

GENERAL ORDER NO. 2
AMENDED CRIMINAL JUSTICE ACT PLAN
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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I. AUTHORITY

Pursuant to the Criminal Justice Act and related statutes (18 U.S.C. § 3006A -- Adequate Representation of Defendants, 18 U.S.C. § 3005 -- Counsel and Witnesses in Capital Cases, 18 U.S.C. § 3599 -- Counsel for Financially Unable Defendants, 18 U.S.C. § 983(b) - - Civil Forfeiture Proceedings) (collectively “CJA” or the “Act”), the United States District Court for the Northern District of California adopts this General Order as the Amended Criminal Justice Act Plan (the “Plan”) for the Northern District of California.

II. POLICY

It is the policy of this Court to provide adequate legal representation for individuals who meet the requirements of Sections V and VI of this Plan.

III. GUIDELINES FOR IMPLEMENTATION

The Court, the Clerk of Court, Federal Public Defender Organization, and private attorneys appointed under the Act shall comply with the provisions of this Plan,

Volume 7 of the Guide to Judiciary Policy, the CJA Panel Attorney Manual for the Northern District of California, the Criminal Justice Act Procedures contained in General Order No. 50, the rules and regulations of the U.S. Judicial Conference, the policies of the Ninth Circuit Judicial Council, including its billing policy, and any other guidelines that may be implemented by the CJA Administration Committee.

IV. ADMINISTRATION OF THE PLAN - CJA ADMINISTRATION COMMITTEE

A. Purpose

The CJA Administration Committee shall act for the District in the administration of the Act and will promulgate regulations necessary to implement this Plan.

B. Composition

The Chief Judge shall appoint members of the CJA Administration Committee, including the Chair. The CJA Administration Committee shall consist of three District Judges, two Magistrate Judges, three experienced criminal defense attorneys with prior panel experience, the current CJA Panel Attorney District Representative (as selected by the Chief Judge), the Federal Public Defender, the CJA Supervising Attorney, and the Clerk of the Court or designee thereof. There shall be a District Judge from each of the San Francisco, Oakland, and San Jose divisions of the Northern District. In no event may an attorney for the government be a member of the CJA Administration Committee or of the Panel Selection Sub-Committees.

C. Meetings

The CJA Administration Committee shall meet in person or telephonically at such time and place as its Chair directs but at least annually to review and forward to the Chief Judge panel recommendations for the forthcoming year, pursuant to Section X of this Plan.

D. Quorum

Six members shall constitute a quorum.

E. Terms

The members of the CJA Administration Committee who are judicial officers serve at the pleasure of the Chief Judge. The Federal Public Defender, the Clerk of Court or a designee, the CJA Supervising Attorney and the CJA Panel Attorney District Representative shall serve *ex officio*. All other members may serve a maximum of two consecutive three-year terms. Such terms shall be staggered.

F. Subcommittees

The Chair may appoint subcommittees, both standing and *ad hoc*, as may be required to assist the CJA Administration Committee in its work. When it is appropriate according to the issue involved, the Chair may appoint any person considered to have the necessary expertise and qualifications to *ad hoc* subcommittees.

V. DETERMINATION OF FINANCIAL ELIGIBILITY

A. Fact-finding

Whenever a person who is entitled to representation under this Plan appears without counsel, the Court shall advise the person of the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford adequate representation. The determination of eligibility for representation under the Act is a judicial function to be performed by a District or Magistrate Judge. Relevant information bearing on financial eligibility must be provided by the person by means of a financial eligibility affidavit which shall be completed and executed before a judicial officer. Unless the person waives representation, if the Court finds, after a review of the financial information submitted, that the person is eligible, the Court shall appoint counsel pursuant to the provisions in this Plan.

B. Disclosure of Change in Eligibility

If, at any time after appointment, counsel obtains information that a client is financially able to pay, in whole or in part, for legal or other services in connection with his representation, and the information is not protected as a privileged communication, counsel shall advise the Court.

