training Program at least once every two years.

   Subsection (b) of the Act provides, in part, that: Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan.

   However, when the district judge or magistrate judge presiding over the case, or the chief judge if a district judge or magistrate judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the *CJA* panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the *CJA* panel *pro hac vice* and appointed to represent the *CJA* defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain

an office in the district, should possess such qualities as would qualify him or her for admission to the district's *CJA* panel in the ordinary course of panel selection.

4. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in *CJA* cases, without regard to race, color, religion, sex, age, national origin or disabling condition. Notice of the opportunity to apply for membership on the *CJA* Panel shall be provided to attorneys at the time of admission to the bar of this Court. The applications shall also be available at the office of the Clerk and on the Court's Web Page. (*www.nynd.uscourts.gov*)

5. Terms. *CJA* Panel members shall serve at the pleasure of the court. Attorneys appointed to the CJA Panel shall serve a term of three years[1]. After the three-year term expires, a panel member may be invited to serve additional terms or may apply to serve additional terms. Completion of a term does not create a right or a presumption for service of another term.

6. Removal from the Panel. Membership on the *CJA* Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges, as they, in their sole discretion, may determine. The Board of Judges may seek the recommendation of the *CJA* Panel Committee with respect to the removal of existing panel members.

7. Required Training. *CJA* Panel members shall be required to attend one *CJA* training program at least once every two years. The Office of the Federal Public Defender shall sponsor two *CJA* workshops each year. *CJA* Panel members may also satisfy the training requirement by attending a nationally sponsored *CJA* Panel training program. In lieu of attending one of the above-mentioned programs, a Panel member may request to have this requirement waived by demonstrating that they have participated in a criminal law seminar of equal quality and length. Requests are to be submitted to the CJA Panel Committee in care of the Clerk of Court at the James M. Hanley Federal Building and Courthouse, 100 S. Clinton Street, Syracuse, New York 13261, and shall include the following materials:

   a) the date, location and length of the program attended;
   b) the agenda or syllabus of the program attended; and
   c) the number and type of CLE credit hours earned for attending the program.

   Failure to fulfill this training requirement may result in grounds for removal from the *CJA* Panel.

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[1]Beginning in calendar year 2014 and each year thereafter, the Court will review one-third of the membership of the CJA Panel. The Court in its sole discretion may invite a panel member to continue service for an additional three-year term, or shall inform the panel member that their term of service on the CJA Panel has ended.

8. Application. The Northern District of New York requires prospective CJA Panel Members to complete the online Application Form. Completed applications shall be routed by the automated system to the Clerk of the Court who will transmit the applications to the Court for review and approval on a quarterly basis. The automated Application form is available on the Court's website at *www.nynd.uscourts.gov*

B. CJA PANEL COMMITTEE.

1. Membership. A *CJA* Panel Committee shall be established by the Court. The NDNY Committee shall consist of two magistrate judges, the Federal Public Defender, attorneys from the Syracuse and Albany Divisions, and one from the Binghamton office. The Clerk of Court or Chief Deputy Clerk shall serve as an *ad hoc* member of the Committee to provide administrative support. The Committee shall be chaired by one of the magistrate judges appointed. Committee members shall be appointed by the Chief Judge and will serve a four- year term.

2. Duties.

a. The Committee shall be responsible for the oversight of the *CJA* Panel and the Criminal Justice Act Plan. At least once annually, the Committee shall review the operation and administration of the panel and make recommendations to the Court as to any necessary changes to the *CJA* Plan. The Committee shall also ascertain the continued availability and willingness of each panel member to accept appointments. The Committee may also make recommendations to the Court with respect to appointment of new panel members or the removal of existing panel members. The Clerk of Court shall provide the Committee with all relevant information concerning the assignment of panel members.

b. The Committee shall assist the Court by working with local bar associations regarding recruitment efforts in furtherance of the Equal Opportunity statement in Paragraph I.A.4 of this Plan. The Clerk of Court will assist the Committee by:

1. notifying bar associations and advertising in legal journals to solicit participation of qualified practitioners who are female, disabled or a member of some other minority;

2. contacting current or former members of the panel, as well as prominent local attorneys to seek recommendations for appointment to the panel of qualified applicants who are female, disabled or a member of some other minority.

