

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

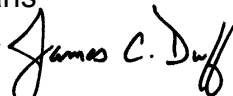
WASHINGTON, D.C. 20544

Date: 02/06/2019

## GUIDE TO JUDICIARY POLICY

TRANSMITTAL 07-011 VOLUME/PART 7A CHAPTER(S) 2, 4, 6

**TO:** Judges, United States Courts of Appeals  
Judges, United States District Courts  
United States Magistrate Judges  
Circuit Executives  
Federal Public/Community Defenders  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts  
Chief Probation Officers  
Chief Pretrial Services Officers  
Senior Staff Attorneys  
Chief Circuit Mediators  
Circuit Librarians

**FROM:** James C. Duff 

**RE:** DEFENDER SERVICES

This transmittal provides notice of changes to *Guide to Judiciary Policy*, Volume 7 (Defender Services), Part A (Guidelines for Administering the CJA and Related Statutes):

[Chapter 2 – Appointment and Payment of Counsel](#)

[Appendix 2A – Model Plan for Implementation and Administration of the CJA](#)

[Chapter 4 – Defender Organizations](#)

[Chapter 6 – Federal Death Penalty and Capital Habeas Corpus Representations](#)

The revision incorporates policies adopted by the Judicial Conference in September 2018 as recommended by the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Committee). Chapter 2 sets out a standard for voucher review and changes to Appendix 2A related to training requirements for panel attorneys and the use of CJA supervisory attorneys. Chapter 4 requires federal defender organizations to be established in every district with 200 or more CJA appointments per year. Chapter 6 adds a policy for establishing capital habeas units and accessing other resources in capital habeas cases.

## Guide Transmittal 07-011 – Defender Services

The significant changes are detailed in the Redline Comparison below.

Questions regarding this transmittal may be directed to the AO Defender Services Offices, at 202-502-3030.

### REDLINE COMPARISON REFLECTING CHANGES

*[Significant changes in Chapter 2 (Appointment and Payment of Counsel) follow:]*

#### § 210 Representation under the Criminal Justice Act (CJA)

##### § 210.10 District Plans

[. . .]

##### § 210.10.15 Developing a CJA Plan

- (a) All districts must develop, regularly review and update, and adhere to a CJA plan. See: § 210.10.10(e), above.
- (b) A district's CJA plan should reference the most recent model plan and best practices.
- (c) The plan should include:
  - (1) Provision for appointing CJA panel attorneys to a sufficient number of cases per year so that these attorneys remain proficient in criminal defense work.
  - (2) A training requirement to be appointed to and then remain on the panel.
  - (3) A mentoring program to increase the pool of qualified candidates.

See: JCUS-SEP 2018, p. 39-40 See also: Guide, Vol. 7A, Appx. 2A, §§ VIII.B.7; IX.B.2, IX.C; and XI.B.1-5.

##### § 210.10.25 Managing the Selection, Appointment, Retention, and Removal of Panel Attorneys

Every district should form a committee or designate a CJA supervisory or administrative attorney or a defender office, to manage the selection, appointment, retention, and removal of panel attorneys from the district's CJA panel. The process must incorporate judicial input into panel administration. See: JCUS-SEP 2018, p. 39. See also: Guide, Vol. 7A, Appx. 2A, § VIII.A.

#### § 230 Compensation and Expenses of Appointed Counsel

[. . .]

##### § 230.33 Review and Approval of CJA Vouchers

##### § 230.33.10 Standard for Voucher Review

Voucher cuts should be limited to:

## REDLINE COMPARISON REFLECTING CHANGES

### § 230.33.10 [cont'd]

- (1) Mathematical errors;
- (2) Instances in which work billed was not compensable;
- (3) Instances in which work was not undertaken or completed; and
- (4) Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

See: JCUS-SEP 2018, p. 42. For guidance on problems related to CJA voucher cutting, see: 2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act, pp. 96-103.

*[Significant changes in Appendix 2A (Model Plan for Implementation and Administration of the CJA) follow:]*

#### VIII. CJA Panel of Private Attorneys

- A. Establishment of the CJA Panel Committee and/or CJA Supervisory Attorney  
[ . . ]

**Defender Services Committee Comment:** The composition of the CJA Panel Committee can be adjusted to reflect the degree of judicial, federal defender, or panel attorney involvement that is desired by each district court. The committee must incorporate judicial input into panel administration. See: JCUS-SEP 2018, p. 39. [ . . ]

[AND/OR 1. Every district should designate a CJA supervisory or administrative attorney or a defender office to manage the selection, appointment, retention, and removal of panel attorneys from the district's CJA panel. See: JCUS-SEP 2018, p. 39.]

- B. Duties of the CJA Committee and/or CJA Supervisory Attorney  
[ . . ]

#### IX. Establishment of a CJA Panel

- A. Approval of CJA Panel  
[ . . ]
  - 2. The chair of the CJA Committee and/or CJA Supervisory Attorney will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Committee.
- B. Size of CJA Panel
  - 1. The size of the CJA Panel will be determined by the CJA Committee and/or CJA Supervisory Attorney based on the caseload and activity of the panel members, subject to review by the court.  
[ . . ]
- C. Qualifications and Membership on the CJA Panel  
[ . . ]

## REDLINE COMPARISON REFLECTING CHANGES

### IX.C. [cont'd]

3. Eligibility  
[. . .]
  - e. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the CJA ~~Committee's~~Committee and/or CJA Supervisory Attorney's consideration.