C. Partial Payment or Reimbursement

If at the time of appointment or at any other time thereafter, the Court finds that a person for whom counsel has been appointed under the Act is able to obtain counsel or pay, in whole or in part, for his representation, or that funds are available from another source to pay for the person's representation, the Court shall take appropriate action, which may include terminating the appointment of counsel and ordering the represented person to partially reimburse the Court for the representation already provided, or permitting assigned counsel to continue to represent the person with the person paying all or part of the furnished representation.

D. Outside Payment

No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by Order of the Court.

E. Change of Financial Circumstances for Persons with Retained Counsel

If at any stage of the proceedings, including appeal, the Court finds that a person who previously did not have counsel appointed under the Act is financially unable to pay his or her retained counsel, the Court may appoint counsel as provided by the Act and authorize such payment as therein provided.

VI. PROVISIONS OF REPRESENTATION

A. Mandatory

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

1. charged with a felony or Class A misdemeanor;
2. a juvenile alleged to have committed an act of juvenile delinquency as defined by 18 U.S.C. § 5031;

3. charged with a violation of probation or faces enlargement of a condition, extension, or other adverse change;
4. under arrest, when such representation is required by law;
5. entitled to appointment of counsel in parole proceedings;
6. charged with a violation of supervised release or faces modification or enlargement of a condition, or extension or revocation of a term of supervised release;
7. subject to a mental condition hearing under of 18 U.S.C. Chapter 313;
8. in custody as a material witness;
9. seeking to set aside a death sentence under 28 U.S.C. §§ 2254 or 2255;
10. entitled to appointment of counsel in verification of consent proceedings 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
11. entitled to appointment of counsel under the Sixth Amendment to the Constitution or by statute, or faces loss of liberty in a case, and federal law requires the appointment of counsel.

B. Discretionary

Whenever a District or Magistrate Judge determines that the interests of justice so require, representation may be provided for any financially eligible person who is also:

1. charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence of confinement is authorized; or
2. seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. §§ 2241, 2254, or 2255;
3. charged with civil or criminal contempt and faces the loss of liberty;
4. called as a 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, or a civil or criminal contempt proceeding, or otherwise faces a loss of liberty;
5. proposed by the United States Attorney for processing under a pretrial diversion program; or
6. held for international extradition under Title 18 U.S.C. Chapter 209.
7. seeking a reduction in a sentence pursuant to 18 U.S.C. Section 3582(c)(2) and USSG 1B1.10 (Reduction in Term of Imprisonment as a Result of an Amended Guideline Range).

C. Ancillary Matters

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to 18 U.S.C. § 3006A. In determining whether a matter is ancillary to the proceedings, the Court should consider whether the matter, or

the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal charge.

VII. TIMING OF APPOINTMENT

A. When Counsel Shall Be Provided

Counsel shall be provided to an eligible person as soon as feasible after arrest, initial appearance before a District or Magistrate Judge, the filing of formal charges (or notification of the filing of formal charges if the charges are sealed), or when a District or Magistrate Judge otherwise determines appointment of counsel to be appropriate under the Act. Every effort shall be made to ensure that counsel is appointed as expeditiously as possible. Appointment of counsel may be made retroactive to include representation furnished pursuant to this Plan but prior to formal appointment.

B. Continuity and Duration of Appointment

A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the District or Magistrate Judge through appeal, including ancillary matters appropriate to the proceedings.

C. Appeals

In the event that a defendant enters a plea of guilty or is convicted following trial, appointed trial counsel shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely notice of appeal. Appointed trial counsel shall continue to represent the defendant on appeal unless or until relieved by the District Court or the Court of Appeals.

VIII. COUNSEL TO BE APPOINTED

A. Introduction

This Plan provides for the furnishing of legal services by a Federal Public Defender Organization, supervised by a Federal Public Defender, serving the United States District Court for the Northern District of California and for the appointment and compensation of private counsel. The term "private counsel" includes counsel furnished by a state, local, or non-profit defender organization, and a claim by such an entity for compensation will be approved on the same basis as in the case of the appointment of private counsel.