C. CJA TRAINING PANEL - SECOND CHAIR PROGRAM.

The Court has established a "*CJA Training Panel - 2nd Chair Program*". The program has been designed to help educate attorneys who do not yet have the experience required for membership on the *CJA* Panel. Training Panel members should contact the Office of the Federal Public Defender to obtain information on additional training or on the *2nd* Chair Program. Training Panel members are not eligible to receive appointments. Attorneys participating in the 2nd Chair Program must comply with section (C) below. Prior service on the *CJA Training Panel - 2nd Chair Program* is not a requirement for membership on the *CJA* Panel, nor will service on the Training Panel guarantee admission of an attorney to the *CJA* Panel.

1. **Objective.** To provide necessary training and prepare experienced state practitioner for appointment to the CJA Panel in order to ensure quality representation for indigent defendants in federal court.

2. **Immediate Approval.** There may be a select group of applicants who qualify for automatic placement on the CJA panel. For example, an applicant who seeks to transfer from another district and already has extensive federal criminal experience, may be eligible for immediate approval, as long as the applicant provides at least two letters of reference from the transferring district. In addition, applicants who have extensive experience practicing criminal law in federal court within the Northern District of New York may also qualify for automatic placement on the CJA panel.

3. **Additional Training.** "Additional training" would be required for those practitioners who have substantial state court experience, including felony jury trials, but essentially have minimal to no federal court experience. Applicants who fall within this category would be required to complete the following:

   a. Participate in CLE programs on the Bail Reform Act, the Sentencing Guidelines and the Federal Rules of Evidence. The Coordinator would identify specific programs for the applicant, who subsequently would certify his/her participation.

   b. The Coordinator would link the applicant to an approved mentor and the applicant would join the mentor for an initial appearance (including custodial interview), detention hearing and sentencing. The mentor would certify the applicant's participation.

4. **2ND Chair Program.** The "2nd Chair Program" would be instituted for otherwise qualified attorneys whose federal court experience is not "substantial" but who have some state criminal court experience. The Coordinator would link the applicant to a mentor and the applicant would join the mentor for the full spectrum of representation (e.g., initial appearance, detention hearing, discovery, guideline calculation and sentencing factors, plea negotiations, client interviews and

conferences, evidentiary hearings, trial and sentencing, etc.). The mentor would certify the applicant's participation.

Additionally, the coordinator will notify mentees whenever possible when a mentor has a jury trial scheduled (not necessarily the applicant's mentor) in order to provide the applicant with an opportunity to observe an entire trial.

Finally, the applicant in the 2nd Chair Program also must participate in CLE programs on the Bail Reform Act, the Sentencing Guidelines and the Federal Rules of Evidence, as under B.1 above.

A participating Mentee will be required to perform at least 15 hours of *pro bono* work prior to being considered for compensation at a reduced paralegal rate in an amount of $65 per hour, not to exceed $800, unless otherwise approved by the District Court Judge, provided the Mentee is not duplicating work completed by the Mentor. The Mentor is required to certify the completion of 15 hours of *pro bono* work.

Authorization of the Mentee as co-counsel and compensation, if any, for the Mentee will be determined by the District Court on a case-by-case basis. Such authorization is appropriate only if the District Court finds that the case in question would have warranted the authorization of a paralegal or associate counsel. No such authorization or determination of compensation will be made by the Magistrate Judge; however, the Mentor should identify the Mentee at any presentment or other appearance before the Magistrate Judge.

