

FEDERAL PUBLIC DEFENDER
Western District of Washington

March 29, 2016

Honorable Kathleen Cardone
Chair, Ad Hoc Committee to Review the CJA Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, D.C. 20544

RE: Testimony of Natalie Harmon,
CJA Panel Administrator, Office of the Federal Public Defender

Dear Judge Cardone and Committee Members:

I am the Criminal Justice Act (CJA) Administrator for the Western District of Washington and have worked in this capacity since October of 1998, having started my employment with the Federal Public Defender's office in May of 1994. Over the years I have had the opportunity to participate in a number of working groups and committees, both within district, at the Ninth Circuit and nationally as new programs were developed for the administration of the CJA and CJA policies and best practices were discussed. I have also had the opportunity to participate in two national CJA Attorney Representative Conferences. I appreciate being asked by the Committee to provide my perspective on CJA panel management.

You have already heard testimony in Portland from my Federal Public Defender, Michael Filipovic as well as our CJA attorney representative, Jennifer Horwitz. You may recall from prior testimony that our CJA Panel is fully managed by a three person unit within the FPD office in conjunction our district's Standing Committee. The CJA Unit makes case assignments, reviews and makes recommendation to the court on funding requests, budgets and vouchers submitted for payment as well as provides training, information dissemination and support to the panel attorneys in our district. The Standing Committee, a committee comprised of six attorneys including the Federal Public Defender, oversees the panel's function, and makes reasonableness recommendations to the court when a judge is inclined to deny or reduce a funding request or voucher. Though I participate in Standing Committee meetings I am not a voting member of that body. I have included in my materials a copy of our CJA Plan (Attachment A) that further delineates the responsibilities of the Standing Committee (see Appendix A: Operation of the Standing Committee). I have also provided a Defender Organization Classification System (DOCS) description of my job (Attachment B.)

CJA ADMINISTRATION – Western District of Washington

As CJA Panel Administrator, I am supported in my job by a paralegal and an assistant paralegal. Both assist in locating counsel for defendants as well as doing technical compliance review of vouchers. The paralegal, Diane Snelgrove, has been working with me for the last 9 years and comes to the FPD office after 19 years as a paralegal in a small law firm where she primarily supported one attorney and ran the firm office. She brings to the job a wealth of knowledge and experience that is invaluable. The assistant paralegal, Lupe Zamudio, has been with the FPD office for over 14 years and primarily focuses on travel, transcripts, and interpreter vouchers. While Diane and Lupe keep the day to day functioning and flow of our CJA work going, I spend the bulk of my time reviewing funding authorizations, working with the court and CJA counsel and, of late, the Ninth Circuit Case Managing Attorneys on budgeting cases. I am often the go between the CJA attorneys and the court, reviewing and gathering additional information on funding requests or vouchers to make clear for the court what has transpired or why a service is necessary to provide a high quality defense. I relay concerns the court may have about costs and work with counsel to ensure they have the resources they need while making every effort to have case expenditures including service provider rates as cost effective for the CJA as possible. On the whole the court in our district has understanding of and respect for the defense function and very few vouchers are reduced or expert funding requests denied. I also provide a considerable amount of training both formally and informally to panel members, experts, the court and others operating within the CJA administrative function within the circuit and across the nation.

Challenges to the Administration of the Criminal Justice Act

My years of service as a CJA Administrator operating from within the Federal Public Defender's office and the exposure I have had with other districts and their CJA operations, have left me with a firm belief that the CJA Panels are best served when managed by a Federal Public Defender Office. Training for panel attorneys tends to be strong and the FPD office tends to support cooperative work between the FPD and CJA attorneys, which can be both a cost savings to the CJA and can elevate the quality of representation provided by panel attorneys. One of the biggest obstacles I see to the Federal Public Defender's taking on a larger role across the country with managing the CJA panels is budgetary. There needs to be a mechanism for crediting the FPD offices so they receive funding for the additional administrative personnel it takes to run the panel. Staffing and budgets should not be solely based on case weights and at the whim of case filings.

I would endorse a movement away from the current CJA billing system to a system that allow for regular, if not monthly, billing. Not only could CJA counsel experience less financial stress in being involved in large, extended CJA cases where it can sometimes take years to receive payment. It is easier to keep tabs on a case and its costs and easier to do voucher review when smaller contemporaneously billed vouchers come in for processing. Regular monthly billing also allows for the close monitoring of an existing budget. And, big picture, allowing cases to be billed as they are in progress may assist in not having large shortfalls in the CJA appropriations by having a more regular flow in CJA expenditures.

In addition to changing the CJA payment structure, I would encourage the Committee to consider an alternative to the current CJA payment and funding authorization system

wherein the presiding judge reviews and approves vouchers, budgets, and expert service provider funding on CJA cases before them. Those tasks should be delegated to another authority.

Training. The Administrative Office of the United States Courts does not support us well by providing training opportunities specific to the administration of the Criminal Justice Act. What is in place has been primarily called forth and organized by those of us doing the work. We have the *Guide to Judiciary Policies and Procedures*, Volume 7 but little else. We do things so very differently from district to district across the nation, and just as one defendant is not the same as another despite having being charged with the same crime, what works in one district may not work in another. However, we could all benefit from the support, community and resource that comes from gathering together and discussing what works and what doesn't and why.

Finally I would offer up that someone operating in my function, be it a CJA Administrator or a CJA Supervising Attorney, should have the defense function at heart while still being able to be conscientious and even-handed with the fisc. It is a definite balancing act.

Thank you again for the opportunity to provide written comment in advance of my testimony at the public hearing in Philadelphia on April 12, 2016. I look forward to further discussing these issues and answering your questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Natalie Harmon', with a long, sweeping flourish extending to the right.

