

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENERAL ORDER No. 79

IN RE: Creation of CJA Special Counsel Panel

This pilot program creates a Special Counsel Panel under the Criminal Justice Act Plan for the Northern District of California, General Order 2, so the Court can grow and diversify its panel while the panel continues to provide excellent representation to indigent defendants.

Purpose:

The Northern District of California has one of the premier CJA panels. Nonetheless, the Court has encountered difficulty filling the panel at times in recent years. The low hourly rate and economic pressures of maintaining a practice in the Bay Area have resulted in a reduction in applications from experienced practitioners with significant private practices. Additionally, several of its most senior and dedicated panel lawyers are not necessarily in need of or desirous for a full panel case load. At the same time, the Court is making concerted efforts to diversify its panel, as well as ensure that the next generation of lawyers is trained on the unique practice of this federal court. The Court has already created a Tier II panel consisting of practitioners with demonstrated experience and expertise in indigent criminal defense, but who do not have significant federal court experience.

A Special Counsel panel will help to address these competing concerns. This panel will consist of attorneys with significant federal criminal experience who will not be assigned cases on the normal rotation. Instead, they will be assigned to assist members of the panel, particularly those attorneys who are less experienced in federal criminal defense practice, or be assigned as counsel of record in cases where a particular expertise is necessary.

This new panel will not limit the Court's ability to assign counsel who are not on the Special Counsel panel as advisory counsel.

Selection:

Members of this panel will be selected during the normal CJA panel selection process by the CJA panel selection subcommittee.

Appointment:

Requests for the appointment of a Special Counsel attorney should be made to the CJA Panel Administrator and may come from the attorney of record, the Federal Public Defender or the Court. Appointment of a Special Counsel attorney to a case will not be on a strict rotation as it is designed to match more senior attorneys on a case-by-case basis under special circumstances relative to need. The appointment will be determined by the CJA Panel Administrator in consultation with the Federal Public Defender and the CJA Supervising Attorney.

When appointed to assist, unless otherwise designated by the Court, the Special Counsel will not appear on the docket, but will instead be available to advise the counsel of record on the case and process. The CJA Supervising Attorney will notify the Court if Special Counsel has been appointed. The Special Counsel attorney shall be part of the defense team for the purposes of creating duties of loyalty and confidentiality owed to the client.

On those cases where a particular expertise is necessary, a member of this panel will be appointed as the attorney of record and must follow all of the requirements of a Tier I panel attorney.

Compensation:

Members of this panel will be compensated for their time, at the discretion of the Court and CJA Supervising Attorney, if they seek such reimbursement. Any such compensation must be submitted through the normal voucher procedure and at the same time the original panel attorney submits their voucher.

When appointed to assist, compensation will be presumptively capped at 30 hours of work per case at the current CJA trial attorney panel rate.

Two attorneys may be paid on a case under the Criminal Justice Act. For example, General Order No. 2 already provides for this to occur in certain circumstances.

When a member of the Special Counsel panel is appointed as the attorney of record, compensation will be the same as provided under the same rules and limitations as Tier I panel members.

Term:

In order to appropriately evaluate the success and viability of this pilot program, a four year term is necessary, allowing for two cycles of attorneys from the Tier II panel. Accordingly, this pilot program shall expire on January 22, 2025, at the same time as General Order 2, and will be evaluated in advance of that date to determine its efficacy.

ADOPTED: July 7, 2021

FOR THE COURT:

Richard Seeborg
Chief Judge