The only expenses permitted to be reimbursed for a Mentee are travel-related expenses, such as mileage and parking. Travel expenses will be reimbursed at the current mileage rate prescribed for federal judiciary employees.

a. Coordinator. The Federal Public Defender will administer the program. Administration will include nomination of Mentors, subject to the approval of the CJA Panel Committee; identifying prospective Mentees; pairing Mentees with Mentors; providing Mentors with guidance and identifying appropriate cases for the Program.

b. Mentors. The Coordinator will link the applicant to a mentor and the applicant will join the mentor for the full spectrum of representation (e.g., initial appearance, detention hearing, discovery, guideline computation and sentencing factors, plea negotiations, client interviews and conferences, evidentiary hearings, trial and sentencing) preferably in the context of a single "Program case."

The CJA Committee Members will propose an initial pool of approximately (10) Mentors, subject to approval of the Chief Judge for the Northern District of New York. Mentors will be appointed for a 24-month period, which is renewable at the discretion of the Committee.

No Mentor will be assigned more than (1) Mentee, as long as there are willing Mentors who have not yet been assigned a Mentee. Mentees may have more than (1) Mentor.

The Mentor is the primary attorney and, accordingly is responsible for the representation of the Criminal Justice Act-client.

A Program case will be a Mentor's CJA case that the Mentor has received as a regular CJA appointment, and which appears to have a wide range of issues to address, including: bail and release; discovery review; guideline calculation and sentencing factors; plea negotiation; client interview and conferences regarding various issues and themes; legal research and writing; and possible evidentiary hearing or trial.

c. Program Completion. Mentees who successfully complete the program will be encouraged to renew their application for appointment to the Panel. If a Mentee renews their application, The Panel Review Committee will solicit the views of the Mentor and Coordinator as to whether the Mentee qualifies for appointment.

II SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF CJA APPOINTMENTS.

The Clerk of the Court shall maintain a current list of all attorneys included on the *CJA* Panel, with current office addresses, telephone and fax numbers, e:mail addresses, as well as a statement of qualifications and experience. The Clerk shall furnish a copy of this list to each judge and magistrate judge, the list shall also be made available to the Federal Public Defender. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender Organization and private attorneys, according to the formula described in the *CJA* Plan for the District.

The Clerk of Court shall also maintain a record of each refusal ("pass") by a panel attorney, and the reason for each pass. If the Clerk's Office determines that a panel member has repeatedly passed assignments, the Clerk may refer the name of the attorney to the Court. The Court shall then consider the information provided by the Clerk and make such further inquiry as it deems appropriate.

B. METHOD OF SELECTION.

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the *CJA* Panel, and quality representation for each *CJA* defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate judge shall notify the Clerk of Court, or Federal Public Defender of the need for counsel and the nature of the case.

The Clerk of Court shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the panel of private attorneys. If the judge or magistrate judge decides to appoint an attorney from the panel, the Clerk shall determine the name of the next panel member on the list who is available for appointment, and shall provide the name to the appointing judge or magistrate judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge, or magistrate judge, may appoint any attorney from the list if a member of the Federal Public Defender's Office is not available. In all cases where members of the *CJA* Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Clerk of Court, or Federal Public Defender as to the name of the attorney appointed and the date of the appointment.

In the interests of justice, where continuity of representation is a factor or other special circumstances exist, the Court may assign an attorney who is not on the panel. Consideration for preserving the integrity of the panel selection process suggests that such appointments be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the district's *CJA* panel in the ordinary course. Such attorney if appointed must also follow the appropriate full admission to the bar or pro hac admission requirements of the district.

C. SPECIAL CIRCUMSTANCES.

If after appointment, counsel learns that a client is financially able to pay all or part of the fee for legal representation and the source of the attorney's information is not a privileged communication, counsel shall so advise the presiding judge. The presiding judge will take appropriate action, including but not limited to: permitting assigned counsel to continue to represent the defendant; terminating the appointment of counsel, or ordering any funds available to the party to be paid as provided in 18 U.S.C. §3006A(f) as the interests of justice may dictate. Any amount paid by the party will be considered by the presiding judge in determining the total compensation allowed to the attorney.

