

**REVISED PLAN OF THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964
(18 U.S.C. § 3006A, AS AMENDED)**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**REVISED PLAN OF THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964
(18 U.S.C. § 3006A, AS AMENDED)**

I.	Introduction.....	4
II.	Provisions for Furnishing Counsel.....	4
	A. Plan Objective.....	4
	B. Legal Services.....	5
	C. Community Defender Organization.....	5
	D. Court’s Discretion.....	5
III.	Provision of Representation.....	6
	A. Mandatory Assignment.....	6
	B. Discretionary Assignment.....	7
	C. Ancillary Matters.....	8
	D. Counsel in Potential Capital Cases.....	9
IV.	Determination of Need for Counsel.....	10
	A. Appearing Before a Judicial Officer in a Criminal Case.....	10
	B. Financial Forms and Affidavits.....	11
V.	CJA Panel Committee.....	12
	A. Committee Membership.....	12
	B. Duties of Committee.....	12
	1. Meetings.....	12
	2. Operations Review.....	12
	3. Mentoring.....	13
	4. Training.....	13
VI.	Composition of Panel of Private Attorneys.....	14

A.	Composition of the CJA Panel.....	14
1.	The Combined List.....	14
2.	The Brooklyn List.....	14
3.	The Long Island List.....	14
4.	Capital Case Trial Lawyers List.....	14
5.	Terrorism List.....	15
6.	Habeas List.....	15
B.	Maintenance of List and Distribution of Assignments.....	15
C.	Size of Panel.....	15
D.	Eligibility.....	15
E.	Terms.....	16
F.	Reappointment.....	16
G.	Application.....	16
VII.	Selection for Assignment to a Case.....	17
A.	Duty Assignment Procedure.....	17
B.	Replacement/Coverage.....	18
C.	Disciplinary Action.....	19
1.	Complaints.....	19
2.	Notice.....	19
3.	Protective Action.....	19
4.	Remedial Action.....	20
5.	Removal of Panel Attorneys.....	20
6.	Confidentiality.....	20
7.	Re-application.....	20
VIII.	Duties of Assigned Counsel.....	21
A.	Non-delegable Duties.....	21
B.	Appeals.....	21
C.	Requests to be Relieved.....	21
D.	Redetermination of Need.....	22
E.	Limited Appointment for Extraordinary Reasons.....	23
IX.	Compensation of Counsel.....	23
A.	Payments to Counsel Assigned Under the Plan.....	23
B.	Schedule of Maximum Fees for Counsel and Other Services.....	23

1. Maximum Hourly Rate for Counsel.....	23
2. Maximum Case Amounts for Counsel.....	24
3. Waiver of Limits on Counsel Fees.....	25
X. Investigative, Expert, and Other Services.....	25
A. Prior Authorization.....	25
B. Without Prior Authorization.....	26
C. Necessity of Affidavit.....	27
D. Associates.....	27
XI. Forms.....	28
XII. ECF.....	29
XIII. Rules and Reports.....	29
XIV. Amendments.....	29
XV. Effective Date.....	29

I. INTRODUCTION

The judges of the United States District Court for the Eastern District of New York (“EDNY”), pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A), as amended (“the Act”), and under the Guidelines for Administering the Criminal Justice Act and Related Statutes, Volume VII, Part A, Guide to Judiciary Policy (“CJA Guidelines”),¹ and the Second Circuit Judicial Council Committee on Criminal Justice Act Representation Policy and Procedure Manual (the “Second Circuit Manual”),² have adopted the following Plan for furnishing representation in federal court to persons financially unable to obtain adequate representation, who are eligible for the same under the Act.

Representation under this Plan shall include the assignment of counsel and the furnishing of investigative, expert, and other services necessary for an adequate defense.

II. PROVISIONS FOR FURNISHING COUNSEL

A. Plan Objective

The objective of this Plan is to attain the goal of equality before the law of all persons. This Plan, therefore, shall be administered so that those accused of a crime, or who

¹The CJA Guidelines are available at http://www.uscourts.gov/uscourts/FederalCourts/AppointmentofCounsel/vol7/vol_07A.pdf

²The Second Circuit Manual is available at http://www.ca2.uscourts.gov/clerk/attorneys/cja_manual.html.

are otherwise eligible for representation under the Act, will not be deprived of representation necessary to an effective defense because they are financially unable to pay.

B. Legal Services

This Plan provides for the furnishing of legal services by a Community Defender Organization as provided in 18 U.S.C. § 3006A(g)(2)(B) and for the continued assignment and compensation of private counsel from a list maintained by the Clerk of Court (the “CJA Panel List”) in cases in which there is a demonstrated need. The attorneys whose names appear on the list shall be selected by the Court in accordance with the procedures in this Plan.

C. Community Defender Organization

The Federal Defenders of New York, Inc. (“FDNY”), a non-profit defense counsel service, is authorized by this Plan to serve as a Community Defender Organization and is eligible to furnish attorneys and to receive payments under 18 U.S.C. § 3006A(g)(2)(B).

D. Court’s Discretion

The Court, in its discretion, will determine whether any party shall be entitled to representation, and shall assign the FDNY in the first instance, unless there is a conflict. All other parties entitled to representation shall be assigned an attorney from the CJA Panel List as defined herein. No party shall have the right to select counsel from the FDNY or from the panel of attorneys.

III. PROVISION OF REPRESENTATION

A. Mandatory Assignment

Representation shall be provided for any financially eligible person who is:

1. charged with a felony or Class A misdemeanor;
2. charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized, unless the presiding judicial officer indicates an intention not to impose a sentence of confinement, in which case representation may be provided in the Court's discretion;
3. a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
4. charged with a violation of probation or supervised release or faces modification of a condition or term thereof, unless the modification sought is favorable to the defendant and the government has not objected to the proposed change;
5. under arrest, when such representation is required by law;
6. entitled to the assignment of counsel in parole proceedings;
7. subject to a mental condition hearing under 18 U.S.C. §§ 4241-4248;
8. in custody as a material witness;
9. seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2241, 2254, or 2255;

10. charged with criminal contempt;
11. entitled to the assignment 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 18 U.S.C. § 4109; or
12. entitled to the assignment of counsel under the Sixth Amendment to the Constitution, or faces loss of liberty in a case, and federal law requires the assignment of counsel.