Natalie Harmon
CJA Administrator

Attachment A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) (hereinafter referred to as CJA), and the *Guidelines for the Administration of the Criminal Justice Act, Volume 7A, Guide to Judiciary Policies and Procedures* (hereinafter *Guide*), the judges of the United States District Court for the Western District of Washington adopt the following amended Plan for furnishing representation in federal courts to any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the goal of equal justice under the law for all persons. This Plan, therefore, shall be administered so that those accused of crime, or otherwise eligible for service pursuant to the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to a lack of financial resources.
2. The goals of this Plan are to: provide timely assigned counsel services to all eligible persons, provide appointed counsel services that are consistent with the best practices of the legal profession, provide cost-effective services, and protect the independence of the defense function performed by assigned counsel so that the rights of individual defendants are safeguarded and enforced.
3. The further objective of this Plan is to particularize the requirements of the CJA and the *CJA Guide* in ways that meet the needs of this district.

B. Compliance

1. The Court, its Court Executive, the Federal Public Defender's office and private attorneys appointed under the CJA shall comply with the CJA guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. The Federal Public Defender shall provide each private attorney with a

current copy of this Plan upon designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel), upon the attorney's first appointment under the CJA, and each time the Plan is revised. The Federal Public Defender shall maintain a current copy of the *Guide* for the use of members of the CJA Panel and shall make its availability known to such attorneys.

III. DETERMINATION OF ELIGIBILITY FOR REPRESENTATION

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

B. In every case in which appointment of counsel pursuant to 18 U.S.C. § 3006A(a) is appropriate, it is the duty of the judge to advise the party of his or her right to counsel. The judge shall appoint counsel promptly if it is found that the party is financially unable to obtain an attorney, unless the party waives his or her right to be represented by counsel.

C. Representation shall be provided for any financially eligible person who:

1. is charged with a felony or Class A misdemeanor;
2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
3. is under arrest, when such representation is required by law;
4. is charged with a violation of probation, parole or supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of probation, parole or supervised release;
5. is subject to a mental condition hearing under Chapter 313 of Title 18;
6. is subject to being held in custody as a material witness;
7. is charged with a capital offense or is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28, United States Code. All appointments under this section shall be made pursuant to Appendix C of this Plan or Local Rule CR104(d);
8. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;

9. has been called as a witness before a Grand Jury or a court that has the power to compel testimony and there is reason to believe the witness risks self-incrimination, loss of liberty or contempt of court;
10. is the subject of federal law enforcement interest and faces the risk of federal charges;
11. is entitled to appointment of counsel under the Sixth Amendment to the Constitution;
12. faces loss of liberty in a case, and federal law requires the appointment of counsel.

D. Whenever a judge¹ determines that the interests of justice so require, representation *may* be provided for a financially eligible person who:

1. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
2. is seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. § 2241, 2254, or 2255;
3. is proposed for processing under a pretrial diversion program;
4. is under federal supervision or in the custody of the Federal Bureau of Prisons, or is otherwise in contact with federal law enforcement officials, whenever the interests of justice require and the court determines that assignment of counsel would be of assistance to the court;
5. is financially eligible and whose case is of a type described in Volume 7, Part A, Chapter 2, Sections 210.20.20–.40 of the *Guide* (describing discretionary appointments, ancillary matters, and civil forfeiture proceedings).

IV. PROVISIONS FOR FURNISHING COUNSEL

A. This Plan provides for the furnishing of legal services by the Federal Public Defender's office and for the continued appointment and compensation of private counsel in a substantial proportion of cases.

B. When appointing counsel under this Plan, the court should be mindful of

¹ Use of the term judge in this Plan includes both district judges and magistrate judges.

directives from the Judicial Conference during times of financial constraint. When practicable, private attorney appointments should be made in at least 25% of the cases.

C. A person eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before a judge, when formally charged, or when otherwise entitled to counsel under the CJA, whichever occurs earliest. The court, in cooperation with the Federal Public Defender and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

D. The Federal Public Defender is authorized under this Plan to initially represent all persons arrested in the district before the first appearance and at bail hearings or arraignments where the defendant is eligible or likely to be determined eligible for assigned counsel by the court.

E. The judge before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

F. If at any time after the appointment of counsel, a judge finds that a person furnished representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).

G. If at any stage of the proceedings, a judge finds that the party is financially unable to continue to pay retained counsel, the judge may make an original appointment of counsel in accordance with the general procedure set forth in this Plan.

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

V. ESTABLISHMENT OF THE FEDERAL PUBLIC DEFENDER ORGANIZATION

A. The court finds that the use of a Federal Public Defender organization in this district, as defined in 18 U.S.C. § 3006A(g)(2)(A), is appropriate and should continue. The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed, reports of the office's activities and the financial position and proposed budget of the office.

B. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization for subsequent assignment

to staff attorneys at the discretion of the Federal Public Defender.

C. In accordance with and subject to the provisions of this Plan and further orders of the court, authority to administer the Criminal Justice Act is assigned and delegated to the Federal Public Defender.

D. It shall be the responsibility of the Federal Public Defender, subject to the approval of the court, to notify CJA Panel attorneys of an appointment and of the first appearance date.

E. Neither the Federal Public Defender, nor any staff attorney appointed as an Assistant Federal Public Defender, may engage in the private practice of law.

VI. CRIMINAL JUSTICE ACT PANEL

A. Formation of a Standing Committee to Oversee the Criminal Justice Act Panel

1. The judges of the United States District Court for the Western District of Washington authorize a standing committee to assist the Federal Public Defender in the administration and oversight of the CJA Panel. The committee shall consist of six attorneys, each a voting member. Four members of the standing committee shall be selected by a majority vote of the judges of the court. At least one such attorney shall be from the area served by the United States District Court in Tacoma. Members of the committee shall serve without compensation.
2. The Federal Public Defender or his or her representative will be a permanent member of the committee. The District's national CJA representative shall serve as a member of the committee during his or her term as district representative.
3. Membership on the committee shall be for a term of three years. Terms may be extended by the court for an additional three years. Members' terms shall be staggered to ensure continuity on the committee.
4. The committee shall meet at least four times per year or at any time the court asks the committee to consider an issue. In addition to reviewing CJA Panel membership, the committee shall identify and define any operating difficulties encountered in the administration of the CJA Panel and make recommendations to the court for appropriate changes.
5. The committee shall act consistent with the requirements of Appendix A to this Plan in making decisions and recommendations related to

participation, training and compensation of CJA Panel lawyers.