D. INVESTIGATIVE, EXPERT AND OTHER SERVICES.

1. Upon Request. Counsel for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense may request such services *ex parte* before a judge or magistrate judge having jurisdiction over the case. Such application shall be heard *in camera* and shall not be revealed without the consent of the defendant. On finding that the services are necessary and that the person is financially unable to afford them, the judge or magistrate judge shall authorize them. An order setting forth the type, purpose, and limitations of such services will be issued by the Court. The judge or magistrate judge may establish a limit on the amount that may be expended or committed for such services within the maximum prescribed by 18 U.S.C. §3006A(e)(3).

2. Without Prior Request. Counsel appointed pursuant to this Plan may obtain, subject to later review, investigative, expert, or other services without prior judicial authorization if they are necessary for an adequate defense. The total cost of services so obtained may not exceed the maximum prescribed by 18 U.S.C. § 3006(A)(e)(2) per individual or corporation providing the services (exclusive of reasonable expenses). However, in the interests of justice and upon finding that timely procurement of necessary services could not await prior authorization, a judge or magistrate judge (in a case entirely disposed of by the magistrate judge) may approve payment for such services after they have been obtained, even if the services exceed the maximum prescribed by 18 U.S.C. §3006(A)(e)(2).

3. Necessity of Affidavit. Statements made by or on behalf of the party in support of requests for investigative, expert, and other services shall be made or supported by

affidavit and filed with the Court *in-camera* for review and consideration.

E. COMPENSATION - FILING OF VOUCHERS.

Claims for compensation shall be submitted on the appropriate *CJA* form[2] accompanied by the *CJA* voucher worksheets to the office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy, and for conformity with the *Guidelines for the Administration of the Criminal Justice Act* (*See: Vol 7, Guide to Judiciary Policies and Procedures*) and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The Court may also direct the Office of the Federal Public Defender to review claim forms for mathematical and technical accuracy, and for conformity with the *CJA* Guidelines. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

1. Maximum Amounts for Counsel. For representation of a defendant before a magistrate judge or judge of this court, or both, the compensation paid any attorney shall not exceed the maximum prescribed by 18 U.S.C. §3006A(d)(2).

2. Waiver of Limits on Counsel Fees. Payment in excess of any maximum amount prescribed by 18 U.S.C. §3006A(d)(2) for counsel fees or for other services may be made for extended or complex representation whenever the judge or magistrate judge (if the representation was entirely before the magistrate judge) certifies that the amount sought is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Second Circuit or such active Circuit Judge to whom the Chief Judge has delegated approval authority. Counsel claiming such excess payment shall submit a detailed memorandum justifying counsel's claim that the representation was in an extended or complex case and that the excess payment is necessary to provide fair compensation.

3. Reduction of *CJA* Payment. In any case where the judge or magistrate judge believes that the claim as submitted should be reduced for reasons other than mathematical or technical errors, the judge or magistrate judge shall notify counsel in writing and afford counsel the opportunity to be heard. Counsel shall be given the opportunity to provide information or documentation relevant to the voucher and questions or concerns raised by the judge or magistrate judge. After review of the submission by the Panel member and the completion of any steps deemed appropriate by the court, the judge or magistrate judge shall make the final decision

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[2]The Administrative Office of the U.S. Courts is in the process of developing an automated *e-CJA* voucher program. It is anticipated that this new electronic voucher program will be available for use in the Courts by the end of 2013 or early in calendar year 2014. Once the new system is made available, the Courts will provide training for members of the CJA Panel on the use of the automated voucher program. Use of the program will be mandatory for all CJA Panel members once the program is live in the Northern District of New York.

as to the fee request consistent with this Plan, the *CJA*, and the interests of justice.

Notwithstanding the procedure described above, a judge or magistrate judge may in the first instance, contact counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the judge or magistrate judge and Panel member, the claim for compensation need not go through the formal written submission requirements noted above.

The Court may, in its discretion, refer the voucher for further review to the Panel Review Committee for a confidential recommendation to the presiding Judge.

4. Reimbursement Restriction. CJA Panel Members who do not maintain an office within the Northern District of New York will only be reimbursed for their mileage and travel time accrued while traveling within the borders of the Northern District. Mileage and travel time incurred outside of the District either traveling from your office or returning to your office will not be allowed without the prior permission of the Court.