B. Discretionary Assignment

Whenever the judicial officer determines that the interests of justice so require, representation may be provided for a financially eligible person who is:

1. seeking relief under 28 U.S.C. §§ 2241, 2254, 2255, or 3582, other than to set aside or vacate a death sentence, in which case the assignment of counsel is mandatory;
2. charged with civil contempt and faces a loss of liberty;
3. a witness or potential 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 otherwise face a loss of liberty;

4. proposed by the United States Attorney for processing under a pretrial diversion program;
5. held for extradition under chapter 209 of Title 18, U.S. Code; or
6. a target of a federal criminal investigation and has been so notified by the United States Attorney's Office or a law enforcement agent.

C. Ancillary Matters

Representation may be furnished for financially eligible persons in “ancillary matters appropriate to the proceedings” under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the proceedings, the Court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives:

1. to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding under 21 U.S.C. § 881, 19 U.S.C. § 1602, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under subsection (f) of the Act and § 210.40.30 of the CJA Guidelines; or
2. to effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property

under Fed. R. Crim. P. 41(e), which property, if recovered by the client, may be considered for reimbursement under subsection (f) of the Act and § 210.40.30 of the CJA Guidelines.

D. Counsel in Potential Capital Cases

At the initial appearance, when a defendant is charged with a death eligible count, or the United States Attorney's Office believes that a defendant is likely to be charged with a death eligible count in the future, the government shall notify the Clerk of Court and the Clerk shall select an attorney from the "Capital Case Trial Lawyers List," as defined in Article VI, Section A, paragraph 3, below.

In any case where the defendant is charged in a superseding accusatory instrument with a death eligible count, and the defendant was previously assigned a Panel attorney who is not among those listed on the Capital Case Trial Lawyers List, the judicial officer assigned to the case may, with the approval of the defendant: 1) continue the previously assigned Panel attorney; 2) replace the previously assigned Panel attorney with an attorney from the Capital Case Trial Lawyers List; or 3) assign an additional attorney from the Capital Case Trial Lawyers List to serve as a second trial counsel.

As soon as possible after the first appearance on the potential death eligible count or upon notification of the imminent superseding death eligible count, the presiding judge, upon application of the defendant and after consultation with the FDNY, pursuant to 18 U.S.C. § 3005, shall assign an additional attorney "learned in the law applicable to capital

cases.” As soon as practicable after assignment to a potential capital case, trial counsel and learned counsel shall consult with the capital case budgeting attorney at the Office of the Circuit Executive.

IV. DETERMINATION OF NEED FOR COUNSEL

A. Appearing Before a Judicial Officer in a Criminal Case

In every case in which a person is eligible for assignment of counsel pursuant to 18 U.S.C. § 3006A(a), and the person appears without counsel, the judicial officer shall have the duty to advise that person that he or she has a right to be represented by counsel throughout the case and that counsel will be assigned to represent the person, if so desired and he or she is financially unable to obtain counsel. All persons making an initial appearance, who do not have retained counsel present, shall be assigned counsel regardless of economic circumstances, for that initial appearance.

A person shall be furnished representation pursuant to this Plan if he or she is financially unable to obtain adequate representation; that is, if his or her net financial resources and income are insufficient to enable the person to obtain qualified counsel.

In determining whether a person is “financially unable to obtain counsel,” consideration should be given to: 1) the cost of providing the person and his or her dependents with the necessities of life; 2) the cost of defendant’s bail bond, if required to secure his or her release on bond; and 3) the likely cost of retained counsel.

Whenever such a person states that he or she is financially unable to obtain counsel, and applies for the assignment of counsel, it shall be the duty of the judicial officer to inquire and make a determination as to whether such person is financially able to obtain counsel. Any doubts as to a person's eligibility should be resolved in his or her favor, subject to further review. The initial determination of eligibility should be made without regard to the financial ability of the person's family to obtain counsel.

All statements made by such person in such inquiry shall be either (a) by affidavit sworn to before a judicial officer, Court Clerk, or deputy clerk, or notary public, or (b) under oath in open court before a judicial officer. All statements of financial need shall be sealed other than for viewing by Pretrial Services, defense counsel and the Court. After final termination of the matter, the United States Attorney may, upon good cause shown, seek access to the financial need statement from the last presiding judicial officer.

If, on the basis of such inquiry, the judicial officer finds that such person is financially unable to obtain counsel, the judicial officer shall assign counsel for such person.

B. Financial Forms and Affidavits

The Clerk of the Court shall provide defendants with the appropriate forms and affidavits pertaining to financial ability.

As soon as the Clerk receives an affidavit of financial inability to employ counsel, s/he shall promptly arrange for the assignment of counsel. If the Clerk becomes aware that a party wishes to apply for discretionary assignment of counsel, as set forth in Article III,

Section B, s/he shall promptly send such party the appropriate CJA forms to be executed and filed.

The Clerk shall screen each claim for compensation and reimbursement of expenses under the CJA for accuracy and compliance with the Second Circuit Manual.

V. CJA PANEL COMMITTEE

A. Committee Membership

A CJA Panel Committee (“CJA Committee”), consisting of at least one of each: a district judge, a magistrate judge, and a criminal defense attorney who regularly practices in the EDNY, along with the attorney in charge of the FDNY for the EDNY, and the Clerk of the Court, is hereby established. A judicial officer shall chair the Committee.

B. Duties of Committee

1. Meetings – The CJA Committee will meet quarterly and more often as necessary, to consider and review Panel applications, and appoint to the Panel the best qualified applicants.
2. Operations Review – The Committee shall also continually review the operation and administration of the Panel and recommend to the Court any changes deemed necessary regarding the assignment process or Panel management.

3. Mentoring – A subcommittee of the CJA Committee will administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. Experienced members of the criminal defense bar who have practiced extensively in the federal courts will be selected to serve as Mentors in accordance with the EDNY Criminal Justice Act Mentoring Program. The subcommittee shall review the applications and qualifications of both Mentor and Mentee applicants, make recommendations as to their participation in the Mentoring Program, identify appropriate cases for the Program, evaluate the success of the Mentor-Mentee relationships, and provide guidance to the Mentors regarding the objectives, protocol, and methods of the Program.
4. Training – The Committee, in conjunction with the FDNY, shall provide training for the Panel attorneys on substantive and procedural matters affecting representation of indigent criminal defendants. This training shall include seminars for the Panel attorneys, and for attorneys who are participants in the EDNY Mentoring Program.