6. The committee shall assist and advise the Federal Public Defender in devising and presenting training programs for the CJA Panel. Such training shall include communication with CJA Panel attorneys on substantive and procedural changes in the law, local rules, administrative requirements, ethics requirements, electronic discovery, and other matters affecting the CJA Panel attorneys, and shall include regularly scheduled seminars for CJA Panel attorneys as well as the private bar.
7. The committee will be permitted to use the staff of the Federal Public Defender for administrative and record-keeping matters. However, the committee is not authorized to make requests for services that would incur financial obligations without prior approval of the court.

B. Prerequisites for Participation on the CJA Panel

1. The CJA Panels shall consist of attorneys recommended by the standing committee and approved by a majority of the judges of the district, pursuant to the procedures outlined in Appendix A.
2. CJA Panel attorneys must be admitted to practice and in good standing in the State of Washington, the United States District Court for the Western District of Washington and the Ninth Circuit Court of Appeals. In addition to bar membership, CJA Panel attorneys should have prior federal and/or state criminal trial experience, experience with serious or complex criminal cases, knowledge of the Sentencing Guidelines and the Bail Reform Act, knowledge of other relevant areas of federal criminal practice, and/or clinical experience or participation in trial advocacy programs.
3. CJA Panel attorneys must have resources and support sufficient to manage CJA assignments, including the availability of office space to meet with clients.
4. Each CJA Panel attorney must carry professional malpractice insurance with minimum limits of \$200,000.00 for each occurrence.

C. Obligations of CJA Panel Members

1. In addition to meeting the training, qualifications, facilities and technology requirements established by the standing committee, CJA Panel members are expected to:

- a. have an office procedure in place that facilitates the prompt receipt of information concerning appointment in a CJA case;
 - b. be qualified and willing to represent an assigned client through the appellate process and ancillary matters appropriate to the proceedings unless or until relieved by order of the court;
 - c. promptly notify the standing committee, in writing, in the event any action is taken by any court or bar affecting the standing of the attorney to practice before such court or bar;
 - d. participate actively in the representation of eligible individuals;
 - e. comply with the requirements of electronic filing and have sufficient knowledge and technological capability to effectively and efficiently manage assigned cases.
 - f. participate in training related to the filing of CJA vouchers, know and abide by procedures related to requests for services under the CJA and be willing to undertake cost-containment measures recommended by the committee.
 - g. conform to the highest standards of professional conduct.
2. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
 3. If at any time after appointment counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the client's representation, and the source of the attorney's information is not protected as a privileged communication, counsel will promptly advise the court.
 4. In multi-defendant cases where multiple CJA attorneys are appointed, counsel must make all reasonable efforts to coordinate with each other to reduce costs, including coordinating and sharing discovery to the extent possible and making joint applications for funding for investigators and other services.
 5. Appointed counsel are encouraged to use lower-billing associates, contract lawyers, paralegals or other means to minimize costs where lead attorney

expertise may not be required, such as for legal research and file review. An appointed counsel may claim compensation for services furnished by a partner or associate or, with prior authorization by the court, counsel who is not a partner or associate, within the maximum compensation allowed by the CJA, separately identifying the provider of each service.

D. Periodic Review and Removal of CJA Panel Members

1. A majority of the judges of the district may remove a member of the CJA Panel at any time.
2. Periodically, the committee will review participating lawyers as described in Appendix A.

VII. ASSIGNMENT OF CASES TO THE CJA PANEL

A. The Federal Public Defender shall be responsible for overseeing the assignment of cases to CJA Panel attorneys. This function will be performed by the CJA Unit of the Federal Public Defender's office.

B. Attorneys will be assigned to one of two primary panels, one providing service for the United States District Court in Tacoma and the second providing service for the United States District Court in Seattle. In the event that the CJA Unit is unable to locate counsel from the list maintained in one city, assignment will be made to the next available CJA Panel attorney on the list maintained for the other city.

C. In addition to the two primary panels, the Federal Public Defender shall maintain lists of attorneys who will provide representation for individuals who appear before judges in outlying courts located within the district. Attorneys assigned to those lists shall be selected by the standing committee in accordance with the procedures and requirements of this Plan. Consistent with the terms and requirements of Appendix B and Appendix C, the Federal Public Defender shall maintain lists of attorneys for assignment to appeals and capital cases.

D. The Federal Public Defender may create an emeritus CJA panel. Attorneys will be eligible for inclusion on the emeritus panel when they have served with distinction on the active panels or have otherwise demonstrated excellence in the practice of federal criminal defense and wish to be active in CJA matters but are not able or willing to accept appointments on a rotational basis due to other significant constraints on their time. Members of the emeritus panel who are unable to take cases in a given year are excepted to contribute in other ways, such as serving as mentors for other CJA Panel members and/or presenting at training seminars. The Federal Public Defender shall review the emeritus panel at least annually to ensure that all members remain capable and eligible for inclusion.

E. Location of attorneys for individual cases shall be undertaken by the CJA Unit of the Federal Public Defender. To facilitate this process, the appropriate court agency shall notify the CJA Unit staff of the need for counsel as soon as possible. The CJA Unit shall locate counsel by contacting attorneys from the appropriate list in rotational order. The CJA Unit, in cooperation with the Federal Public Defender, shall develop a method of contacting attorneys that is most likely to reach them quickly.

