



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

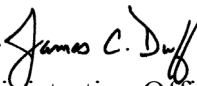
JAMES C. DUFF
Director


WASHINGTON, D.C. 20544

August 14, 2019

MEMORANDUM

To: Judges, United States Courts of Appeals
Judges, United States District Courts
U.S. Magistrate Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Senior Staff Attorneys
Circuit Librarians

From: James C. Duff 
Director, Administrative Office of the United States Courts

Honorable Raymond J. Lohier, Jr. 
Chair, Judicial Conference Committee on Defender Services

RE: JUDICIAL CONFERENCE ACTION ON CRIMINAL JUSTICE ACT POLICIES
(IMPORTANT INFORMATION)

The Judicial Conference has approved 29 of the 35 interim recommendations, with some modifications, in the [Report of the Ad Hoc Committee to Review the Criminal Justice Act](#) (*Cardone Report*). This memorandum provides information on those recommendations approved by the Conference that are most relevant to local administration of the Criminal Justice Act (CJA). We encourage court units to review these new Judicial Conference policies and to coordinate with their local federal defender and panel attorney district representative to ensure that local practices are consistent with Judicial Conference guidelines.

Background

In April 2015, Chief Justice John G. Roberts, Jr. appointed the [Ad Hoc Committee to Review the Criminal Justice Act Program](#) to conduct a comprehensive and impartial review

of the administration and operation of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A. The Committee, chaired by Judge Kathleen Cardone (TX-W), submitted its report to the Judicial Conference in November 2017. The Cardone Committee recommended that an independent Federal Defender Commission within the judicial branch, but outside the oversight of the Judicial Conference, be established with sole authority to set policy and practices related to the provision of federal defense. Recognizing that the creation of an independent commission would require not only Judicial Conference approval but also an act of Congress and could not be implemented immediately, the Cardone Committee made 35 interim recommendations designed to give more authority and autonomy within the current structure.

To date, the Judicial Conference has approved 29 of the 35 interim recommendations (19 at its September 2018 session, and 10 at its March 2019 session). Some of the recommendations were modified from their original form after consultation with Judge Cardone and the chairs of other relevant Conference committees whose jurisdictions are implicated by the report's recommendations. In addition, the Executive Committee and the Director of the Administrative Office of the United States Courts (AO) took actions implementing all or portions of five interim recommendations. Other recommendations, including the Cardone Committee's final recommendation regarding structural independence, have been deferred for further consideration.

CJA Voucher Review Standard

The Cardone Committee identified a number of issues relating to the review of CJA panel attorney compensation vouchers, most notably the practice of voucher cutting. *Cardone Report*, at pp. 103, 109-11. To address these issues, and to assist courts with their voucher review responsibilities, the Judicial Conference approved the following standard for the review and approval of CJA vouchers:

Voucher cuts should be limited to mathematical errors, instances in which work billed was not compensable, was not undertaken or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

The new standard has been incorporated into the *Guide to Judiciary Policy*, Vol. 7A (*CJA Guidelines*), [§ 230.33.10](#), and complements the Judicial Conference policy that vouchers should not be reduced in the interest of cost-containment or out of concerns about the Defender Services budget. *Id.* [§ 230.33.20](#). The Judiciary's eVoucher system will be updated to incorporate this standard into the voucher review and approval process.

Assistance with Reviewing CJA Vouchers and Service-Provider Requests

The Cardone Report recognized that some districts rely upon CJA supervising attorneys or administrators employed by the court or the federal defender office or circuit case-budgeting attorneys to review vouchers and service provider requests and make recommendations to the presiding judge. The Cardone Report cited several benefits of

having a centralized and knowledgeable resource to assist judges with these CJA-related matters. *Cardone Report*, at pp. 83-84, 125-33. Recognizing these benefits, the Judicial Conference approved the following policy:

Every circuit should have available at least one case budgeting attorney and reviewing judges should give due weight to their recommendations in reviewing vouchers and requests for expert services, and must articulate their reasons for departing from the case budgeting attorney's recommendations.

This policy is contained in § [230.26.15](#) of the *CJA Guidelines*.

Independent Review Process for Panel Attorneys to Challenge Voucher Reductions

According to the Cardone Report, one of the issues with the voucher review process is the inability of panel attorneys to appeal a voucher reduction.¹ *Cardone Report*, at pp. 120-21. To improve the fairness of the voucher review process, the Judicial Conference adopted the following policy:

Every district or division should implement an independent review process for panel attorneys who wish to challenge any reductions to vouchers that have been made by the presiding judge. Any challenged reduction should be subject to review in accordance with this independent review process. All processes implemented by a district or division must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid pursuant to 18 U.S.C. § 3006A(d).