VI. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. Composition of the CJA Panel

The Court shall establish a panel of private attorneys (“the CJA Panel”) who are eligible and willing to be appointed to provide representation under the Act. The CJA Committee established under Article V, Section A above shall approve attorneys for membership on the CJA Panel. The CJA Panel shall consist of six lists:

1. The Combined List – The first list shall include attorneys to whom assignments as counsel shall be made in cases heard at the courthouses in both Brooklyn and Central Islip, Suffolk County (the “Combined List”).
2. The Brooklyn List – The second list shall include attorneys to whom assignments as counsel shall be made in cases heard at the courthouse in Brooklyn.
3. The Long Island List – The third list shall include attorneys to whom assignments as counsel shall be made in cases heard at the courthouse in Central Islip, Suffolk County (the “Long Island List”).
4. Capital Case Trial Lawyers List – The fourth list shall consist of those attorneys eligible for assignment as the trial lawyer in death eligible cases.

5. Terrorism List – The fifth list shall consist of those attorneys eligible for assignment in terrorism cases.
6. Habeas List – The sixth list shall consist of those attorneys willing and able to represent defendants in non-trial matters, particularly habeas corpus cases where the Court has determined that counsel should be assigned.

An attorney may serve on more than one list.

B. Maintenance of List and Distribution of Assignments

The Clerk of the Court shall maintain a current list of all attorneys on the CJA Panel, with current office addresses, telephone numbers, and email addresses. The Clerk shall furnish a copy of this list to each judicial officer. The Clerk shall also maintain a public record of assignments to Panel and FDNY attorneys according to Article II, Section B.

C. Size of Panel

The CJA Panel shall be large enough to provide sufficient experienced attorneys to handle the caseload under the Act, but small enough to provide Panel attorneys with adequate assignments to maintain a high level of proficiency in Federal criminal defense work. The size of the CJA Panel shall be set by the CJA Committee on an annual basis.

D. Eligibility

All applicants must demonstrate a commitment to provide the highest quality representation to those individuals eligible for their services. Attorneys who serve on the

CJA Panel must be members in good standing of the bar of this Court, have demonstrated experience in and knowledge of the Federal Rules of Criminal Procedure and the Federal Rules of Evidence, and shall have substantial federal trial experience or the equivalent. Experience with, and knowledge of, federal sentencing law and practice is a necessary qualification for membership on the CJA Panel.

E. Terms

Attorneys appointed to the CJA Panel shall serve a term of three years. CJA Panel Membership is a privilege, not a right, which may be terminated at any time, at the sole discretion of either the Board of Judges or the CJA Committee. After a three-year term expires, a Panel attorney may be invited to serve additional terms or may apply to serve additional terms. Completion of a term does not create a right to selection for service of another term.

F. Reappointment

A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment for an additional three-year term at least three months prior to the expiration of his or her current term. Applications for reappointment will be reviewed on an annual basis along with all other applications for appointment to the Panel.

G. Application

Application forms for membership on the CJA Panel shall be made available through the Court's website at www.nyed.uscourts.gov/cja or on request to the Clerk of the Court.

The application forms shall indicate to which list or lists the applicant is applying, and shall require information regarding the applicant's educational background, professional qualifications, previous experience, prior service as a member of an assigned counsel panel, all prior adverse disciplinary findings by any bar or court disciplinary group, and such other factors as the CJA Committee deems relevant. Completed applications shall be submitted to the Clerk, who will transmit them to the Chair of the CJA Committee. Applications and reappointment applications will be reviewed at regular intervals as scheduled by the CJA Committee. 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 disability for which a reasonable accommodation can be made pursuant to federal law.

VII. SELECTION FOR ASSIGNMENT TO A CASE

A. Duty Assignment Procedure

On an annual basis, the Clerk of Court shall prepare, from the list of Panel attorneys, a roster of assigned duty days, including weekends. Assignments from the list of Panel attorneys should be made on a rotating basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, the attorney's experience, and geographical considerations. This procedure is intended to result in a balanced distribution of assignments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

When a judicial officer decides to assign an attorney from the Panel, the Clerk's Office shall notify the Panel attorney who is on duty on that date and shall provide the name to the appointing judicial officer. In the event of a conflict or where additional attorneys are required in a multiple defendant case, a Panel attorney or attorneys, who are available for assignment, may be assigned. The Clerk shall select such substitute Panel attorneys from the roster of attorneys assigned duty days in that same week, or, if necessary, attorneys assigned duty days in that same month.

During weekends, holidays, or other non-working hours, or at any other time necessary, the presiding judicial officer may appoint any attorney from the appropriate CJA Panel list. When Panel attorneys are assigned directly by the Court, the assigning judicial officer shall notify the Clerk of Court of the name of the Panel attorney assigned and the date of the assignment.

B. Replacement/Coverage

A Panel attorney who is unable to serve on his or her assigned duty day shall arrange for a replacement attorney from the existing CJA Panel list to cover the assigned date. That replacement attorney shall continue to serve as counsel to the defendants assigned to him or her on that date, unless otherwise ordered by the Court. Absent an order from the Court, attorneys who are not currently EDNY Panel attorneys may not appear as replacement counsel. The Magistrate Clericals shall be informed whenever a Panel attorney agrees to switch duty dates with another Panel attorney.

C. Disciplinary Action

1. Complaints – Complaints concerning the conduct of a Panel attorney may be initiated by the CJA Committee, a judicial officer, opposing counsel, co-counsel, another Panel attorney, a member of the FDNY, or a defendant. All complaints concerning the conduct of a Panel attorney shall be forwarded to the Chair of the CJA Committee. If the CJA Committee determines that the complaint alleges facts, which if true, would warrant possible removal of the Panel attorney, the CJA Committee shall make such inquiry as it deems appropriate and necessary.
2. Notice – If the CJA Committee decides to conduct such an inquiry, the Panel attorney against whom the complaint has been lodged must be notified of the specific allegations against him or her. The Panel attorney may respond in writing and shall, if so directed, appear before a subcommittee, composed of judicial officers on the CJA Committee, and the FDNY attorney-in-charge, who shall not have a vote.
3. Protective Action – Prior to the disposition of any complaint, the CJA Committee may recommend temporary removal of the Panel attorney from any pending case, or from the Panel, and may take such other protective action that is in the best interest of the client or the administration of the Plan.