F. Appointments should be made in a manner that results in both a balanced and equitable distribution of appointments among members of the CJA Panel, and quality representation for each CJA defendant. At the direction of the court or the Federal Public Defender, an attorney may be assigned out of order for a case which requires particular expertise, is of particular complexity or severity, or involves a client with unusual needs.

G. Attorneys on the emeritus panel may be called for cases which require particular expertise, are of particular complexity or severity or involve clients with unusual needs.

H. In the interests of justice, where continuity of representation is a factor or other special circumstances exist, the court may appoint an attorney who is not on the CJA Panel. Such attorneys shall possess such experience and character as would qualify him or her for admission to the district's CJA Panel in the ordinary course.

I. Assignment and compensation of counsel for new representations (*e.g.* revocation proceedings, mental condition hearings) and hybrid representations (*e.g.* standby counsel) shall be made in accordance with the requirements of the *Guide*, Vol 7A, § 220.20-.55.

J. The CJA Unit shall maintain master lists of CJA appointments, which will include the date of each appointment, the case name and the date of each refusal ("pass") by a CJA Panel attorney, as well as statistical information reflecting the respective percentages of cases assigned to the Federal Public Defender and the CJA Panel.

VIII. INVESTIGATIVE, EXPERT AND OTHER SERVICES

A. Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his or her case, may request such services in an *ex parte* application before a judge, as provided in 18 U.S.C. § 3006A(e)(1). Upon finding that the services are necessary, and that the person is financially unable to obtain them, the judge shall authorize counsel to obtain the services.

B. Counsel may obtain, subject to later review, investigative, expert, or other services without prior authorization, only under the circumstances set forth in 18 U.S.C. §3006A(e)(2). Expenditures without prior court authorization are not favored.

C. Counsel shall comply with all provisions regarding financial limitations and

requests for services, as set forth in 18 U.S.C. § 3006A(e), and any guidelines or regulations approved by the Judicial Conference of the United States.

D. In the event that a judge indicates an intention not to approve, in whole or in part, compensation for services requested or rendered under this paragraph, counsel may request review and recommendation by the standing committee pursuant to the procedures set forth in Appendix A.

IX. COMPENSATION AND CASE BUDGETING

A. Payments of fees and expenses to counsel appointed under this Plan, (other than to the Federal Public Defender's office), and payment for investigative, expert, and other services incurred, shall be made in accordance with any statutory limitations and such rules, regulations and guidelines, as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts. No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a party, unless such payment is approved by order of the court.

B. In non-capital representations of unusual complexity that are likely to generate claims for compensation in excess of \$30,000, the court may require development of a case budget consistent with the policy of the Ninth Circuit Judicial Council and the *Guide*, § 230.26.10-.20. Counsel must notify the court as soon as possible if they anticipate that attorney hours are expected to exceed 300 or total expenditures are expected to exceed \$30,000 for appointed counsel and services.

C. In capital cases, pursuant to the *Guide*, courts must discuss with appointed counsel, at the outset of the case, the preparation and submission of a budget that will be subject to modification in light of facts and developments that emerge as the case proceeds.

D. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form to the CJA Unit of the Federal Public Defender. The CJA Unit shall review the claim form for mathematical accuracy and for conformity with CJA Guidelines and, if accurate, shall forward the claim form for approval by the court. To promote accuracy, it is the expectation of the court that timekeeping be contemporaneous with provision of services.

E. Claims for compensation should be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The CJA Unit should make every effort to ensure that CJA Panel lawyers comply with this time limit. Absent extraordinary circumstances, including referral to the standing committee, judges should act on claims within 30 days of submission.

F. Except in cases involving mathematical or technical corrections, no claim for compensation submitted for services provided under the CJA should be reduced without affording counsel the opportunity to be heard.

G. In any case where a judge has a question or concern with the amount of compensation claimed, the voucher may be referred to the standing committee for review and recommendation before final action on the claim is taken. The judge may, at the time the voucher is submitted to the standing committee, provide the committee with a statement describing questions or concerns with the voucher. Counsel shall be given the opportunity to provide information or documentation relevant to the voucher and questions or concerns raised by the judge. The standing committee shall act in accordance with the procedures outlined in Appendix A and issue a written recommendation to the judge.

H. Notwithstanding the procedure described above, a judge 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 judge and CJA Panel member, the claim for compensation need not be referred to the standing committee for review and recommendation.

EFFECTIVE DATE

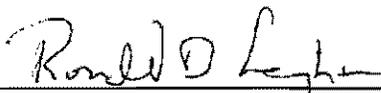
This Plan as amended this First Day of March, 2012, shall take effect when approved by the Judicial Council of the Ninth Circuit.



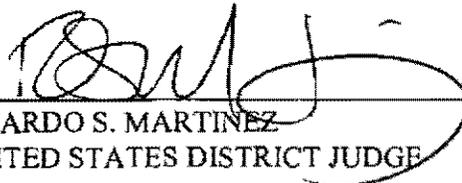
MARSHA J. PECHMAN
CHIEF UNITED STATES DISTRICT JUDGE



ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE



RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE



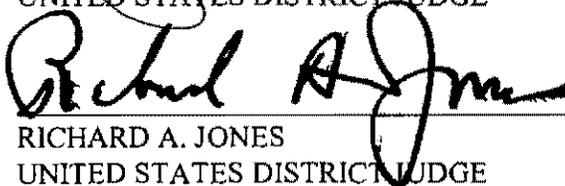
RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE



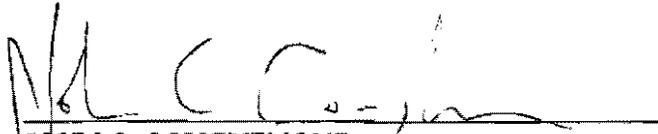
JAMES L. ROBERT
UNITED STATES DISTRICT JUDGE



BENJAMIN H. SETTLE
UNITED STATES DISTRICT JUDGE



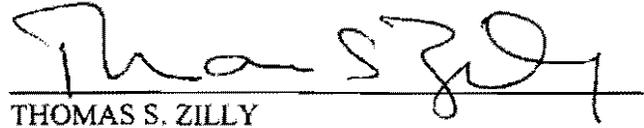
RICHARD A. JONES
UNITED STATES DISTRICT JUDGE



JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE



ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE



THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

APPENDIX A
OPERATION OF THE
CJA STANDING COMMITTEE

I. RESPONSIBILITIES OF THE CJA STANDING COMMITTEE

A. The standing committee shall solicit applications for the CJA Panels from interested members of the bar of the Western District of Washington. The standing committee shall promote participation on the Panels in a manner which facilitates and encourages racial, ethnic and gender diversity and geographic balance and the inclusion of Panel members who speak Spanish and other languages typically spoken by residents of this district.

B. The standing committee shall compile all applications submitted by attorneys wishing to participate on a CJA panel and shall periodically meet, at least annually, to review the applications. For attorneys meeting the qualification standards for inclusion on the panel, the committee shall conduct such additional investigation as is necessary to assure the committee that the applicant has the requisite character, standing in the bar, skill and commitment to vigorous representation of the accused to merit inclusion on the panel. Applicants that the committee believes should be added to a panel shall be referred to the court with a recommendation specifying which panel the committee believes the applicant should be assigned to.

C. The court may request the standing committee to conduct additional investigation of an applicant and the committee shall act in accordance with directions from the court. Final decisions regarding inclusion on or removal from the Panel will be made by a majority of the judges of the district.

D. The standing committee shall ensure that the Tacoma Panel includes not less than twelve members and the Seattle Panel includes not less than fifty members. The emeritus, appellate and capital case panels will have no size restriction.

E. The standing committee shall monitor the size and operation of the panels to assure that they meet the needs of current case load requirements. In addition, the committee, in conjunction with the CJA Unit, shall monitor the level of participation in training and case assignments of lawyers on the panels. It is the expectation of the court and committee that panel lawyers actively participate in training and accept appointments in numbers sufficient to remain current in the law.

F. Every year, the committee will review a third of the members of the Panel, so that the entire CJA Panel is reviewed every three years. During the review, participating lawyers will be

asked if they wish to remain on the panel. For those attorneys wishing to remain on the CJA Panel, the Committee shall solicit input from the court concerning the quality of representation provided by those lawyers. The Committee will also consider whether the CJA Panel member has declined cases during the review period, how many cases the member has accepted and declined, 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 the Plan and its appendices. If a lawyer has been accepting appointments in sufficient numbers and has consistently provided high quality representation, he or she will likely remain on the panel.

G. If the court or committee has reservations concerning the quality of representation provided by a Panel lawyer, the court may direct the committee to take such action as is necessary to remedy any perceived deficiency. If the court determines a Panel lawyer has not demonstrated the skill or character necessary to participate on the Panel, it may direct that the lawyer be removed.

II. TRAINING REQUIREMENTS AND MENTORSHIP

A. The standing committee shall, in conjunction with the Federal Public Defender, provide regularly scheduled and on-going training for members of the CJA Panels. The standing committee may establish training requirements and monitor compliance of Panel members.

B. Attorneys new to the CJA panel will be assigned mentors by the standing committee unless the attorney has significant and exemplary federal criminal defense experience. Mentors will be lawyers from the panel or the Federal Public Defender's office. Mentorship will continue for not less than one year. During that time, the mentor will assist and monitor the new panel lawyer and report to the committee concerning his or her progress and ability. Input received may be used to assess training needs and/or continued participation on the panel.

III. VOUCHER REVIEW

Whenever the court is considering reducing a claim for compensation, appointed counsel should be afforded notice and the opportunity to comment. To facilitate this policy and to assist the court in evaluating claims, it may refer questions and vouchers to the standing committee for a report and recommendation. The committee shall meet as soon as practicable to review the questioned claim. The committee will review documentation related to the claim, the record of the proceedings and such other materials as necessary to assess the reasonableness of the claim. The committee shall submit a written recommendation to the court and counsel within thirty days of the request for review. The committee's recommendation shall be guided by policies and standards for compensation as described in the *Guide* published by the Administrative Offices of the United States Courts. In addition, the committee shall consider, among other factors, the following:

1. Whether the case goes to trial or ends with a guilty plea.

2. The number of defendants in the case.
3. Unusual characteristics of the defendant (unable to speak English, mental health issues, particularly uncooperative).
4. Location of the defendant (e.g., amount of travel required for counsel to meet with the defendant) and whether the defendant is in custody.
5. Type and number of crimes charged.
6. Complexity or novelty of legal issues (requiring unusually great amount of legal research).
7. Number of witnesses presented by all parties at the trial or hearing.
8. Amount of pretrial discovery and investigation required, number of documents, open or closed file case.
9. Number of motions in the case; number and length of hearings on motions and other hearings; nature of hearings (evidentiary or mere argument).
10. Amount of trial preparation required.
11. Length of trial.
12. Length and complexity of sentencing hearing and severity of potential sentence.

Following receipt of the standing committee's report and recommendation, the judge may request additional information from counsel or the committee. The court should act promptly in finally certifying payment.

IV. COST CONTAINMENT MEASURES

A. The standing committee shall explore and develop cost containment measures for CJA representations. The committee shall identify and provide to CJA lawyers cost containment strategies including:

1. Use of a pool of experts and investigators who have agreed, in nonspecialized cases, to provide their services at a discounted or most reasonable cost.
2. Use of a brief bank developed by the Federal Public Defender and made available to Panel attorneys with a topics index for the brief bank being made

available to all Panel lawyers.