APPENDIX II

NORTHERN DISTRICT OF NEW YORK
GUIDELINES
FOR CLAIMS SUBMITTED FOR REIMBURSEMENT
PURSUANT TO THE CRIMINAL JUSTICE ACT

Where persons accused of committing a Federal crime establish they are financially unable to retain private counsel, and where the offense or offenses qualify for Court appointed counsel, the Court may appoint counsel to be paid from public funds pursuant to the Criminal Justice Act (18 U.S.C. §3006A) (CJA) and the Criminal Justice Act Plan for the Northern District of New York. To facilitate this process, these Guidelines have been adopted by the Court.

Every attorney who is paid out of the public funds designated for the payment of legal services rendered under the CJA has the responsibility to exercise prudence and restraint when preparing a voucher for payment. Such attorneys have an obligation to limit expenses to the greatest extent possible while still providing full, effective and fair representation of the client. In addition to the Guidelines, it is the obligation of each CJA attorney to comply with the Judiciary's Guidelines for Administering the CJA and Related Statutes, applicable local rules, Court orders, and notices.

It is the responsibility of the Court to ensure that all services and expenses funded under the CJA are those necessary and reasonable for effective representation by counsel.

1. <u>Actual and Reasonable Work and Expenses</u>

a. Only actual and reasonable work performed and expenses may be claimed or compensated. In claiming compensation, billing judgment must be exercised as to the reasonableness of all compensation claimed. Where more time was expended than is claimed for compensation, counsel may so indicate on the voucher.

b. Failure to exercise billing judgment, recurring violations of these Guidelines, and unreasonable claims may result in reduction or denial of claims and removal from the CJA panel.

c. Time spent on overlapping services in multiple cases (e.g., research, court appearances, waiting time) must be allocated appropriately among the cases and may not exceed the actual time expended.

d. Preparation of "boiler-plate" notices and motions not necessitating legal research, e.g., motion to seal, continue, or any other routine filings, typically involve modifying the date, case caption and/or case number. Only time newly expended in adapting previously-

used documents may be claimed.

e. Time expended on extended discussion of fundamental principals of law well known to the court and to opposing counsel may not be claimed. For example, claims for research relating to basic and general sentencing principles, i.e., "research re: *Booker, Gall, Kimbrough*, etc.", or "cut and paste"of legal and historical discussions about *Booker* and its progeny, are not considered reasonable or compensable. Where facts and research are essential to an argument for reduced sentences, the argument must be tailored to the specific case to be compensable.

f. Claims for reviewing a Notice of Electronic Filing (NEF) and associated documents must include the document numbers. No time may be claimed for reviewing an attorney's own NEFs or filings or of co-defendants unless relevant to the representation.

g. Claims for conferences with family representatives must reference the subject of the communication. This information should be included in the supporting documentation submitted in support of the voucher, and is not to be filed in CM/ECF.

h. Ten or more hours billed in a single day is unusual. Absent extraordinary circumstances, billable hours in a day should not exceed ten hours unless in hearings or in trial.

i. Charges for a facsimile transmission are limited to $.10 per page. Charges for in-house copy work is limited to $0.20 per page or actual cost, whichever is less. The number of pages for copy work and faxes must be referenced on the expense worksheet.

2. <u>Tasks Not Compensable</u>

a. Clerical work, even if performed by an attorney, may not be claimed. Clerical work includes work customarily performed by non-professional employees and work that can be performed by a non-attorney for counsel to be able to render directly professional services. Work performed by a non-attorney may be claimed and compensated in accordance with orders of the court authorizing such work.

b. Time spent accessing and storing Notices of Electronic Filing ("NEFs") is clerical and not compensable.

c. Retrieving or holding property of a defendant is generally not compensable.

d. You cannot charge for representation in other Courts, i.e.: if you represent the defendant in a State or County Court that work cannot be charged back to the Federal Court.