4. Remedial Action – After inquiry, the subcommittee may recommend that the attorney: 1) be removed from the Panel; 2) be limited to participating in particular types or categories of cases; or 3) be required to undertake other remedial action.
5. Removal of Panel Attorneys – A Panel attorney may be removed from the Panel prior to the expiration of his or her term whenever the CJA Committee determines that the attorney has failed to fulfill the obligations of Panel membership or has engaged in other conduct that renders it inappropriate for that attorney to be continued as a Panel attorney. Any Panel attorney who is suspended, disbarred, indicted, the target of an investigation, or who receives a notice of a pending criminal investigation, shall immediately notify the Clerk of Court and the presiding judicial officers before whom the attorney is appearing of the circumstances so that appropriate inquiry may be made.
6. Confidentiality – Unless otherwise directed by the subcommittee, any information concerning any possible disciplinary action, including any complaint and any proceeding concerning it, shall be confidential.
7. Re-application – An attorney removed from the Panel before the completion of his or her term may not reapply before the expiration of one year following the removal.

VIII. DUTIES OF ASSIGNED COUNSEL

A. Non-delegable Duties

A Panel attorney assigned by a judicial officer shall, unless excused by order of court, continue to act for the party throughout the proceedings in this Court. An assigned Panel attorney shall not delegate any substantive tasks in connection with the representation of a defendant to any person without the written consent of the defendant and the Court.

B. Appeals

Assigned counsel shall, upon imposition of sentence, advise the defendant of any right of appeal and of the right to counsel on appeal. If requested by the defendant, or upon the Court's direction, counsel must file a timely Notice of Appeal. When an appeal is taken, assigned trial court counsel shall continue to represent the appellant unless or until he or she has been notified that his or her services are no longer required.

C. Requests to be Relieved

If at any stage of the proceedings, a Panel attorney assigned by a judicial officer in any proceeding wishes to be relieved, he or she shall inform the judicial officer before whom the case is pending, and shall file an application in compliance with Local Rule 1.4.

The judicial officer may, in the interests of justice, substitute one assigned counsel for another.

D. Redetermination of Need

If, at any stage of the proceedings, a judicial officer finds that a party who had retained his or her own attorney is financially unable to provide for continued representation, the judicial officer may assign counsel from the CJA Panel or the FDNY for the party.

If, after assignment, 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 Court. The Court will take appropriate action, including but not limited to: permitting assigned counsel to continue to represent the defendant with all or part of the cost defrayed by the defendant; terminating the assignment 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 Court in determining the total compensation allowed to the attorney.

Counsel assigned pursuant to this Plan shall at no time seek nor accept any fee or other thing of value from, or on behalf of, the person represented, for representing the person to whom he or she was assigned. Nor shall counsel assigned pursuant to this Plan agree to be privately retained by the person to whom he or she was assigned or by persons acting on that person's behalf, without advising and securing the approval of the Court. Violation of this section is a ground for removal from the Panel.

E. Limited Appointment for Extraordinary Reasons

Retained counsel will not be assigned by the presiding judicial officer except for extraordinary reasons and upon notice to the Chief Judge.

If the judicial officer finds that, due to extraordinary circumstances, a defendant cannot be effectively represented by the FDNY or an attorney from the CJA Panel, the judicial officer may, upon a finding of financial need, assign counsel to represent the defendant for this particular case, stating briefly the reason therefor. An attorney so assigned may seek reimbursement from the CJA Fund pursuant to this Plan.

IX. COMPENSATION OF COUNSEL

A. Payments to Counsel Assigned under Plan

Payment of fees and expenses to counsel under this Plan and payment for investigative, expert, and other services authorized pursuant to Article X shall be made in accordance with the policies set by the Judicial Conference (“Judicial Conference policy”) and with the fiscal policies of the Administrative Office of the United States Courts.

B. Schedule of Maximum Fees for Counsel and Other Services

The following fees are hereby prescribed for the EDNY:

1. Maximum Hourly Rate for Counsel

The maximum hourly rate of attorneys shall not exceed the amount provided by statute and Judicial Conference policy. The current rates are set forth in Schedule A of the

CJA Plan and available on the Court's website at www.nyed.uscourts.gov/criminal-justice-act-info. In addition, such attorney or the organization furnishing the attorney shall be reimbursed for expenses reasonably incurred, including the cost of any necessary transcripts authorized by the judicial officer.

2. Maximum Case Amounts for Counsel

The maximum payment for counsel per case shall not exceed the amount provided by statute and Judicial Conference policy.

Any request for compensation in excess of the amount provided by statute and Judicial Conference policy shall be accompanied by an affidavit of counsel detailing, in both narrative and statistical form, the services provided. 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.

Reasonable out-of-pocket expenses may be claimed if itemized and suitably documented. Expenses for investigative, expert and other services under Article X shall not be considered out-of-pocket expenses.

When warranted, the presiding judicial officer may require counsel claiming less than the amount provided by statute and Judicial Conference policy to submit a memorandum justifying the compensation claimed.

3. Waiver of Limits on Counsel Fees

Payment in excess of any maximum provided above for counsel fees or for other services may be made for extended or complex representation whenever the judicial officer 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.

X. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

A. Prior Authorization

Counsel for a party who is financially unable to obtain investigative, expert, social worker, or other services deemed necessary for an adequate defense may request such services *ex parte* before a judicial officer 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 judicial officer shall authorize counsel to obtain them. An order setting forth the type, purpose, and limitations of such services will be issued by the Court, *ex parte*.

The judicial officer 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) and (e)(5) and Judicial Conference policy. In no instance shall the amount expended exceed the amount authorized by statute and Judicial Conference policy per individual or corporation

providing the services unless payment in excess of that limit is certified by the judicial officer as necessary to provide fair compensation for services of an unusual character or duration and the amount of the excess payment is approved by the Chief Judge of the Circuit or such active Circuit Judge to whom the Chief Judge has delegated such approval authority. The current rates are set forth in Schedule B of the CJA Plan and available on the Court's website at www.nyed.uscourts.gov/criminal-justice-act-info.

B. Without Prior Authorization

Counsel assigned pursuant to this Plan may obtain, subject to later review, investigative, expert, social worker, or other services without prior judicial authorization, if they are necessary for an adequate defense. The total aggregated cost of services that are obtained without prior authorization may not exceed the maximum amount authorized by statute and Judicial Conference policy per individual or corporation providing the services (exclusive of reasonable expenses). These maximum rates are also set forth in Schedule B of the CJA Plan and available on the Court's website at www.nyed.uscourts.gov/criminal-justice-act-info. However, in the interests of justice and upon finding that timely procurement of necessary services could not await prior authorization, a judicial officer may approve payment for such services after they have been obtained, even if the cost of the services exceeds the maximum amount authorized by statute and Judicial Conference policy.