B. Federal Public Defender Organization

1. Authority. The Federal Public Defender Organization for the Northern District of California, previously established in this District under the Act, shall continue to operate pursuant to the provisions of 18 U.S.C. § 3006A(g)(2)(A) of the Act, as well as the Guidelines for the Administering the Criminal Justice Act (Volume VII, Guide to Judiciary Policy), promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Act.
2. Reporting Requirements. The Federal Public Defender shall furnish to this Court a roster of staff attorneys and shall report any changes thereto to the Court.

3. Assignment of Cases. Upon determining that a person requires representation under the Act, a District or Magistrate Judge shall appoint the Federal Public Defender Organization if that Organization can accept the appointment. The Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in that office. Accordingly, the Court will appoint cases in the name of the Federal Public Defender Organization rather than in the name of individual staff attorneys.

C. CJA Panel Attorneys

1. Appointment. If the Federal Public Defender cannot accept an appointment, the Court shall select a panel attorney who is willing to undertake the representation. The Court shall appoint panel members on a strict rotational basis, with the Federal Public Defender identifying the attorney next eligible and available to take a case. Exceptions are allowed only when the representation calls for a particular specialization or demand.
2. Record Keeping. The Federal Public Defender will keep a record of all such appointments for review by the CJA Administration Committee upon request. Both the Federal Public Defender and the CJA Unit shall maintain current lists of all panel attorneys with office addresses, telephone numbers, and email addresses.

D. Non-Panel Attorneys

When the District or Magistrate Judge presiding over the case (or the master calendar Magistrate Judge, if a District Judge has not yet been assigned to the case) determines that the appointment of an attorney who is not a member of a panel is in the interest of justice, judicial economy or continuity of representation, the attorney may be appointed to represent a person eligible under the Act. To preserve the integrity of the panel selection process, such appointments should be made only in exceptional circumstances. Any attorney so appointed shall be subject to the provisions of this Plan.

E. Limited Representation Assignments

A separate panel rotation for material witness, Rule 40, probation, parole and supervised release violations and other limited representation assignments will be maintained. The same attorney who handled the underlying case will ordinarily be assigned the succeeding related case even if he or she is no longer on the panel as of the time of the assignment.

D. Substitution of Counsel

The Court, in the interests of justice, may substitute one appointed counsel for another at any stage in the proceedings.

IX. NUMBER OF COUNSEL TO BE APPOINTED

A. Non-Capital Cases

Except as otherwise provided only one attorney shall be appointed to represent a person who has requested representation under the Act. More than one attorney may be appointed in any case determined by the Court to involve exceptional circumstances. The Court shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown.

B. Capital and Capital-Eligible Cases

In a capital prosecution, at least two attorneys should be appointed for the defendant. In assigning counsel, the Court shall consider the recommendation of the Federal Public Defender Organization pursuant to 18 U.S.C. Section 3005.

C. Capital Habeas Cases

Due to the complex, demanding and protracted nature of capital habeas proceedings, a capital habeas petitioner is entitled to appointment of one or more qualified attorneys. The Selection Board for the Northern District of California initially will evaluate the appropriate number of counsel to be appointed in a capital habeas case and, considering all relevant factors, will make a recommendation to the assigned Judge as to whether one or two attorneys should be appointed. The assigned Judge may consider a motion for appointment of second counsel at any point in the proceedings.

X. **SELECTION OF PANEL ATTORNEYS**

A. Application for Panel Membership

Application forms for panel membership shall be made available, upon request, by the Federal Public Defender's Office. Applicants shall forward completed applications to the Office of the Federal Public Defender which shall be reviewed by the appropriate panel selection subcommittee.

B. Panel Selection Subcommittees

There shall be panel selection subcommittees on panel membership for the San Francisco/Oakland divisions which shall select members for the San Francisco/Oakland Panel, and for the San Jose division which shall select members for the San Jose Panel. There shall also be an appellate panel selection subcommittee which shall select members for the Appellate Panel. Chairs of each subcommittee shall be selected by the Chair of the CJA Administration Committee in consultation with the Chief Judge.