3. Use of the internet and web sites to facilitate information sharing, briefing and training.
4. Identification of paralegals and document technicians to provide assistance in summarizing transcripts and organizing documents in complex litigation cases in a cost efficient manner.
5. Assistance to Panel lawyers in identifying "government rates" for transportation and travel related expenses for attorneys, witnesses and experts through the Panel administration team in the Federal Public Defender's office.
6. Strategies for contact with the United States Attorney's Office designed to discuss and develop cost efficiencies associated with bail requests, discovery disputes, management of complex cases or other matters that draw on the resources of the CJA.
7. Creation of relationships with the United States Marshal, Pretrial Services and the Probation Office to develop cost containment measures with those agencies.

B. The standing committee, in cooperation with the CJA Unit, shall promptly provide Panel lawyers current information concerning national and Ninth Circuit policies and initiatives related to cost containment fiscal constraints and changes in rules related to claims for compensation.

C. The committee, with the Federal Public Defender, will consider methods for reducing the cost of prison visits by panel members, interpreters, and experts, and, where appropriate, coordinate with the Bureau of Prisons to effectuate cost saving measures.

V. YEAR-END REPORT

The standing committee shall prepare and provide a brief year-end report to the Chief Judge of the Western District of Washington describing the fiscal year operation of the Panels. The report must include a summary of CJA payments to Panel members, information regarding all complaints received about Panel members and their disposition, information regarding training conducted, and the number of times each Panel attorney "passed" on appointments during the preceding year. The report must also summarize the committee's annual review of Panel members as described in this Appendix.

The CJA Unit shall provide relevant statistical information to the standing committee for inclusion in its yearly report of operations. The report of operations shall cover the fiscal year and

be submitted not later than December 31st.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

APPENDIX B

I. ADMINISTRATION OF APPELLATE PANEL

A. The Federal Public Defender and CJA Unit shall maintain a list of qualified individuals to handle appointments on appeal. The list shall include individuals with a proven commitment to the defense function, who are learned in the practice of federal criminal law and have demonstrated excellence in writing skills.

B. In selecting individuals for placement on the Appellate Panel, the Federal Public Defender shall take steps to ensure appropriate diversity and geographic balance within the Western District of Washington and the inclusion of Panel members who speak Spanish and other languages typically spoken by residents of this district.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CRIMINAL JUSTICE ACT PLAN

APPENDIX C

PROVISIONS APPLICABLE IN CASES
INVOLVING THE DEATH PENALTY

I. STATUTORY AUTHORITY

A. The appointment and compensation of counsel and the approval and payment of persons providing investigative, expert, and other services governed by 18 U.S.C. § 3005, 18 U.S.C. § 3599, Local Rule CR104(d) and Volume 7A, Chapter 6, §§ 610.10 – 630.60 of the *Guidelines for Administration of the CJA (Guide)*.

B. Detailed recommendations on the appointment and compensation of counsel in federal death penalty cases were adopted by the Judicial Conference on September 15, 1998 (JCUS-SEP 98, p. 22). In September 2010, the Defender Services Committee endorsed revised commentary to the 1998 recommendations. The recommendations and the accompanying revised commentary are set forth in Appx 6A (Recommendations Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010)) to Part A of the *Guide*.

C. The provisions of this Appendix apply to all capital cases whether originating in a state court or a United States district court.

II. APPOINTMENT OF COUNSEL IN CAPITAL CASES

A. At the outset of every capital case, the court shall appoint two attorneys, at least one of whom is experienced in and knowledgeable about the defense of death penalty cases. 18 U.S.C. § 3005, 18 U.S.C. § 3599(a)(1) & (2).

B. While courts should not appoint more than two attorneys unless exceptional circumstances and good cause are shown, appointed counsel may, with prior court authorization, use the services of attorneys who work in association with them, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits that could not otherwise have been met.

III. PROCEDURES FOR APPOINTMENT OF COUNSEL IN CAPITAL CASES

A. Appointment of counsel shall be made after consultation with and upon the

recommendation of the Federal Public Defender.

B. In evaluating the qualifications of counsel considered for appointment, the Federal Public Defender shall consider the:

1. minimum experience standards set forth in 18 U.S.C. § 3599(b)-(d), 18 U.S.C. § 3005, and other applicable laws or rules including Local Rule 104(d);
2. qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;
3. recommendations of other federal public and community defender organizations, and local and national criminal defense organizations;
4. proposed counsel's commitment to the defense of capital cases; and
5. availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

C. Courts should ensure that all attorneys appointed in federal death penalty cases are well qualified, by virtue of their prior defense experience, training, and commitment, to serve as counsel in this highly specialized and demanding litigation.

D. Ordinarily, "learned counsel" (*see* 18 U.S.C. § 3005) should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high-quality representation.

E. To facilitate this process the Federal Public Defender shall maintain a list of counsel qualified to undertake capital representations.

F. The provisions of this section shall take effect whenever a defendant is charged with a federal criminal offense for which the penalty of death is possible, unless the government issues written notice at or before the initial appearance that the government will not seek the death penalty or unless the court orders that death is not an applicable punishment upon conviction. If such written notice by the government that it will not seek death as punishment is later withdrawn, the provisions set forth in this section shall be implemented as soon after the withdrawal of the notice as is practicable. In the event that counsel for the defendant has already been appointed or retained at the time the government either withdraws its notice not to seek the death penalty or files a notice of intention to seek the death penalty, the provisions of this section shall apply to permit the appointment of additional or substitute counsel if necessary to comply with the qualification standards contained above and in applicable rules and statutes. For cases

originating in state court and subject to the provisions of 28 U.S.C. § 2254, appointment of counsel shall be made as soon as practicable after the state conviction is deemed final in order to assure timely filing in this district.

G. Ordinarily the attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the defendant at trial. Appointment of appellate counsel shall be made upon recommendation of the Federal Public Defender who shall consider the attorney's experience in federal criminal appeals and capital appeals among other relevant factors.