C. Necessity of Affidavit

Applications made by or on behalf of the party in support of requests under Sections A and B of this Article shall be supported by affidavit, and must include: 1) the name, address, telephone number and taxpayer identification number or social security number of the expert, investigator, or other service provider; 2) the hourly rate sought; 3) the estimated number of hours to complete the work; 4) justification for the use of the expert, investigator or other service provider; and 5) a properly prepared CJA Form 21 or 31 for the judicial officer's approval. The presumptive hourly rates applicable to various service providers are set forth in the current Second Circuit Manual which may be found at http://www.ca2.uscourts.gov/clerk/attorneys/cja_manual.html.

D. Associates

Upon approval of the presiding judicial officer, the use of associates is authorized under the Guide to Judiciary Policy, but the associate shall be considered as an extension of, and not a substitute for, the Panel attorney. It is the intent of the Plan that the assigned Panel attorney, not the associate, represent the client. Thus, associates may not appear in Court without the assigned Panel attorney being present as well.

Prior approval of the use of associates must be obtained from the presiding judicial officer to allow the court to consider the qualifications of the associate, including educational background and experience, and to rule upon the necessity of the associate's participation.

In the absence of prior judicial approval, reimbursement under the CJA shall, except for good cause shown, be denied by the presiding judicial officer.

Associates who are members of the CJA Panel may be billed at the rates set forth in the then current Second Circuit Manual (which may be found at www.ca2.uscourts.gov/clerk/attorneys/cja_manual.html), regardless of the nature of the case, including capital cases. Associates who are not members of the CJA Panel will not be reimbursed at the full attorney rate.

Associate time spent in meetings or in court will not be compensated absent some compelling justification for the associate to participate in these events. Only assigned Panel attorneys may bill for meetings, conferences or court appearances.

CJA Panel attorneys should be fiscally responsible in using associates. Statements made by or on behalf of the party in support of requests for the use of associates shall also be made or supported by affidavit.

XI. FORMS

Where standard forms or procedures for standardized electronic submission of forms have been approved by the Judicial Conference of the United States or an appropriate committee, such forms and procedures shall be used by the Court, the Clerk of Court and counsel. The Clerk of Court shall notify counsel through their registered e-mail addresses when a change in forms or procedures has become necessary.

XII. ECF

All CJA Panel attorneys are required to register for and use the Court's Case Management/Electronic Case Filing System under their own credentials.

XIII. RULES AND REPORTS

The Chief Judge, on behalf of the Court, may promulgate such rules as the Board of Judges of this Court adopts in furtherance of this Plan. The Chief Judge shall similarly make such reports on the implementation of the Act to the Judicial Conference of the United States or a committee thereof as are required or requested.

XIV. AMENDMENTS

Amendments to this Plan may be made from time to time by the Board of Judges of this Court, subject to the approval of the Judicial Council of the Second Circuit.

XV. EFFECTIVE DATE

This Plan, as amended, this 9th day of October, 2012, supersedes all prior CJA Plans of this Court, and shall take effect when the amendment is approved by the Judicial Council of the Second Circuit.

This CJA Plan as amended was approved by the Judicial Council of the Second Circuit on October 17th, 2012.

SCHEDULE A¹

Current Maximum Hourly Rate for Counsel in Non-Capital Cases

Date services were performed	Maximum hourly rate
March 1, 2014 to the present	\$126
September 1, 2013 to February 28, 2014	\$110
January 1, 2010 to August 31, 2013	\$125
March 11, 2009 to December 31, 2009	\$110
January 1, 2008 to March 10, 2009	\$100
May 20, 2007 to December 31, 2007	\$94
January 1, 2006 to May 19, 2007	\$92
May 1, 2002 to December 31, 2005	\$90
On or prior to April 30, 2002	Contact Second Circuit Case-Budgeting Attorney

Current Maximum Hourly Rate for Counsel in Capital Cases

Date services were performed	Maximum hourly rate
March 1, 2014 to the present	\$180
September 1, 2013 to February 28, 2013	\$163
January 1, 2010 to August 31, 2013	\$178
March 11, 2009 to December 31, 2009	\$175
January 1, 2008 to March 10, 2009	\$170
May 20, 2007 to December 31, 2007	\$166
January 1, 2006 to May 19, 2007	\$163
February 1, 2005 to December 31, 2005	\$160
On or prior to January 31, 2005	\$125

¹See Second Circuit Manual; CJA Guidelines §§ 230.16, 230.23.20, 230.23.30.

Current Maximum Hourly Rate for Associates, Paralegals, & Law Students

Associates	\$80-\$90
Paralegals	\$35-\$50
Law Students	\$13-\$28

Current Maximum Case Amounts for Counsel

	<u>Date on which or after service was performed</u>			
	January 1, 2010	March 11, 2009	October 13, 2008	December 8, 2004
Felonies, non-capital habeas proceedings, certain judicial civil forfeiture proceedings, proceedings to protect federal jurors employment	\$9,700	\$8,600	\$7,800	\$7,000
Misdemeanors, prisoner transfer proceedings	\$2,800	\$2,400	\$2,200	\$2,000
Appeals	\$6,900	\$6,100	\$5,600	\$5,000
Proceedings regarding paroled prisoners transferred to U.S., witnesses, violations, crack cocaine retroactive amendment, and other representations required or authorized by the CJA (both at trial court and appeal levels) not aforementioned	\$2,100	\$1,800	\$1,700	\$1,500

SCHEDULE B²

Current Hourly Rate For Investigative, Expert, Social Worker, or Other Services Deemed Necessary for an Adequate Defense³

Investigators	\$80-\$95
Mitigation Experts	\$100
Mental Health Professionals	\$200-\$250
Pathologists	\$250

Current Maximum Amounts for Investigative, Experts, Social Worker, and Other Services in Non-Capital Cases (CJA 21 Vouchers)⁴

	Work performed on or after May 27, 2010	Work performed before May 27, 2010
With Prior Authorization	\$2,400 cumulative compensation, excluding expenses, paid payee for a given defendant in a representation	\$1,600 cumulative compensation, excluding expenses, paid payee for a given defendant in a representation
Without Prior Authorization	\$800 for each category of service	\$500 for each category of service

²See Second Circuit Manual.

³This list is not all-encompassing, given the diversity of expert providers. The Second Circuit suggests that if an expert demands a rate higher than \$250 per hour, counsel should negotiate for a lower rate and/or seek approval from the presiding judicial officer for the higher rate. See Second Circuit Manual.

⁴Form available at: <https://www.nyed.uscourts.gov/sites/default/files/forms/CJA21.pdf>.

