

Appendix to the CJA Plan for the District of Maryland

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.
- B. Agenda. The CJA Supervising Attorney shall prepare and circulate the agenda each month to the Committee members. Any Committee member may request that an item be added to the agenda. The agenda shall contain the relevant item from the CJA Committee's annual schedule.
- C. Annual Schedule. To the extent reasonably possible, the CJA Committee will take up the listed items according to the following schedule:
1. January: review mentor program progress for the past year and review panel attorney performance for the past year
 2. February: continue review of panel attorney performance and consider removal of panel members, if necessary
 3. March: review of number/diversity/geographical location/special needs for panel composition
 4. April: consider applications to felony panel and term renewals
 5. May: continue consideration of panel applications
 6. June: review CJA appointments and voucher procedures; review allocation of assignments between FPD and panel; FPD report on panel training
 7. July: no regular meeting
 8. August: no regular meeting
 9. September: review of presumptive rates, procedures for requesting expert or investigative services, and consideration of related problems or concerns regarding experts or investigators
 10. October: review/discuss annual mailing to panel attorneys
 11. November: review budget matters
 12. December: FPD report on panel training session; review allocation of assignments; review/discuss long-range planning.
- D. Panel Applications
1. Misdemeanor Panel Applications. The CJA Committee shall consider applications to the Misdemeanor Panel each month. The CJA Supervising Attorney shall review each application to insure that the applicant is a member in good standing of the bar of this Court.

2. Felony Panel Applications. The CJA Committee shall consider applications to the Felony Panel each year in April and May. (With respect to former Assistant Federal Public Defenders, former Assistant U.S. Attorneys, and other attorneys with obviously superior qualifications, applications may be considered at any time.) Felony Panel applications will be considered along with the term renewal applications. The CJA Supervising Attorney shall review each application, check the references supplied by each applicant, and make any further inquiry deemed necessary to an informed consideration of the application. The CJA Supervising Attorney shall forward all pending applications with the results of the reference check to the Committee.
 3. Term Renewal Applications. The CJA Supervising Attorney shall advise the Committee of the results of the judicial survey regarding a panel attorney's performance prior to consideration of the attorney's term renewal application.
 4. Capital Panel Membership. Consistent with procedures set out in the Court's CJA Plan, the Federal Public Defender shall recommend the membership of the Capital Panel and, upon such recommendation and with the approval of the Committee and the Court, an attorney may become a member of the Capital Panel at any time.
- E. Vacancies on Panel. If, 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 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. Members selected in this fashion shall serve until the expiration of the term that was vacated.

II. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA Panels.

1. Number. The Court has established three panels: Felony, Capital and Misdemeanor.
2. Approval. The Court shall approve for membership on the panels (hereinafter referred to as the "CJA Felony Panel," the "CJA Capital Panel," and the "CJA Misdemeanor Panel") private attorneys 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 panels after receiving recommendations from the CJA Committee. Capital Panel members must receive the recommendation of the Federal Public Defender. Members of the CJA panels serve at the pleasure of the Court.

3. Size. The CJA Committee shall periodically fix the size of the CJA panels. The panels 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 Felony Panel, attorneys must have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the United States Sentencing Guidelines.
5. Appointments. Generally, an attorney must be a member of the appropriate panel to be appointed on a CJA case. However, when the trial judge, or the Chief Judge or his/her designee if a judge has not yet been assigned to the case for trial, 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 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 requires 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 skills and qualities as would qualify him/her for admission to the district's CJA panel in the ordinary course of panel selection.
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. Terms. The term for membership on the Felony Panel is three years. The Felony Panel is divided into three groups, equal in number. Members are assigned to one of the three groups on a random basis. Each year the CJA Supervising Attorney shall circulate applications for renewal of panel membership to those Felony Panel members whose terms are expiring. The applications for renewal of Felony Panel membership shall be considered along with all pending applications by the CJA Committee in accordance with its annual schedule. The CJA Committee's panel membership decisions may be appealed to the *en banc* U. S. District Court.
8. Applications. Application forms for membership on the CJA Misdemeanor Panel and CJA Felony Panel shall be made available, upon request, by the CJA Supervising Attorney. Completed applications shall be submitted to the CJA Supervising Attorney. The CJA Supervising Attorney shall transmit the

applications with recommendations to the CJA Committee in accordance with the Committee's annual schedule.

9. Training Requirement. Members of the Felony Panel are required to attend one training session per year. Training will be provided by the Office of the Federal Public Defender. One training session will be held in the Northern Division in May of each year, and one will be held in the Southern Division in November of each year. Attorneys may request permission from the CJA Committee to be absent from the annual training program for good cause. Permission to be absent generally will not be granted in consecutive years.

- B. Mentor Program. The CJA Committee may refer applicants for the CJA Felony Panel to the mentor program. The applicants will be assigned to an Assistant Federal Public Defender or a Felony Panel member qualified by the CJA Committee to participate in the mentor program as a mentor. Applicants referred to the mentor program are not eligible to receive appointments independently and shall not be eligible to receive compensation for their services while participating in the mentor program. The program is designed to insure that counsel have sufficient expertise in federal criminal procedure and the sentencing guidelines before admission to the Felony Panel. It shall be the duty of the mentor attorney to notify the CJA Committee regarding the progress and capability of the applicant.