3. Record Keeping

a. Attorneys must maintain contemporaneous time and attendance records daily for all work performed. Records are subject to audit and must be retained for three years after approval of a final voucher for appointment. *(Reference: Volume 7, Part A., Chapter 2, Section 230.76 of The Judiciary Guidelines for Administering the CJA and Related Statutes.)*

b. The Court will conduct an annual review of attorneys who have claimed compensation of more than 1,000 hours in the preceding fiscal year. *(Reference: Volume 7, Part A., Chapter 2, Section 230.80 of The Judiciary Guidelines for Administering the CJA and Related Statutes*.) An attorney may be required to perform a self-audit or independent audit for the Court.

c. Records must allow determination of all time worked on all CJA cases in a single day.

d. Proof of payment is required for all itemized expenses in excess of $50.00. This includes a receipt, copy of a canceled check, or credit card statement.
An invoice is not considered proof of payment.

4. Descriptions of Tasks

a. Descriptions of services must be adequate to understand the service and to evaluate the reasonableness of the time claimed.

b. Claims for legal research must state the issue researched.

c. Discrete tasks must be described and the time quantified separately, except one task each day of less than 0.1 hour may be claimed at 0.1 hour if no other service is claimed for that day with which it can be quantified. Multiple tasks on one day of less than 0.1 hour each must be quantified together at no more than the total actual time expended on all, or quantified with another task on the same day. If the activities fall into multiple categories as identified on the Out of Court section of the CJA 20 form (i.e., Interviews; Record Review; Legal Research and Writing; Travel; and Investigative/Other Work), the 0.1-hour entry may be entered in any applicable category. The aggregate time claimed, during the total period of representation, for single tasks requiring less than six minutes will be evaluated for reasonableness and may be subject to a reduction.

d. Claims for document review may not exceed the actual time spent and must state specifically the nature of material reviewed and the number of pages.

5. Travel

a. Only actual time spent traveling may be claimed. Counsel must provide a breakdown of each expense and when claiming mileage must include the starting location and destination.

b. Travel time and mileage to and from the courthouse is computed from the attorney's office, not the attorney's home, *unless their home is the office.*

c. Attorneys must obtain advance authorization from the Court for travel outside the district. Absent such authorization, the attorney must demonstrate the travel was necessary and prior authorization could not have been obtained. Ordinarily, compensable time for travel includes only those hours actually spent in or awaiting transit. Accordingly, if a trip necessarily and reasonably requires overnight lodging, compensable travel time to the destination from the attorney's office terminates upon arrival at the place of accommodation and includes travel time returning directly to the attorney's office. *(Reference: Volume 7, Part A., Chapter 2, Section 230.60(b) of The Judiciary Guidelines for Administering the CJA and Related Statutes.)*

d. Reasonable within-district travel for investigative purposes, e.g., travel to a local jail to meet with the client on an issue that could be discussed over the phone, does not require prior authorization.

e. Actual mileage driven must be recorded for all mileage claims.

f. Receipts must accompany all claims for non-mileage related travel expenses, including parking, tolls, taxi, airfare, hotel, etc.

g. Reimbursement for meals is allowable only when the traveler has received authorization for overnight travel.

h. Reasonableness of travel costs will be determined in conjunction with these Guidelines, and prevailing limitations for travel and subsistence expenses governing federal judiciary employees.

i. Reimbursement Restriction. CJA Panel Members who do not maintain an office within the Northern District of New York will only be reimbursed for their mileage and travel time accrued while traveling within the borders of the Northern District. Mileage and travel time incurred outside of the District either traveling from your office or returning to your office will not be allowed without the prior permission of the Court.

j. While time spent in common on more than one case must be prorated among the vouchers for cases on which the time was spent, the entire amount of travel or other expenses applicable to more than one representation must be billed to one representation. The materials supporting the voucher on which the expenses are billed must cross-reference the other CJA representations. *(Reference: Volume 7, Part A., Chapter 2, Section 230.50(e) and (f) of The Judiciary Guidelines for Administering the CJA and Related Statutes.)*