1. Composition.

- a. San Francisco/Oakland and San Jose Panel Selection Subcommittees. The Chair of the CJA Administration Committee shall select a District Judge member of each panel selection subcommittee, who shall select the Magistrate Judge and attorney members of his or her panel selection subcommittee, subject to approval by the Chair of the CJA Administration Committee. The trial panel selection subcommittees shall consist of at least one District Judge, one Magistrate Judge, two experienced criminal attorneys with prior panel experience, the Federal Public Defender and/or a designee, the CJA Supervising Attorney and the current CJA Panel Attorney District Representative. With the exception of the Federal Public Defender, members of each panel selection subcommittee shall have their chambers or principal place of business in the geographic area served by that subcommittee.
- b. Appellate Panel Selection Subcommittee. The Chair of the CJA Administration Committee shall select a District Judge member of the Appeals Selection Subcommittee, who shall select the Magistrate Judge and attorney members of

his or her panel selection subcommittee, subject to approval by the Chair of the CJA Administration Committee. The Appellate Selection Subcommittee shall consist of at least one District Judge, one Magistrate Judge, two experienced criminal attorneys with prior panel and appellate experience and the Federal Public Defender and/or a designee.

- c. Eureka Panel Selection Subcommittee. This subcommittee shall consist of the resident Magistrate Judge in conjunction with the Chair of the CJA Administration Committee and the Federal Defender or a designee.
2. Meetings. The panel selection subcommittees shall annually review attorney applications and recommend attorneys for appointment to the panel.
3. Terms. Each non-judicial member of a panel selection subcommittee, except *ex officio* members, shall serve a three-year term and may be reappointed by the Chair of the CJA Administration Committee for one successive term.
4. Process of Selecting Panel Attorneys. The three panel selection subcommittees shall select panel attorneys based on their proven experience and competence in the field of criminal defense, proof that they meet the minimum requirements set forth in this Plan, and their willingness to serve indigent defendants. The panel selection subcommittees will present their appointment recommendations to the Chair of the CJA Administration Committee, who will present them to a quorum of the CJA Administration Committee for approval, after which the Chair of the CJA Administration Committee will present the list of recommended panel attorneys to the Chief Judge for final approval.
5. Additional Panel Selection Subcommittee Responsibilities. At least annually, the panel selection subcommittees shall (a) review the operation and administration of their panels over the preceding year and make recommendations to the CJA Administration Committee regarding the selection, recommendation and appointment process and panel management, and (b) determine the continued availability and willingness of each panel member to accept appointments.

XI. PANEL ATTORNEY QUALIFICATIONS AND REQUIREMENTS

A. General Qualifications

Each attorney appointed to the panel shall have:

1. Membership in good standing of the bar of this Court and of the State Bar of California;
2. A principal place of business within the specific Court division for the applicable panel, required at the time the attorney submits an application for panel membership and during the entire term of membership;
3. Demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the Federal Sentencing Guidelines;

4. Minimum relevant professional experience as follows:
 - a. Five years of continuous private federal criminal practice, or seven years of criminal practice in state or federal court, or three years of experience as an Assistant United States Attorney or Assistant Federal Public Defender.
 - b. For trial panel membership, five federal or state felony jury trials. Two of the required trials may be replaced with equivalent experience such as unusually complex matters which are settled short of trial, criminal appeals which require unusual knowledge or effort or substantial civil jury trials. Any applicant who has not tried two federal criminal jury trials must audit two cases from start to finish pursuant to the mentor program established under the Plan. Successful completion of the mentor program will satisfy the requirements necessary to serve on a trial panel, but it does not guarantee admission. . This audit shall include watching at least one full federal criminal trial.
 - c. In the case of the appellate panel, ten federal or state felony appeals or combination thereof. Five of the required appeals may be replaced with equivalent experience such as criminal trials, habeas corpus proceedings, or complex criminal matters settled short of trial.
 - d. Members of the San Francisco/Oakland panel must be willing to take cases in either venue.
5. Such additional qualifications as may be established by the CJA Administration Committee.