H. In appointing counsel in post-conviction habeas proceedings, the court shall consider the recommendation of the Federal Public Defender and the attorney's experience in such matters.

I. Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c) but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation. Such appointments should be made after consultation with the Federal Public Defender.

J. In the interest of justice and judicial economy, unless precluded by a conflict of interest, the court should typically continue the appointment of state post-conviction counsel if qualified under *Guide*, Vol 7A, § 620.60.

K. The appointment of counsel in capital cases extends "throughout every subsequent stage of judicial proceedings" as defined in 18 U.S.C. § 3599(c) and 7A, § 620.70 of the *Guide*.

IV. COMPENSATION IN CAPITAL CASES

A. Statutory maxima do not apply in capital cases. The court will set the rate at an amount not to exceed compensation limits set by the Judicial Conference and reported in the *Guide*, 7A, § 620.60. In the interest of justice and in furtherance of relevant statutory provisions regarding qualifications of counsel in capital cases, the court should compensate counsel at a rate sufficient to ensure adequate compensation.

B. Pursuant to the *Guide*, courts must discuss with appointed counsel, at the outset of the case, the preparation and submission of a budget that will be subject to modification in light of facts and developments that emerge as the case proceeds. The budgeting process should be guided by policies adopted by the Ninth Circuit and those set forth in the *Guide*, 7A, §§ 640.20-40.

Attachment B

PANEL ADMINISTRATOR

A. DEFINITION

The Panel Administrator provides Criminal Justice Act (CJA) Panel(s) with the full range of panel management services, including coordination of panel appointments, maintenance of panel lists and appointment records, preparation and review of panel forms and vouchers, and supervision of panel assistants. *This position exists only in those defender organizations that manage the CJA Panel(s).*

B. PRIMARY JOB DUTIES

The Panel Administrator performs or supervises the performance of tasks such as the following:

1. Possesses full knowledge of and interprets the CJA Guidelines and federal travel regulations, the *Guide to Judiciary Policy*, District Court Rules and the district's CJA Plan.
2. Works with the Defender, District Court Judges, Magistrate Judges, U. S. Marshals, Pretrial Services, Circuit Court, U.S. Attorney, members of the bar, the Administrative Office of the United States Courts (AOUSC), and others regarding the CJA for the purpose of disseminating and receiving information requisite to panel management. Drafts appropriate memoranda for Defender to distribute to staff and panel members. Distributes CJA manuals, manual updates, and other publications of interest to the panel, as required.
3. Acts as consultant to the Defender, panel lawyers and experts in the formulation, implementation and assessment of policies and procedures pertaining to the CJA. Maintains updated information regarding judges' courtroom and trial procedures. Tracks the status of pending CJA criminal case load in the district.
4. Supervises panel assistants; determines priorities to ensure expeditious assignment and reimbursement of counsel and experts.
5. Coordinates the flow of vouchers through headquarters and branch office(s). Verifies data, computations and compliance with CJA Guidelines on all CJA vouchers prior to submittal to the court or Defender. Refers to criminal file and court minutes when necessary. Performs regular quality check of vouchers submitted and returns the vouchers containing errors to the appropriate parties with correction instructions.
6. Coordinates submission of requests for experts to district court. Tracks approved amounts and expert invoices to ensure proper court orders are obtained for compensation of experts.
7. Participates, as requested, in budget preparation with respect to internal statistics regarding CJA appointments and expert services payments and/or encumbrances.

8. Coordinates panel attorney travel and expert travel in accordance with federal travel regulations. Prepares travel authorization documents for approval by court. May serve as account custodian for GTA at direction of court.
9. Processes all documents necessary to secure court-appointed counsel. Makes initial inquiries and determinations regarding conflicts and notifies the Defender of foreseeable problems.
10. Contacts panel members to determine their availability for appointment. Reports location of a defendant, and information about the case. Transmits copies of complaints and/or indictments to panel counsel. Maintains a log of attorney acceptance or unavailability. Consults with Defender regarding continued unavailability or noncompliance of panel member(s).
11. Supervises the maintenance of the CJA panel list of all court-appointed attorneys and logs all criminal cases under each appointed attorney. Checks court minutes to verify dates of transfer of appointment of attorneys, relief of court-appointed attorneys, or substitution of retained attorneys. Assures that required financial affidavits and orders are part of court record.
12. Supervises the preparation of forms CJA-6, CJA-7, CJA-20, CJA-21, CJA-23, CJA-24, CJA-30 and CJA-31 for district and circuit court appointments. Forwards all vouchers to the district court when applicable. Maintains a log of each CJA-20 or CJA-30 at time of attorney appointment. Studies each CJA form for accuracy prior to either entry into the AOUSC's decentralized voucher payment system or submittal to the AOUSC. In some districts, may enter, verify, or certify for payment all CJA vouchers in the AOUSC's decentralized payment system. Initiates and transmits interim payment orders to judges.
13. Verifies dates, computations and compliance with CJA Guidelines on all CJA vouchers prior to submission to the court for approval. Returns vouchers containing errors with instructions for corrections. Ensures required documentation accompanies voucher. Works with panel attorneys and to facilitate processing of CJA vouchers. Identifies and tags vouchers requesting payment excess, and ensures proper forms and documents accompany voucher.
14. Provides assistance in the planning and presentation of CJA panel training sessions. Assists in the preparation of written materials for distribution to the CJA panel.
15. Supervises the compilation and maintenance of the list of various court experts, such as interpreters, psychiatrists, investigators and other experts.
16. Maintains internal records and statistics regarding CJA for use by the clerk's office, the court, the AOUSC, and others. Keeps statistical data on panel appointments updated to ensure proper apportionment and equality of assignment. Prepares reports for the Defender regarding the distribution of CJA panel assignments.
17. Assists the clerk's office when problems arise concerning the administration of the Criminal Justice Act.