6. Expert and Non-Expert Services Over $800

a. Any expenditure over $800.00 must be authorized in advance by the Court. For expert

services, this maximum applies per representation, not per service type. *(Reference: Volume 7, Part A, Chapter 2, Section 310.20 of The Judiciary Guidelines for Administering the CJA and Related Statutes and NDNY General Order #1, Appendix Section II-D)*

b. The Court will strictly apply the requirements set forth in 18 U.S.C. § 3006A(e). If the cost of services for a case is anticipated to surpass the $800.00 limitation, application to exceed this amount must be made at the onset. Any request seeking *nunc pro tunc* authorization for goods or services rendered in the interest of justice must include justification to support a finding that timely procurement of such goods or services could not practicably await prior authorization.

c. The cost of goods or non-expert services may be claimed as an Other Expense on Form CJA 20. Claims for expert services must be filed on Form CJA 21 and be in accordance with the presumptive hourly fee schedule set forth on the District's Internet website. Approval to exceed the presumptive hourly rate must be obtained in advance. If a particular type of service is not listed on the Court's fee schedule, the request and justification must be based on the market rate.

d. Expert vouchers where travel was necessary must provide a breakdown of travel expenses, ie: parking, tolls, and mileage from the starting location, destination and the number of miles traveled.

e. Necessity of Affidavit. Statements made by or on behalf of the party in support of requests for investigative, expert, and other services shall be made or supported by affidavit and filed with the Court *in-camera* for review and consideration. The request should contain a sealing Order directing that the request and supporting papers be sealed until after the case is concluded and any appeals that may be filed have been terminated and the case closed.

f. Receipts must accompany all claims.

g. For information on rates for interpreter services please visit our website at ndny.uscourts.gov.

7. Compensation and Filing of Vouchers.

Claims for compensation shall be **typed** and submitted on the appropriate *CJA* form accompanied by the *CJA* voucher worksheets to the office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy, and for conformity with the *Guidelines for the Administration of the Criminal Justice Act* (*See: Vol 7, Guide to Judiciary Policies and Procedures*) and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The Court may also direct the Office of the Federal Public Defender to review claim forms for mathematical and technical accuracy, and for conformity with the *CJA* Guidelines. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

a. Maximum Amounts for Counsel. For representation of a defendant before a magistrate judge or judge of this court, or both, the compensation paid any attorney shall not exceed the maximum prescribed by 18 U.S.C. §3006A(d)(2).

b. Waiver of Limits on Counsel Fees. Payment in excess of any maximum amount prescribed by 18 U.S.C. §3006A(d)(2) for counsel fees or for other services may be made for extended or complex representation whenever the judge or magistrate judge (if the representation was entirely before the magistrate judge) certifies that the amount sought is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Second Circuit or such active Circuit Judge to whom the Chief Judge has delegated approval authority. Counsel claiming such excess payment shall submit a detailed memorandum justifying counsel's claim that the representation was in an extended or complex case and that the excess payment is necessary to provide fair compensation.

c. Notwithstanding the procedure described above, a judge or magistrate judge may in the first instance, contact counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the judge or magistrate judge and Panel member, the claim for compensation need not go through the formal written submission requirements noted above. The Court may, in its discretion, refer the voucher for further review to the Panel Review Committee for a confidential recommendation to the presiding Judge.

d. Filing Your CJA Voucher. CJA Vouchers should be submitted for payment no later than 45 days after the final disposition of the case, unless good cause is shown. The clerks of the concerned courts should ensure that attorneys comply with the prescribed limits.
(See Section 230.13 of Volume 7 of the Guide to Judiciary Policies and Procedures)

8. Violation of Guidelines

Violation of these Guidelines may result in suspension or removal from the CJA Panel and reimbursement of payments received. Counsel are reminded that they must comply fully with the requirements set forth in NDNY General Order # 1 - Plan for the Composition, Administration and Management of the Panel of Private Attorneys and the Office of the Federal Public Defender under the Criminal Justice Act as well as Volume 7, of The Judiciary Guidelines for Administering the CJA and Related Statutes.