**Defender Services Committee Comment:** These general eligibility requirements may be supplemented or replaced by more detailed and specific standards, depending on the needs of the district. Specific eligibility requirements might include at least two (2) years in a public defender or prosecutor's office, either state or federal; OR at least three (3) years in private practice during which time the attorney was involved in at least 20 criminal cases in either state or federal court, five (5) of which were state or federal felony trials; OR an applicant should have tried at least two (2) federal felony cases from initial appearance or arraignment through sentencing and have other significant litigation experience as determined by the CJA Committee-and/or CJA Supervisory Attorney. A specific training eligibility requirement may be imposed prior to appointment to the panel. See: Guide, Vol. 7A, § 210.10.15(c)(2).

#### 4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee and/or CJA Supervisory Attorney, the chief judge will appoint or reappoint attorneys to the CJA Panel. [. . .]

[. . .]

#### 6. Reappointment of CJA Panel Members

[. . .]

- c. The CJA Committee and/or CJA Supervisory Attorney will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. The CJA Committee and/or CJA Supervisory Attorney also will consider how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.

#### 7. Removal from the CJA Panel

[. . .]

- b. Automatic disciplinary review

The CJA Committee and/or CJA Supervisory Attorney will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority, grievance committee, or administrative body has taken action, or when a finding of probable cause, contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

## REDLINE COMPARISON REFLECTING CHANGES

### IX.C.7. [cont'd]

#### c. Complaints

##### (i) Initiation

A complaint against a panel member may be initiated by the CJA Committee and/or CJA Supervisory Attorney, a judge, another panel member, a defendant, or a member of the [federal public defender/community defender] office. [. . .] Any complaint should be directed to the CJA Committee and/or CJA Supervisory Attorney, which will determine whether further investigation is necessary.

##### (ii) Notice

When conducting an investigation, the CJA Committee and/or CJA Supervisory Attorney will notify the panel member of the specific allegations.

##### (iii) Response

A panel member subject to investigation may respond in writing and appear, if so directed, before the CJA Committee and/or CJA Supervisory Attorney or its subcommittee.

##### (iv) Protective action

Prior to disposition of any complaint, the CJA Committee and/or CJA Supervisory Attorney may recommend temporary suspension or removal of the panel member from any pending case, or from the panel, and may take any other protective action that is in the best interest of the client or the administration of this Plan.

##### (v) Review and recommendation

After investigation, the CJA Committee and/or CJA Supervisory Attorney may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the panel, limiting the attorney's participation to particular types or categories of cases, directing the attorney to complete specific CLE requirements before receiving further panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner, or any other appropriate remedial action.

##### (vi) Final disposition by the court

The CJA Committee and/or CJA Supervisory Attorney will forward its recommendation to the chief judge for consideration and final disposition.

[. . .]

## REDLINE COMPARISON REFLECTING CHANGES

### XI. Duties of CJA Panel Members

#### A. Standards and Professional Conduct

[. . .]

3. CJA panel members must notify within 30 days the chair of the CJA Committee and/or CJA Supervisory Attorney when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

[. . .]

### XII. Compensation of CJA Panel Attorneys

#### A. Policy of the Court Regarding Compensation

[. . .]

##### 2. Voucher cuts should be limited to:

a. Mathematical errors;

b. Instances in which work billed was not compensable;

c. Instances in which work was not undertaken or completed; and

d. Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

See: JCUS-SEP 2018, p. 42.

#### B. Payment Procedures

[. . .]

6. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the CJA Committee and/or CJA Supervisory Attorney for review and recommendation before final action on the claim is taken. **See:** Section VIII of this Plan.
7. Notwithstanding the procedure described above, the court may, in the first instance, contact appointed 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 court and CJA panel member, the claim for compensation need not be referred to the CJA Committee and/or CJA Supervisory Attorney for review and recommendation.

[. . .]

*[Significant changes in Chapter 4 (Defender Organizations) follow:]*

### **§ 410 Overview**

[. . .]

### **§ 410.20 Judicial Conference Policy**

### **§ 410.20.10 Recommended Amendments to the Criminal Justice Act**

[. . .]

## REDLINE COMPARISON REFLECTING CHANGES

### **§ 410.20.20 Establishment of Federal Defender Organizations**

- (a) A federal public or community defender organization should be established in every district that has 200 or more appointments each year.
- (b) If a district does not have a sufficient number of cases, then a defender organization adjacent to the district should be considered for co-designation to provide representation in that district.

**See:** JCUS-SEP 2018, p. 39.

*[Significant changes in Chapter 6 (Federal Death Penalty and Capital Habeas Corpus Representations) follow:]*

### **§ 655 Establishment of Capital Habeas Units & Other Resources**

Circuit courts should encourage the establishment of capital habeas units in federal defender organizations where they do not already exist and make resource counsel and other resources, as well as training opportunities, more widely available to attorneys appointed in capital habeas cases.

**See:** JCUS-SEP 2018, p. 40.