B. Special Qualifications for Capital Cases

Pursuant to 18 U.S.C. § 3599(b), at least one attorney must have been admitted to practice in the Court in which the prosecution is to be tried for not less than five years, and must have had not less than three years' experience in the actual trial of felony prosecutions in that Court. The presiding judicial officer, for good cause, may appoint an attorney who may not otherwise qualify, but who has the background, knowledge, and experience necessary to properly represent the defendant.

C. Mandatory Continuing Legal Education

Each panel member shall annually attend, at his or her own expense, five hours of continuing legal education (CLE) specifically concerning federal criminal practice and shall so certify by December 1st of each year to the Federal Public Defender on forms available at that office. These five hours of CLE may be satisfied by programs which also satisfy State Bar minimum CLE requirements.

D. Mentor Program

Panel members are expected to agree to reasonable mentoring requests. The Federal Public Defender shall administer this program. If requested by the Federal Public Defender, the trial panel member shall serve as a mentor to a non-panel attorney ("mentee") who has not tried two federal criminal jury trials. The mentor shall provide an opportunity for the mentee to audit all aspects of a federal criminal case, including client conferences, strategy determination, motion and trial preparation and court

appearances, and the mentee shall be part of the defense team for the purposes of creating duties of loyalty and confidentiality owed to the client. To complete the requirements of the program, mentees need to audit two federal criminal cases from start to finish including at least one jury trial and two of each of the following: arraignment, detention hearing, motion hearing, and sentencing.

XII. TERM LIMITS FOR PANEL ATTORNEYS

A. Term Limits

Each panel member will serve for a three-year term. San Francisco and Oakland Panel Attorneys who have completed their terms may, after a one-year hiatus, seek reappointment for a new three-year term. Panel attorneys on the San Jose, Eureka, and Appellate Panels are not required to wait one year before seeking a new term. A panel member's term will continue until the conclusion of any active representation under this Plan, but no new appointments will be offered. Members of the panels shall serve at the pleasure of the Court.

B. Leaves of Absence

A panel member may take a leave of absence not to exceed three months without being required to resign from the panel, which can be initiated by the panel member sending a letter to the CJA Supervising Attorney. The leave of absence will not extend the panel attorney's term. The CJA Administration Committee may permit longer leave periods if justified.

XIII. REMOVAL FROM THE PANEL

A. Mandatory Removal

Any attorney whose right to practice in this District or the State of California has been suspended or revoked shall be automatically removed from the panel.

B. Discretionary Removal

1. For good cause shown, the CJA Administration Committee may remove an attorney from the panel for engaging in unethical behavior, improper billing, or misconduct or for failing to represent his or her client in a vigorous, competent, professional, or ethical way.

2. The CJA Administration Committee may remove any attorney who does not accept appointments consistent with the acceptance rates for their relevant panel. The attorney will be given reasonable notice and an opportunity to cure the imbalance.

C. Removal Procedure

1. Filing a Complaint

Any person who believes that a panel member's conduct should be investigated may file a complaint addressed to the Chair of the CJA Administration Committee and delivered to the CJA Unit in a sealed envelope marked "confidential." A complaint should be made as soon as possible after the event from which it arises so that fair consideration of the facts is possible; a complaint is subject to dismissal when the passage of time has rendered adequate investigation impracticable. A complaint must meet the following requirements:

- a. The complaint may be in letter format, not to exceed five typewritten or legible handwritten pages, and it must contain a thorough statement of what occurred, the time and place of the occurrence(s), and any other information that would assist investigation, such as the presence of witnesses and their names and contact information.
- b. Supporting documentation should be attached.
- c. The complaint must be signed and the complainant's address and day time phone provided. Anonymous complaints are disfavored; it is within the discretion of the CJA Administrative Committee to decide whether an anonymous complaint merits further investigation.

2. Investigating a Complaint

Within 21 days of receipt of the complaint, the Chair of the CJA Administration Committee shall determine whether the complaint should be investigated and forward this recommendation to the other committee members. If the other members agree with the Chair's determination, the Chair shall provide a copy of the complaint to the panel member who is the subject of the complaint and request that the panel member, within 14 days, submit a written response by letter addressed to the Chair. The CJA Administration Committee may undertake any investigation necessary to resolve the matter or may appoint a subcommittee to do so. The investigation may include interviewing the complainant, the panel attorney and witnesses. The CJA Administration Committee will provide the results of this investigation to the panel attorney and provide that attorney with an opportunity to respond.

