UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

CRIMINAL JUSTICE ACT PLAN

APPENDIX B

CJA Panel Management Protocol

I. Joining the CJA Panel.

A. Application. Application forms for membership on the CJA Panel are available from the Federal Defenders. Completed applications must be addressed to the CJA Committee and submitted to the administrative coordinator.

B. Appointment to Panel. After considering the recommendations of the CJA Committee, the Article III judges will select or remove panel members.

C. District of Montana Mentor Program.

1. Purposes. The Mentor Program allows a new or prospective Panel member to become familiar with the culture and expectations of federal criminal defense practice in Montana, regardless of experience in other jurisdictions, and provides a structured training platform for mentees to sharpen and demonstrate qualification for membership on the Panel.

2. Mentors and Mentees.

a. The Chief Federal Defender will select qualified and willing CJA counsel to serve as mentors. Mentors will be assigned one mentee at a time unless all available mentors already have one mentee.

b. Mentors must agree to monitor mentees in at least one felony case, to comply with reporting requirements, and to attend additional yearly training designated by the CJA Committee.

3. Program Framework.

a. The mentee must serve with a mentor in one case and may be required to attend or participate in other cases or proceedings as required by the Chief Federal Defender.

b. The Chief Federal Defender will select a mentor case that appears

to present a full spectrum of issues including pretrial release or detention, discovery review, guideline calculations, motion practice, plea negotiations and/or trial, and sentencing matters.

c. Both the mentor and the mentee will be appointed as counsel in the case.

d. The mentor is lead counsel, has primary authority over client communications and legal strategy, and has ultimate responsibility for the client's representation. The mentor will supervise the mentee and determine appropriate tasks and extent of responsibility with due regard for the needs of the case and the mentee's experience.

e. The mentee may act and must be prepared to act for the client in court and out of court under the mentor's direction.

4. Payment.

a. The mentor will be paid at the standard CJA rate. The mentee will be paid 75% of the standard CJA rate, rounded to the nearest dollar. The mentee must keep contemporaneous time sheets in the form required by eVoucher and must seek payment through eVoucher.

b. The mentor must review the mentee's work and voucher and file ex parte certification in CM/ECF that the mentee performed the work reflected in the mentee's time sheets, that the time expended was reasonably necessary for adequate representation, and that payment in the amount the mentee requests is necessary to provide fair compensation. The mentee may submit a voucher only after the mentor has filed the required certificate.

c. Other than travel expenses incurred by the mentee, the mentor will seek reimbursement for reasonable expenses incurred in the course of the representation.

d. The mentee may request reimbursement only for travel expenses.

II. Motions for CJA Funds.

A. No Motion Required or Permitted. A motion is not to be filed for:

1. Certain Services Other than Counsel.

a. Interpreter, Investigator, and Paralegal Services Up to $1,800

Total. Where necessary for adequate representation, the *first* CJA Panel member appointed to a case is pre-authorized, pursuant to 18 U.S.C. § 3006A(e), to expend up to $1,800 for services of an interpreter, an investigator, a paralegal, or any combination of these services, without filing a motion. Any amount in excess of $1,800 must be pre-approved by the judge as provided in Part II.B or payment will not be approved. Counsel must advise service providers of this limitation. To qualify under this provision, all services must be billed and invoiced at an hourly rate (document translation at a rate per word or per page). All services and expenses remain subject to review for reasonableness at the conclusion of the case.

b. Other Services Up to $900. Where all expert services other than interpreter, investigator, and paralegal do not exceed $900, and subject to Part II.B.1 below, counsel need not seek pre-authorization to obtain services of any service provider.

c. Applying (a) and (b).

Example 1: Counsel intends to retain an investigator whose services will cost $1,080 ($60/hr x 18 hrs) but does not intend to retain a paralegal or interpreter. Counsel need not file a motion because the investigator does not exceed $1,800.

Example 2: Counsel intends to spend $900 for interpreter services ($50/hr x 18 hrs) and $780 for investigative services ($60/hr x 13 hrs). A firearms expert is also needed and is expected to total $450 ($150/hr x 3 hrs). No motion is required as counsel is pre-authorized for an interpreter and paralegal services up to a total of $1,800 and the firearms expert does not exceed $900.

Example 3: Counsel has obtained interpreter services for $300 and paralegal services for $300. A firearms expert is also needed and services are expected to total $1,050 ($150/hr x 7 hrs). No motion is required as to the interpreter and paralegal, but counsel must file a motion for the firearms expert because her services will exceed $900.

2. Payment for Counsel Services Over Statutory Maximum. Submission of a CJA 20 and CJA 26 in eVoucher constitutes a request for payment over the statutory maximum. Any order granting payment over the statutory maximum or finding a case to be complex, extended, or otherwise unusual will not guarantee payment and will have no binding or preclusive effect on any judge deciding appropriate compensation.

3. Some Travel Out of District and/or Overnight. Counsel need not seek pre-approval for necessary overnight travel to attend court. Where an in-person visit is necessary for adequate representation, counsel need not seek pre-approval to travel to a bordering state or for overnight travel to see a client.

B. Motion Required. Counsel must file an ex parte motion to obtain:

1. New Service Provider on Appointment of Second or Subsequent CJA Counsel. CJA counsel appointed after another has withdrawn must use the services of investigators, interpreters, and other service providers retained by previous counsel unless, on motion, new counsel shows compelling reasons to retain a new service provider. This requirement does not apply to investigators employed by the Federal Defenders or to paralegals. Unauthorized new providers will not be paid.