**Current Maximum Amounts for Investigative, Experts, Social Worker, and Other Services
Deemed Necessary for an Adequate Defense in Capital Cases
(CJA 31 Vouchers)⁵**

With Prior Authorization	\$7,500 combined total compensation and expenses for all investigative, expert, and other services for a given defendant in a representation
Without Prior Authorization	\$800 for each category of service

⁵Form available at: <https://www.nyed.uscourts.gov/sites/default/files/forms/CJA31.pdf>.

MEMORANDUM TO CJA PANEL MEMBERS – GOOD PRACTICES

To: The CJA Panel Members
From: The CJA Committee for the
Eastern District of New York
Dated: May 19, 2014

**GOOD PRACTICE SUGGESTIONS
for EDNY CJA Panel Attorneys**

In an effort to provide CJA Panel members with suggestions for increasing efficiency and maximizing the productive use of time, the CJA Committee¹ has prepared the following list of Good Practice Suggestions. Many of the suggestions and tips will be familiar to Panel members; others may be new. Perhaps most important is the change in the rules for travel reimbursement.

A. *Travel Vouchers*

The CJA Guidelines, Section 230.76, provide that “[v]ouchers should be submitted no later than 45 days after the final disposition of the case, unless good cause is shown.” When submitting the voucher outside the 45-day time period, counsel is required to provide an affidavit setting forth good cause. See Second Circuit Judicial Council Committee on Criminal Justice Act Representation Policy and Procedure Manual, I.A.1.c. (Dec. 17, 2013).

Counsel who anticipate being unable to submit their CJA voucher within the 45-day time limit are directed to submit an affidavit to the presiding judge, prior to the expiration of the 45-day

¹The CJA Committee extends special thanks to the subcommittee comprised of Peter Kircheimer, Gary Villanueva, and Louis Freeman, who, with the assistance of Jerry Tritz and Anthony L. Ricco, developed the suggested practices list. Also, the Honorable Dora L. Irizarry worked with the Warden of the MDC in an effort to clarify and improve the procedures to be followed by attorneys when visiting their clients.

limit, setting forth their reasons for the late filing, and requesting an extension of time.

An attorney who fails to submit the voucher or a timely request for extension within the 45-day limit runs the risk of not being paid for the representation.

B. *Travel Smart*

1. New Travel Reimbursement Rules.

a. Reimbursable Travel Expenses: When visiting detainees, CJA counsel is permitted to bill for travel expenses from his or her home or office to the detention facility – whichever distance is shorter. Counsel may also bill for travel expenses on the return trip to home, office or the court. See The Guide to Judiciary Policy, Volume 7, Part A, Chapter 2 (Appointment & Payment of Counsel) for information about travel expenses for CJA attorneys.

b. Non-reimbursable Travel Expenses: Counsel ordinarily may not bill for travel time to and from his or her home or office to court; nor may counsel seek reimbursement for the return trip from court to home or office. Exception: The exception to this rule applies when an attorney, who is only on the Brooklyn CJA Panel, is specially assigned to a case pending in Central Islip. Provided counsel first obtains permission from the presiding district judge on the case, counsel may seek reimbursement for travel to and from home or the office to the Central Islip Courthouse. The same exception applies when attorneys only on the Long Island Panel are assigned to a Brooklyn case and need to travel to the Brooklyn courthouse, and the presiding judge approves such reimbursement in advance.

c. Vouchers: CJA vouchers seeking reimbursement for travel expenses must specify where the travel is to and from. Vouchers that fail to contain this information will be

returned to the requesting attorney.

2. Travel Suggestions.

a. When traveling long distances to see a client with an interpreter, try to see more than one client using that interpreter. Remember that interpreters are permitted to bill for travel time within a 25 mile radius of the metropolitan area.

b. When traveling out of the New York metropolitan area or to a foreign nation in a case where an interpreter is required, arrange for an interpreter in the location. Contact your CJA Representative or the Federal Defenders of New York (“F.D. of N.Y.”) for assistance to identify an interpreter.

c. When purchasing air travel tickets, book your travel through the National Travel Agency whenever possible. If you are certain of the date(s) upon which you will be traveling, request *nonrefundable tickets*. *Nonrefundable tickets* are always substantially less expensive than *refundable tickets*. However, if the date of departure for travel is not certain or there is a possibility that you will have to move the date of departure and/or the return date, always purchase *refundable tickets*.

C. ***Investigators, Experts, Paralegals, and Associates***

Under the CJA Plan, counsel for a party who is financially unable to obtain investigative, expert, social worker, or other services deemed necessary for an adequate defense may request such services *ex parte* before a judicial officer having jurisdiction over the case. Similarly, the use of associates is authorized under the CJA Plan and the Guide to Judiciary Policy, but the associate shall be considered as an extension of, and not a substitute for, the Panel attorney.

1. Experts, Investigators and Paralegals.

Panel attorneys seeking to use an investigator, expert or paralegal are encouraged to seek authorization from the presiding judicial officer *prior* to retaining such services. Although the CJA Plan provides that such services may be obtained without prior judicial authorization, subject to certain maximum amounts authorized by statute, the better practice is to first obtain permission from the court. In any event, applications for such services must be supported by an affidavit, which must be as specific as possible in describing the need for the service, the number of estimated hours necessary to the preparation and presentation of your defense, the estimated cost, and include a curriculum vitae for the investigative expert or paralegal.

2. Negotiate and Shop Around for Service Providers

a. Shop Around for the Best Prices: For example, where there are multiple mental health experts charging different rates, select the expert with the lowest rate, assuming that the expert has an excellent reputation and record. Counsel should never compromise the quality of the service provided, but is encouraged to shop around and negotiate for the best rates.

b. Negotiate Rates: Counsel should negotiate and inquire whether a service provider will work or provide services at a lower rate in CJA cases - where possible. Many service providers in the past have done so as a result of an expressed professional public interest in our cases.

c. Step by Step or Gradual Approach to Contracting Services: For example, if counsel has several tape recordings in need of voice analysis at a rate of \$3,500 per tape, have the analysis done one tape at a time. After reviewing the results on the first tape, consult with the client and then decide whether any further analysis needs to be done on any of the remaining tapes.

d. Translations: Asking a contracting interpreter to prepare summaries rather than verbatim translations may help you decide whether verbatim translations are necessary.

e. Translation of a single phone call: When seeking a translation of a single phone call, negotiate an hourly rate rather than a half day rate, and have the interpreter participate by conference call. The F.D. of N.Y. tries to pay \$75.00 - \$100.00 an hour where the interpreter does not need to leave home to do the translation.