III. SELECTION FOR APPOINTMENT

- A. Maintenance of CJA Data Base. The CJA Supervising Attorney shall maintain a data base listing all panel members. New attorneys shall be added to the data base upon admission to the CJA panel.

- B. Method of Selection.
 1. Appointments. 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 and timing considerations. This procedure is designed to achieve a balanced distribution of appointments and compensation among the members of the CJA panel, while insuring good quality of representation for each defendant.

 2. 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.

 3. 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.

4. 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 Supervising Attorney in advance so that he/she may arrange for counsel to be appointed in a timely manner.

IV. COMPENSATION: FILING AND PAYMENT OF VOUCHERS

A. Format of Claim.

1. Worksheets or Billing Records. All vouchers must be accompanied by detailed worksheets or billing records. The worksheets or billing records shall be fully itemized with individual narrative entries showing the date of service, a precise description of the service, actual time consumed for the service in hours and tenths of hours, the name of the individual providing the service and a calculation of rate and hours equaling the charge for the individual entry.
2. Excess Compensation Claims. CJA form 20 vouchers requesting payment in excess of the statutory maximum provided by the CJA shall include the panel attorney's written justification for why the case should be considered "extended" or "complex" and why the excess payment is necessary to provide fair compensation. Justifications shall be submitted on a CJA form 26 or in the alternative may be typewritten in a memo that contains all the information required in the CJA form 26.
3. Claim for Final Interim Payment. Final interim payment vouchers shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement shall be attached to the final voucher that reflects all compensation received to date and the amount of compensation due.
4. Expert Service Vouchers. Vouchers submitted for payment of non-attorney's fees in excess of \$300 must have prior court approval. Applications for the ratification of expenses incurred without prior court approval are not looked upon with favor and will not be approved, except in the most unusual situations, and then not exceeding the limitations set forth in the Act.
 - a. Claims Under \$1,000.00. Vouchers for non-attorney's fees in excess of \$300 shall be accompanied by an order pre-approving the services or contain the presiding judicial officer's signature in box 17 of the CJA form 21.
 - b. Claims in Excess of \$1,000.00. All non-attorney's fees in excess of \$1,000 must have the prior approval of the presiding judicial officer and of the Chief Judge of the Circuit or his/her designee. Requests for payment of non-

attorneys' fees in excess of \$1,000 must be accompanied by the judicial order granting pre-approval.

- c. CJA 31 Vouchers. Vouchers submitted for payment of non-attorney's fees in capital cases must have the approval of the presiding judicial officer. The total fees and expenses paid to experts, investigators, or other service providers may not exceed \$7,500 without approval of the Chief Judge of the Circuit. The CJA Supervising Attorney will maintain a tally of all fees in capital cases.

B. Interim Payments.

1. Felony Cases. In extended cases counsel may request interim payments. The request shall be made in writing and contain sufficient detail to support the request. The request must be sent to the CJA Supervising Attorney for review. The request will be forwarded to the District Judge with the CJA Supervising Attorney's recommendation. Interim payment requests must be approved by the District Judge and the Chief Judge of the United States Court of Appeals for the Fourth Circuit.
2. Capital Cases. Interim payments will not be approved in capital cases without an agreement on the case budget, absent extraordinary circumstances. After approval of the budget for counsel's fees, an order will be entered by the District Court approving interim payments to counsel. If the expected fees and expenses to experts and other service providers totals more than \$7,500.00, the budget and interim payment order for service providers will be forwarded to the Chief Judge of the United States Court of Appeals for the Fourth Circuit for his approval. If the expected fees and expenses to service providers totals less than \$7,500.00, in appropriate cases the District Judge will approve the request for interim payments to service providers.

C. Voucher Approval.

1. CJA Form 20. Authority to act on all CJA form 20 interim vouchers and all CJA form 20 final vouchers under the statutory maximum is delegated to the CJA Supervising Attorney pursuant to the administrative order adopted on December 4, 1998, and filed in Misc. Docket 706. CJA form 20 vouchers requesting payment in excess of the statutory maximum will be reviewed by the CJA Supervising Attorney and forwarded with a recommendation to the presiding judicial officer. The presiding judicial officer will determine if excess payment is necessary to provide fair compensation in accordance with the CJA Guidelines. If excess payment is certified by the presiding judicial officer, the voucher will be submitted to the Chief Judge of the Fourth Circuit or his/her designee for review and approval.