18. Maintains applications submitted by prospective panel members and responds to inquiries concerning the approval process for new panel members.

19. Performs all other duties as assigned.

C. ORGANIZATIONAL RELATIONSHIPS

The Panel Administrator reports to the Administrative Officer or other supervisor as designated by the Defender.

D. QUALIFICATIONS

To qualify for the position of Panel Administrator, a person must be a high school graduate or the equivalent and must have the requisite experience outlined in the *Salary and Experience Scale* and *Experience Requirements* sections. The individual must be able to perform each essential job duty satisfactorily. The job requirements are representative of knowledge, skills, and/or abilities necessary to perform the essential functions of the job.

E. SALARY AND EXPERIENCE SCALE

DOCS Grade Level	Years of General Experience	Years of Specialized Experience	Total Years of Experience
7	3	1	4
9	3	2	5
11	3	3	6
12	3	4	7
13	3	5	8

Note: One year of the required experience must have been at, or equivalent to, the next lower grade in federal service. Experience that has not provided training or required the application of the knowledge, skills and abilities outlined in the *Primary Job Duties* section above is **not** creditable experience. Specialized experience may always substitute for general experience but general experience may not substitute for specialized experience.

Note: To qualify at the *DOCS Level 13*, the FDO must be designated by the court as responsible for the administration and management of the district's CJA panel attorney program, which may include processes such as: a) application, review, and selection of qualified panel members; b) panel attorney assignments, and c) substantial CJA voucher processing functions. The Panel Administrator must perform *substantially all* of the following duties (consistent with the functions outlined in Chapter 16 of the Federal Defender Operations Manual) and under the direction of the individual Defender:

(1) assist in maintaining the district CJA panel membership; (2) manage all CJA panel appointments in cases referred to the FDO by the court; (3) assist the panel selection committee with the panel attorney selection process; (4) manage records and reporting requirements including maintaining a current list of all panel attorneys, recording of

assignments, and preparing other reports such as panel acceptance and availability logs, and statistics on the proration of representations between the FDO and panel, number of assignments per panel attorney, diversity of panel, and applicants for panel membership; (5) (where applicable) review vouchers for mathematical accuracy and compliance with CJA Guidelines, submit reviewed vouchers to the presiding judge (or Federal Defender) for consideration and action, respond to inquiries, and process claims through the CJA payment system; (6) train panel attorneys on voucher preparation and the guidelines that apply to proposed process for appealing voucher reductions; (7) assist in panel training with tasks such as logistics, obtaining speakers, registration, and obtaining CLE accreditation, as required; (8) assist in updating and maintaining the CJA plan for the district; and (9) represent the FDO in providing effective liaison with the CJA panel members and the court.

It is also anticipated that a Panel Administrator at the DOCS grade 13, while performing the same primary job duties as outlined in the Panel Administrator DOCS description for grades 7-12, will provide advanced panel administrator services and, in some instances, advanced supervisory services.

F. EXPERIENCE REQUIREMENTS

General Experience

Experience that provides evidence the individual has:

- a general understanding of the methods and skills required for accomplishing the tasks outlined in the *Primary Job Duties* section above;
- a general understanding of office confidentiality issues, such as attorney/client privilege;
- the ability to read, analyze and interpret common technical journals and legal documents;
- the ability to apply common sense understanding to carry out instructions furnished in written, oral or diagram form;
- the ability to analyze and apply relevant policies and procedures to office operations;
- the ability to exercise good judgment in a mature and diplomatic manner;
- the ability to communicate orally and in writing;
- a general knowledge of office practices and legal processes;
- the ability to recognize and analyze problems and recommend practical solutions;
- the ability to use a personal computer.

Specialized Experience

Progressively responsible experience in the functional areas described in the *Primary Job Duties* section above. Such experience provides the individual:

- a comprehensive knowledge of administrative management principles, practices, methods and techniques;
- the ability to identify and evaluate pertinent facts and regulations, policies and precedents;
- skill and judgment in the analysis of management issues;

- knowledge of financial management and operations in a legal environment;
- experience as an administrative manager performing progressively responsible duties;
- the skills and ability to execute the duties of the position.

G. EDUCATIONAL SUBSTITUTIONS

Education above the high school level in accredited institutions may be substituted for the general experience on the basis of one academic year (30 semester or 45 quarter hours) equals nine months of experience.

Completion of all the requirements for a bachelor's degree from an accredited college or university and having met one of the following may be substituted for one year of specialized experience:

1. An overall "B" grade point average equaling 2.9 or better of a possible 4.0.
2. Standing in the upper third of the class.
3. A "B+" (3.5) grade point average or better in major fields of study such as business or public administration, accounting, personnel management, information systems, legal management, or specialized or significant course work in a field closely related to the subject matter of this position.
4. Election to membership in Phi Beta Kappa, Sigma XI, or one of the National Honor Scholastic Societies meeting the minimum requirements of the Association of College Honor Societies, other than Freshman Honor Societies.

Completion of one academic year (18 semester hours) of graduate study in an accredited university in such fields as business or public administration, accounting, personnel management, information systems, legal management or other field closely related to the subject matter of the position, may be substituted for one year of specialized experience.

Completion of a master's degree or two years of graduate study (36 semester hours) in an accredited university in such fields as business or public administration, accounting, personnel management, information systems, legal management or other field closely related to the subject matter of the position, or completion of a Juris Doctor (JD), may be substituted for two years of specialized experience.

H. PHYSICAL DEMANDS AND WORK ENVIRONMENT

The physical demands described are representative of those required in order for an individual to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the individual is regularly required to sit and talk or hear. The individual frequently is required to use hands to touch, handle, or feel. The individual must

occasionally lift and/or move up to 25 pounds. The individual is frequently required to stand, walk and reach with hands and arms. The individual will spend most of his/her time in an office environment.