Counsel should read and become familiar with the Second Circuit CJA Policy and Procedure Manual issued by the Second Circuit Judicial Counsel Committee. Presumptive rates for expert service providers are set forth in Appendix E of the Second Circuit CJA Policy and Procedure Manual. (http://www.ca2.uscourts.gov/CJA_policy_manual.htm)

Counsel has discretion and makes the ultimate decision on the rate to be submitted to the court for prior approval of payment for service providers, such as investigators, paralegals and other experts. However, when retaining the services of a provider, establish a compensation rate consistent with the presumptive rate schedule in the CJA Policy and Procedure Manual wherever possible, as well as commensurate with the experience and level of expertise of the services provided. Prior to submitting a request for expert services to the court, counsel may consult with Jerry Tritz, the Case-Budgeting Attorney, for guidance on the prevailing "going rates" for expert service providers.

Finally, the CJA Plan requires that any application submitted for prior approval should include an affidavit containing: 1) the name, address, telephone number and taxpayer identification number or social security number of the expert, investigator, or other service provider; 2) the hourly rate sought; 3) the estimated number of hours to complete the work; 4)

justification for the use of the expert, investigator or other service provider; and 5) a properly prepared CJA Form 21 or 31 for the judicial officer's approval. Although the number of hours varies based upon the needs of the individual case, counsel should maintain consistency on requested billing rates for service providers from case to case.

3. Associates.

a. Prior Approval is Required: Please be aware that unlike experts, prior approval of the use of associates must be obtained from the presiding judicial officer. This will allow the court to consider the qualifications of the associate, including educational background and experience, and to rule upon the necessity of the associate's participation. In the absence of prior judicial approval, reimbursement for an associate's time under the CJA shall, except for good cause shown, be denied by the presiding judicial officer.

b. Rates of Reimbursement: Associates may be billed at the rates set forth in the then current Second Circuit Manual, regardless of the nature of the case, including capital cases. Associates are to be used as "of counsel" and not as paralegals. If the presiding judge believes that an associate has been used as a paralegal and not as an associate, the hourly rate may be adjusted accordingly.

D. *Visiting Clients in Jail*

1. Arrive Early.

When making jail visits during the week, arrive at the detention facilities early in the morning (8:30 a.m. to 9:00 a.m.) to avoid conflict with and delays caused by the processing of social and family visits, which begin at noon. Alternatively, visit the jail on the weekend when

there are no social visits.

2. Visit Multiple Clients.

Visit more than one client when visiting the detention facilities - where possible. If visiting a cooperator, consider whether such a visit is appropriate. In any event, make sure to coordinate with other lawyers where there are separation orders in place.

a. When visiting clients at the MDC always bring extra files for the opposite wing you are planning to visit, so that if the client you are seeing has been transferred to the other wing, you are still able to call on multiple clients.

b. As long as there are no separation issues, the MDC has agreed to allow corrections officers to bring down more than one inmate at a time. Counsel may request to see three clients at once so that by the time you finish with the first client, the others will be available to interview. If the desk officer is unaware of this policy, ask to speak to the Duty Lieutenant. Obviously, this does not apply to inmates who are in the Special Housing Unit ("SHU") who must be seen within the confines of the SHU visiting area. This will eliminate a substantial amount of waiting time between interviews.

c. Bring materials to review on other cases while waiting at the local jails - where practical.

3. Notice to Clients.

Let clients know of your visit ahead of time. The MDC will be keeping a log concerning attorney visits in order to address claims that the corrections officers are not producing defendants timely or at all. Attorneys should advise their clients that they have limited time to visit and impress upon them the importance of going down to see the attorney as soon as they are

summoned. In addition, attorneys should coordinate visits with family members so that the client is not forced to choose who she or he actually sees.

4. Title 18 Forms.

Attorneys and their paralegals and interpreters will be permitted to fill out their Title 18 forms (certifying that they are not bringing firearms or other contraband into the facility) in advance, as opposed to once they get to the facility. The CJA Committee is working with the Warden of the MDC to facilitate access to these Title 18 forms.

5. Identify Yourself as an Attorney.

Attorneys should be permitted to get to the front of the line when there are family members and others visiting inmates. The attorney should identify him/herself to the corrections officer in the visiting area upon entering. The Warden should be made aware if these procedures are not being followed.

6. Paralegals.

Send a paralegal to the prison only if you do not need to discuss substantive legal issues with your client and you only need to get a document signed.

Defendants should be accompanied by counsel and not by paralegals at any pre-sentence interview with the Probation Department.

7. MDC Medical Unit.

The MDC Medical Unit is concededly understaffed. When a defendant is going to enter the facility and she or he is on prescribed medications, the MDC Legal and Medical Staff recommend the following:

- a. Prescription Medications: The defendant should bring his medication in a

bottle that has a prescription label on it, with his or her name, the name of the prescribing physician, the name and strength of the medication, and the name or phone number of the pharmacy that filled the prescription. This will assure continuity of medication and, if it is not on the BOP formulary, will allow the intake medical staff to find a proper substitute. Moreover, this will avoid any delay in obtaining medical treatment. Judges should be asked to make sure that the Marshals accept such medication. Note that the defendant may NOT bring bottles of *expired* medications or medications without proper labels.

b. Medical and Psychiatric Records: The MDC medical staff highly recommends that the defendant bring with him or her copies of their medical/psychiatric records, especially the names and telephone numbers of any treating physicians. Getting an inmate proper medical treatment may be delayed if the inmate does not know the names of the medications he or she is taking, the ailments he or she has, the names of the treating physicians, or at which hospitals he or she has had procedures. This delay is made even worse if there is a language barrier. It can take medical staff months to track down this information.

E. *Transcripts*

1. Ordering Transcripts.

Do not order transcripts automatically. Instead, consider whether there is an actual need or not.

2. Free Access to Pacer.

CJA Attorneys may apply to the court for free access to Pacer on their CJA cases. Once given access, attorneys have free access to the entire docket, including the transcript of the plea

allocation before the magistrate judge, which is always transcribed for review, and acceptance of the plea by the presiding district judge. There is a 90-day “blocked period” for review of errors and correction of the transcript. During the 90-day blocked period, the transcripts can be viewed by the attorneys, but not printed, from the public terminals in the Clerk's Office. Once that period is over, the transcript may be downloaded for free. However, the CJA attorney first must apply for the free access.

3. Sentencing Transcripts.

Rather than requesting payment for sentencing transcripts, wait until the end of the 90-day period when the transcripts are posted on ECF and can be printed without cost. If the CJA Attorney has not applied for free access to Pacer, it will still be cheaper to order the transcript after the 90-day period at \$0.10 per page rather than at the \$0.90 per page that is charged before that period ends.