This policy can be found in section [230.33.40](#) of the *CJA Guidelines* and section XII.C of the [Model CJA Plan](#). The independent review process is intended to ensure that panel attorneys have some recourse to challenge a voucher reduction *after* the presiding judge has authorized payment for less than the amount claimed. For procedures to follow *before* reducing a voucher (*i.e.*, when the court is contemplating a reduction but has not yet taken final action on the voucher), please see section [230.33.30](#) of the *CJA Guidelines*, which recommends that the court provide the panel attorney with notice of the proposed reduction and an opportunity to address the court's concern(s). In addition, the Model CJA Plan recommends referring the voucher to a local committee, whose membership includes experienced defense counsel, or a CJA Supervising Attorney, for a recommendation in those instances where the court is considering reducing the claim. *See Guide*, Vol. 7A, Appx. A, § XII.B.6.

¹ Circuit courts have uniformly agreed that the decision to reduce or deny a CJA voucher is an administrative act that cannot be appealed. *Cardone Report*, at p. 116.

CJA Plans (Panel Size, Training Requirement, and Mentoring Program)

The CJA requires that each district place in operation a plan for providing representation and other defense services to eligible persons. 18 U.S.C. § 3006A(a). Effective CJA plans can improve the quality of representation in a district. The Cardone Report recommended that districts include certain features in their plans to ensure the availability of qualified lawyers who can provide representation consistent with the best practices of the legal profession. *Cardone Report*, at pp. 79-82. Based on the recommendation, the Judicial Conference approved the following:

All districts must develop, regularly review and update, and adhere to a CJA plan as per Judicial Conference policy. Reference should be made to the most recent model plan and best practices. The plan should include:

- a) Provision for appointing CJA panel attorneys to a sufficient number of cases per year so that these attorneys remain proficient in criminal defense work.**
- b) A training requirement to be appointed to and then remain on the panel.**
- c) A mentoring program to increase the pool of qualified candidates.**

Districts may refer to the [Model CJA Plan](#) for guidance on how to incorporate the features mentioned above. *See Guide*, Vol. 7A, Appx. 2A, § IX.B.2 (size of the CJA panel and number of appointments per panel member); § XI.B (training requirements for CJA panel members); and § VIII.B.7 (mentoring program).

Each district court should review its CJA plan every five years and amend it as needed. *Guide*, Vol. 7A, § 210.10.10(e). Courts are encouraged to coordinate with their local federal defender and panel attorney district representative concerning review of the district plan and any revisions.

Appointment of Counsel in Capital Cases

Judges are statutorily required to consider the recommendations of the local federal defender when appointing counsel in federal capital prosecution cases. *See* 18 U.S.C. § 3005. To ensure that judges benefit from the expertise of the federal defender and resource counsel² when appointing counsel in *all* capital cases, the Judicial Conference approved the following policy:

² Resource counsel are death penalty experts who may be relied upon by the court for assistance with selection and appointment of counsel, case-budgeting, and legal, practical, and other matters arising in federal capital cases. They are part of the AO's Defender Services Death Penalty Resource Counsel projects. *See Guide*, Vol. 7A, Appx. 2A, § XIV.B.4.

In appointing counsel in capital cases, judges should consider and give due weight to the recommendations by federal defenders and resource counsel and articulate reasons for not doing so.

This policy is contained in [section 620](#) of the *CJA Guidelines*: § 620.30(a)(1) (federal capital prosecutions); § 620.40 (federal capital appeals); § 620.50 (capital post-conviction proceedings). It also appears in section XIV of the [Model CJA Plan](#).

Training and Resources on CJA-Related Topics

Recognizing the important role that judges play in administering the CJA, the Judicial Conference approved the Cardone Committee's recommendations for increased training for judges and court staff on issues relevant to federal criminal defense, including defense best practices; the need for experts, investigators, and other service providers; electronic discovery needs; and funding needs in capital cases. [JCUS-SEP 18, pp. 40-41](#). The Defender Services Committee, through the AO's Defender Services Office, is coordinating with the Federal Judicial Center to expand judicial training on these matters and is considering opportunities and appropriate venues to train court staff on similar topics.

Other Interim Recommendations from the Cardone Report

The Judicial Conference approved other Interim Recommendations from the Cardone Report, including recommendations relating to the establishment of and staffing for federal defender offices; recommendations to improve the quality and cost-effectiveness of representation in capital cases, including capital habeas cases; and recommendations for increased funding and resources, including in the areas of litigation support and information technology. For a comprehensive list of Judicial Conference actions concerning the Cardone Report, see [Report of Proceedings \(Sept. 13, 2018\)](#) (pp. 38-42) and [Report of Proceedings \(Mar. 12, 2019\)](#) (pp. 18-20). The Defender Services Committee is monitoring the implementation of these recommendations.

Questions?

The AO's Defender Services Office (DSO) is available to provide guidance on these and other CJA-related policies. Please feel free to contact the DSO Legal and Policy Division Duty Attorney at 202-502-3030 or dso_lpd@ao.uscourts.gov.

cc: CJA Panel Attorney District Representatives