2. Services Other than Counsel. Except as provided in Part II.A.1 above, counsel must move for authorization to obtain services other than counsel. If the motion is granted, counsel must give the service provider a copy of the order and advise him or her that payment for services will be limited to the specific amount authorized. Counsel's motion must:

   a. state the provider's hourly rate, the number of hours required to complete the task, the total amount required, and the total amount billed to date by the same service provider. Failure to meet these criteria will result in administrative rejection of the motion without judicial review;

   b. explain why the services are necessary for adequate representation in the context of the case; and

   c. if all amounts billed, requested, and paid to date for the service at issue exceed $2,500, include the phrase "(Circuit Approval Required)" immediately below the title of the motion.

3. Rule 17(b) Subpoenas and Witness Fees and Expenses. Motions for subpoenas under Fed. R. Crim. P. 17(b) or for fees and expenses for fact witnesses or a defendant under 28 U.S.C. § 1825 must:

   a. comply with D. Mont. L.R. CR 17;

   b. state that fees and expenses of fact witnesses and costs of service of process cannot be paid from CJA funds under CJA Guidelines § 230.66.50;

c. request that the United States Marshals Service be ordered to pay witness fees and expenses; and

d. if formal service of subpoenas is required, request that the Marshals Service be ordered to effect or pay for service of process.

4. Interim Payment. A motion seeking interim payment for counsel services before the conclusion of the case must include the phrase "(Circuit Approval Required)" immediately below the title of the motion. A motion for interim payment is permitted only when:

a. interlocutory appeal is taken and the appellant's brief has been filed; or

b. three years have passed since indictment and counsel no longer represents the defendant.

III. Payment for Representation and Services Other than Counsel.

A. Billing and Records.

1. Time to Submit in eVoucher. All CJA Panel members must submit vouchers seeking payment for their services and services other than counsel through eVoucher, with appropriate documentation, no later than 45 days after judgment or dismissal. Counsel are strongly encouraged to submit all vouchers in a case at one time.

2. Recording Time. Counsel and service providers must record time and services in eVoucher or by other detailed notation contemporaneously with performance of services. Counsel must follow the guidance in Part IV.E.1 and Appendix 6 of the Ninth Circuit's CJA Policies.

3. Multiple CJA Panel Attorneys. Where multiple panel members have represented one client in a case, no attorney will be paid until all counsel submit their vouchers, except as allowed on motion for interim payment, *see* II.B.4.

4. Record Retention. Counsel must retain all billing records, including those received from other service providers, for at least three years after final approval or rejection of a voucher.

5. Confidentiality and Disclosure.

a. Form CJA 20 will be filed in CM/ECF after payment is made. Counsel's time sheets and supporting documents will not be filed and are confidential but may be discoverable in a proceeding under

28 U.S.C. § 2255.

b. When necessary to protect the client's safety, counsel may make a note in eVoucher requesting redaction of the client's name from Form CJA 20 before it is filed in CM/ECF. To request redaction of Form CJA 20 for any other reason, counsel must file an ex parte motion in CM/ECF.

6. Case Budgeting. Counsel must file ex parte notice when counsel expects the total cost of the case, including counsel and expert services and expenses, will exceed $75,000, or when counsel's services have exceeded $45,000 and sentencing has not been set or has been continued.

B. Cost Reduction Measures.

1. Billing Increment. Counsel must bill in tenths of an hour.

2. Aggregation. Counsel must aggregate time spent on one task that is performed at various times over the course of a day to accurately reflect the total time spent. For example, if counsel receives three notices of filing and reads each document when it is received, the total actual time spent reading all new filings should be aggregated at the end of the day. When counsel has four calls with the prosecutor or two calls and two emails about the plea agreement, the total actual time spent in plea discussions should be aggregated at the end of the day.

3. Expenses. Reasonable expenses will be reimbursed as consistent with Appendix 7 of the Ninth Circuit's CJA Policies.

4. Multiple Defendants Using One Expert Service Provider. Counsel should consider sharing one expert where possible and consistent with adequate representation for each defendant. An engagement letter, *see, e.g.*, Appendix 3 of the Ninth Circuit's CJA Policies, should be used.

C. Voucher Reductions. This section does not apply to reductions based on billing or mathematical errors.

1. Notice and Order. A presiding judge considering a voucher reduction will issue an order to counsel to show cause. The order must identify the proposed amount of the reduction, explain the reason(s) for it, require counsel's response to these reasons, and advise counsel of the option to request independent review.

2. Request by Counsel. Counsel must respond to the order to show cause and, in addition, choose one of the following:

a. accept the proposed reduction and waive independent review; or

b. contest the proposed reduction and waive independent review; or

c. contest the proposed reduction and request independent review.

3. Judge's Options. The presiding judge will review counsel's response.

a. If counsel waives or does not request independent review, the presiding judge will make a final decision regarding counsel's compensation and authorize payment.

b. If counsel requests independent review, but the presiding judge approves payment of the amount requested in the response, that decision is final and the presiding judge will authorize payment.

c. If counsel requested independent review and (b) does not apply, the presiding judge will forward the voucher to a reviewing judge appointed by the Chief Judge.

4. Review and Decision.

a. The reviewing judge will consider all relevant materials, may request input from counsel or court staff, and will make and serve on counsel a recommendation to the presiding judge.

b. The presiding judge will promptly review the recommendation, make a final decision regarding counsel's compensation, briefly explain the reason(s) for the decision, and authorize payment.

5. Finality and Retroactivity. The presiding judge's authorization of payment is final. But, by submitting a supplemental CJA-20 in eVoucher, counsel may request independent review of any reduction to a voucher submitted on or after March 13, 2019, and before December 1, 2019.

IT IS SO ORDERED, effective **November 22, 2019**.

DATED this 21st day of November, 2019.

Dana L. Christensen, Chief Judge
United States District Court