4. The Guide to Judicial Policy.

Vol. 6, Ch. 5 of the Guide to Judicial Policy governs all matters concerning transcripts.

Section 510.45.20(b) provides:

The Congress and the Judicial Conference have insisted that the requirements of 28 U.S.C. § 753 as to the transcribing or recording of pleas and sentences in criminal cases be carefully and promptly observed. The reporter must file a transcript within 30 days of *the close of the proceeding* unless it was recorded on electronic sound recording equipment, in which event the electronic recording, accompanied by a certification of the reporter, must be filed as soon as the recording has been used to capacity.

§ 510.45.20(b) (emphasis added). We interpret “the close of the proceeding” to refer to the end of the arraignment, change of plea hearing, or sentencing hearing, and not the end of the case.

Section 510.45.20(c) cautions the court to carefully consider whether the Clerk's copy

(which is the copy posted per the provision of subsection(b) set forth above) is sufficient, before approving production of another copy at government expense in connection with 28 U.S.C. § 2255 motions.

Court reporters are permitted to post an electronic recording of proceedings in a special file maintained by the Clerk's office in order to satisfy the statutory requirements. However, these files are not accessible to the court or the parties. The Judicial Policy Guidelines make it clear that only a certified transcript is appropriate for use in other court proceedings (such as habeas petitions). The presiding judge can direct the court reporter to post a transcript within 30 days of the end of the proceeding (arraignment, guilty plea, or sentence) to satisfy the policies set forth above. This option then permits the attorneys to employ the cost saving measures described in the earlier part of this memorandum. In addition, if the presiding judge directs such action, then, automatically, the transcripts become readily available for any appeal or post-conviction proceedings, again at the cheaper costs described above.²

The CJA Committee is recommending that an Administrative Order of the Court be issued directing all court reporters to post transcripts of arraignments, guilty pleas, and sentences within 30 days of the date of each proceeding. Thus, the court reporters will be alerted to the fact that they are required to complete and post said transcripts, even if the presiding judge does not specifically order them to do so. Additionally, for purposes of appeal, appellate counsel, instead of ordering the transcript at a higher cost, can advise the Circuit Court that, by Administrative Order of the U.S. District Court of the EDNY, the transcript has been or will be posted by (date) and will be ordered at the reduced CJA or Federal Defenders Office rate.

²Notably, as part of their regular salary, court reporters are compensated for transcripts of arraignments, change of plea hearings, and sentences.

5. Sharing Transcripts.

Court stenographers may only charge once for CJA ordered transcripts. If one CJA attorney in a multi-defendant case has ordered a transcript, the other attorneys must share with that attorney rather than submitting a voucher and ordering an additional copy. CJA Attorneys should not share transcripts with those who are not on the CJA Panel. The Judge on the case should allocate expenses between Panel and non-Panel attorneys. If the government or retained counsel has ordered a transcript at the regular delivery rate (\$4.02 per page for 30-day delivery), or the court has ordered it, then CJA counsel may order a copy at \$0.90 per page. (These rates are not for transcripts that have already been posted on the docket as per section D.2 above). Once a party has ordered a transcript, the court reporter is required to post the transcript on the docket.

F. *Practical Suggestions*

1. Billing for Reviewing E.C.F. Bounces.

Counsel should refrain from billing for the review of routine or informational ECF bounces, unless substantive action related to the review of the ECF bounces is required.

2. Use of Mail Delivery Services.

When mailing documents and pleadings, use the regular United States Postal Service. Counsel should refrain from using FedEx or UPS for mailing everyday correspondence or materials. If you need proof of service or tracking of your mailed item, use the United States Postal Service's Priority Mail.

3. Legal Research.

Counsel may submit a request in advance to be compensated on an hourly basis for legal

research performed through electronic research services, such as Lexis or Westlaw. You will not be compensated for the actual cost of your Lexis or Westlaw research; you will only receive compensation for your time.

G. ***Multi-Defendant Cases***

1. Discovery Review in Major Multi-Defendant Cases.

Utilize lower cost providers such as paralegal and/or associate counsel (with prior Court approval) for discovery review and indexing in cases involving large volumes of Rule 16 discovery.

2. Prevent the Duplication of Work in Multi-Defendant Cases.

Share the costs of Title III motions, and other suppression motions related to more than one defendant with co-counsel where possible – i.e. motions related to the execution of search warrants impacting more than one defendant. Circulate the joint submission to all counsel ahead of time, with the option that any counsel may submit a supplemental declaration which raises an issue particular to his or her defendant. Request permission of the presiding judge to follow this procedure.

3. Counsel Meetings in Multi-Defendant Cases.

Counsel without conflicts are encouraged to meet in multi-defendant cases to discuss the coordination of discovery, motions, and case budgeting.

4. Discovery in Multi-Defendant Cases.

Counsel are encouraged to utilize the services of the National Litigation Support Resources in cases where Rule 16 discovery is provided in digital or electronic format. Contact Kelley

Scribner (510-637-1952) and/or Sean Broderick (510-637-1950) at the Office of Defender Services. They will help organize and index computer generated Rule 16 discovery.

5. Share Service Providers.

In multi-defendant cases, counsel is encouraged to share service providers where there is no conflict of interest. For example, in a multi-defendant case, an investigator can interview a government witness and get the basic pedigree information for the benefit of all defendants.

H. ***Case Budgeting***

1. Prepare a Budget.

On any case which has the capacity to exceed \$30,000 or require more than 300 attorney hours, you should prepare a budget. Contact Jerry Tritz (212-857-8726) for advice and assistance.

2. Use case budgeting techniques even on non-budget cases.

Utilizing case budgeting techniques will help to improve the efficiency in all cases, including those involving less than \$30,000 or fewer than 300 attorney hours.

I. ***Continuing Legal Education and Training***

CJA counsel is encouraged to keep track of and attend CLE training sessions and programs sponsored by the Training Branch of the Office of Defender Services, the District Courts for the Eastern and Southern Districts of New York, the F.D. of N.Y., the United States Sentencing Commission, and the local Bar Associations on the federal sentencing guidelines, the federal rules of evidence and on federal substantive and procedural law.

* * * * *

The above good practices are being provided to assist CJA counsel with cost saving measures to utilize during this period of fiscal crisis and to clarify existing rules and procedures. Implementation of these practices is intended to enhance the quality of representation afforded to CJA clients by their assigned attorneys.