3. Investigating a Complaint Involving Allegations of Criminal Activity

If the complaint alleges criminal activity, the CJA Administration Committee is not required to notify the panel attorney of the complaint if disclosure could jeopardize the investigation.

D. Bases for Automatic Dismissal of the Complaint

Within 21 days of receipt of the complaint, the Chair of the CJA Administration Committee shall automatically dismiss the complaint without further action if:

1. It alleges activities that can no longer be adequately investigated because of the passage of time;
2. It lacks sufficient detail; or
3. The allegations are clearly frivolous or untrue.

When a complaint is dismissed for any of these reasons, the subject panel member shall receive a copy of the complaint with a written statement of dismissal from the Chair of the CJA Administration Committee.

E. Final Determination by CJA Administration Committee

Within 90 days of receipt of a complaint, the CJA Administration Committee will dismiss a complaint if the allegations are found to be untrue or, if true, insufficiently serious to warrant removal from the panel. The CJA Administration Committee may

impose other sanctions short of removal, such as censure, a term of probation, or any other sanction it deems appropriate under the circumstances. If the CJA Administration Committee finds the allegations to be true and warranting removal, the Chair will notify the panel member of his/her removal from the panel. A notice of removal should occur no more than 90 days from the date the complainant filed the complaint, although the Chair of the CJA Administration Committee may extend this deadline for good cause.

F. Reapplication to the Panel Following Removal

Any member who is removed from the panel, whether for mandatory or discretionary reasons, may reapply for panel membership after waiting one year from the date of removal.

G. Miscellany

1. The original complaint and all papers, records and reports will be kept in confidential files by the Clerk of the Court.
2. The Chair of the CJA Administration Committee may extend a deadline for good cause shown.
3. The entire complaint process shall remain confidential until the Chair of the Administration Committee 1) formally dismisses the complaint, or 2) formally removes the attorney from the panel.
4. These procedures are not meant to preclude remedies available through malpractice or negligence suits arising from the provision of representational services.
5. If the CJA Administration Committee finds the allegations to be true and warranting removal from the panel, the Chair may, after consultation with the Chief Judge, refer the matter to the Court's Standing Committee on Professional Conduct.

XIV. RESOURCES

Answers to questions concerning appointment under the Act can generally be found in the applicable federal statutes: 18 U.S.C. § 3006A -- Adequate Representation of Defendants, 18 U.S.C. § 3005 -- Counsel and Witnesses in Capital Cases, 18 U.S.C. § 3599 -- Counsel for Financially Unable Defendants, 18 U.S.C. § 983(b) -- Civil Forfeiture Proceedings); the Guide to Judiciary Policy, Vol. 7; the CJA section of the Court's website (cand.uscourts.gov/cja); and this Court's CJA Policy Manual. All other questions should be directed to the CJA Unit.

XV. MISCELLANEOUS

A. Vouchers and Funding Requests

Panel attorneys and service providers shall submit vouchers and funding requests pursuant to the requirements set forth in General Order 50, Criminal Justice Act Procedures for Voucher Payment and Funding Requests.

B. Supersession

This Plan supersedes all prior Criminal Justice Act Plans of this Court.

C. Effective Date

This Plan shall take effect when approved by the Judges of the Northern District of California and the Judicial Council of the Ninth Circuit.

DATED: January 3, 1973

AMENDED: February 24, 2000
December 20, 2011
June 16, 2015

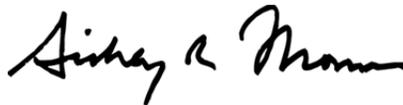
FOR THE COURT:



CHIEF JUDGE
UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF CALIFORNIA

DATE: June 16, 2015

FOR THE JUDICIAL COUNCIL OF THE 9TH CIRCUIT:



CHIEF JUDGE
UNITED STATES COURT OF APPEALS, 9TH CIRCUIT