2. CJA Form 21. Vouchers submitted for the final payment of non-attorney's fees totaling \$300.00 or less will be reviewed by the CJA Supervising Attorney. After review, the CJA Supervising Attorney shall approve such amounts deemed reasonable and appropriate under the CJA Guidelines. Authority to act on vouchers for non-attorney's fees with prior judicial approval in excess of \$300.00 is delegated to the CJA Supervising Attorney within the total amount previously approved by the presiding judicial officer. All vouchers for non-attorney's fees in excess of \$1,000.00 will be reviewed by the CJA Supervising Attorney and forwarded with a recommendation to the presiding judicial officer for his/her certification. If certified, the voucher and all supporting documentation will then be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for review and approval for payment.
3. CJA Form 30. Vouchers submitted for payment in capital cases will be reviewed by the CJA Supervising Attorney and monitored for compliance with the budget. Vouchers that are reasonable and in compliance with the budget will be forwarded with a recommendation to the presiding judge for approval for payment.
4. CJA Form 31. Vouchers submitted for payment of non-attorney's fees in capital cases must have the approval of the presiding judicial officer. If an interim payment order has been entered in the case, the vouchers will be reviewed by the CJA Supervising Attorney and forwarded with a recommendation to the presiding judicial officer for two-thirds payment of the requested fee. The CJA Supervising Attorney will monitor all payments to service providers in capital cases. At the conclusion of the case, final interim payment vouchers shall be filed with the CJA Supervising Attorney. The CJA Supervising Attorney will refer all non-attorney claims (together with a recommendation) to the presiding judicial officer for action on the voucher claim. If the total payments for non-attorney fees and expenses is in excess of \$7,500.00, the final interim payment vouchers will be submitted to the Chief Judge of the Fourth Circuit or his/her designee for review and approval of the payment.

D. Voucher Reduction.

1. Notice of Proposed Reduction. Prior to the reduction of any voucher or denial of certification, the CJA Supervising Attorney will notify the panel attorney of the reason for the reduction or denial and allow the attorney to submit a written request for reconsideration.
2. Request for Reconsideration. A request for reconsideration must be submitted to the CJA Supervising Attorney within 10 days of notification of the proposed reduction or denial unless good cause is shown. The CJA Supervising Attorney shall review the request for reconsideration and may grant it in full, in part, or not at all. The CJA Supervising Attorney's decision shall be communicated to the panel attorney.

3. Appeal of Denial of Reconsideration. Within 10 calendar days of such notice, the panel attorney may appeal the denial of reconsideration to the presiding judicial officer. The appeal shall be filed with the CJA Supervising Attorney who shall refer the matter for decision, together with the complete voucher file, to the presiding judge. The judge's decision on appeal shall be final.

V. CASE BUDGETING

A. Capital Prosecutions.

1. Attorney Fees. After appointment in a capital case, attorneys must begin the budgeting process. The budgeting process will be supervised by the CJA Supervising Attorney. 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 CJA Supervising Attorney 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. The court will make every reasonable effort to hold expert or investigative fees to the \$7,500.00 statutory maximum during the period preceding the Department of Justice determination of whether the death penalty will be sought. 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. If the District Judge finds that a sufficient showing of a need for confidentiality is made, the budget meeting shall be held *ex parte*. The budget meeting shall be on the record but, if ordered by the Court, under seal. The CJA Supervising Attorney shall assist the Court during the budget meeting. After the meeting the CJA Supervising Attorney shall prepare a case memorandum for the District Judge detailing the budget agreement on expert witnesses and investigators. That memorandum and counsel's *ex parte* motion seeking authorization for investigative and expert expenses shall be forwarded to the Chief Judge of the Fourth Circuit, or his/her designee, for review and approval. The CJA Supervising Attorney shall prepare a case budget order detailing the agreement regarding counsel fees and expenses. 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 CJA Supervising Attorney 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.

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. Following the initial appointment meeting, the CJA Supervising Attorney shall meet with appointed counsel and provide counsel with the information they will need to frame their budget request.
2. AO Software Package. Budget requests shall be submitted using the budget software provided by the Administrative Office of the Courts. The CJA Supervising Attorney will provide the software to counsel.
3. 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. The CJA Supervising Attorney shall review the budget request and, if appropriate, shall negotiate the budget request with appointed counsel. Counsel are urged to note any special circumstances that might cause them to seek to amend the budget after it is approved.
4. Case Budget Meeting. A meeting with the Chief Judge, or his/her designee, shall be held as soon as possible following the case budget submission. If a proper showing of a need for confidentiality is made, the meeting shall be held *ex parte* in chambers. The meeting shall be held on the record but, if ordered by the Court, under seal. The approved case budget will be filed under seal in the court file.

5. Compliance. The CJA Supervising Attorney shall monitor compliance with the budget and shall periodically advise the Court on the state of the budget.
 6. Request to Amend the Budget. Any request for additional funding shall be sent to the CJA Supervising Attorney. That request, along with his/her recommendation, shall be forwarded to the Chief Judge or his/her designee. Absent special circumstances, counsel's request for additional funding will be denied.
 7. Attorney's Fees. Capital habeas case budgets containing approved attorney's fees totaling more than \$100,000 shall be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for review and comment.
 8. Expert/Investigative Fees and Expenses. Capital habeas case budgets containing expert or investigative fees and expenses in excess of \$7,500.00 that have been certified by the District Court as reasonably necessary to adequate representation shall be forwarded to the Chief Judge of the Fourth Circuit or his/her designee for review and approval.
- C. Complex Cases. Upon the advice of the CJA Supervising Attorney, 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.