

FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF CALIFORNIA
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HILARY POTASHNER
Federal Public Defender
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December 6, 2016

Dear Applicant:

Our annual application period is now open, and closes on January 31, 2017.

Since 1996, the Panel has been administered by the Office of the Federal Public Defender for the Central District, by delegation from the Ninth Circuit. Panel members receive appointments under 18 U.S.C. § 3006A to handle direct criminal appeals and civil appeals from denial of relief under 28 U.S.C. §§ 2254 and 2255 in cases arising out of the Central District and Guam. Applicants should have significant federal criminal appellate experience or other transferable experience and a commitment to the representation of indigent defendants and petitioners. Excellent time management skills are also essential.

The number and types of appointments can vary from year to year, but panel members should expect to receive an appointment every 1-3 months. Panel attorneys are expected to accept appointment in at least 4 cases each year. Unless you have made a previous request to be removed from the rotation, you are expected to accept the appointment and not move to be relieved for a reason other than a conflict of interest. Frequent motions to be relieved are a basis for removal from the panel.

Panel members are expected to conform to applicable standards for the provision of services to indigent criminal defendants and petitioners, including but not limited to the ABA Standards for Criminal Justice (3d ed. 1993) ("The Defense Function"), available at http://www.abanet.org/crimjust/standards/dfunc_toc.html.

There are three listings of panel members: (1) general; (2) those with experience in habeas litigation who take appointments in 2254 and 2255 matters; and (3) highly experienced, those who are qualified to accept appointments in complicated and extensive matters, including cases with voluminous records and complex legal issues. Work on appeals is at the \$129 CJA rate. Please see Judiciary Policies and Procedures Chapter VII for more information on what is and is not reimbursable.

If you wish to be considered for a three-year term on the CJA Appellate Panel, you must complete and submit the attached Application, Professional Experience Inquiry Authorization

and Waiver, and Acknowledgment Form. Along with these completed forms, you must also submit a copy of your most recently filed non-*Anders* opening brief for a Central District CJA Appellate Panel appointed case. You may use additional pages to provide requested information, if desired.

You may submit the required materials via email as PDF attachments, to Mariah Ogden (Mariah_Ogden@fd.org). Alternatively, you may mail a printout of the materials to our office at the address above, marked to Ms. Ogden's attention. Whichever method you use, your submission is due by the close of business on January 31, 2017. If it is not received by then, you will not be considered for the 2017 term. (You will still be able to apply during any following application period.) Alternatively, you may mail a printout of the materials to our office at the address above, marked to Ms. Ogden's attention, which must be received by January 31, 2017.

Whichever method you use, your submission is due by the close of business on January 31, 2017. If it is not received by then, your application will not be considered for the 2017 term for the CJA Appellate panel. (You will still be able to apply during any following application period.)

Sincerely,

A handwritten signature in blue ink, reading "Chris Dybwad", is written over a horizontal line.

Christopher Dybwad
Chief Deputy Federal Public Defender
CJA Appellate Panel Administrator

**APPLICATION FOR MEMBERSHIP IN THE NINTH CIRCUIT CJA APPELLATE
PANEL FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Name: _____

Phone: _____

Business address: _____

Facsimile: _____

E-mail: _____

I am interested in handling: [] habeas only [] criminal only [] any type of case

1. Courts in which you are admitted to practice:

2. Please list up to five (5) cases in which you were counsel of record through an entire Ninth Circuit criminal or habeas appeal, including briefing and oral argument. Please list the name and case number, name of opposing counsel, and disposition. You may substitute cases from other jurisdictions, if necessary. If you have not completely handled five appellate matters in any court, please explain your relevant qualifications and experiences and how those will be transferable to Ninth Circuit appellate practice. You may answer on a separate page.

Case Name	Case Number	Opposing Counsel	Disposition
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. References (please include a daytime phone number):

Name Phone Number

Name Phone Number

Name Phone Number

Name Phone Number

4. Employment History:

Please list your employment history over the past ten years or since graduation from law school. Please indicate your major areas of practice for each position or time-period of self-employment.

You may answer on this page, or use a separate page to answer the following questions:

5. During the past five years, have you received an Order to Show Cause from any Court? If so, please list and explain:

6. Have you ever been removed from eligibility to receive appointments by any Court? If so, please list with dates and case numbers, and explain:

7. Have you ever been the subject of discipline by a State Bar or other disciplinary committee? If so, please list and explain:

8. Please list the continuing education courses you have completed in the past three years:

9. Please list any other information you believe is relevant to our consideration of your application. You may use a separate sheet if necessary.

PROFESSIONAL EXPERIENCE INQUIRY AUTHORIZATION AND WAIVER

I hereby authorize the administrators of the disciplinary and inquiry bodies of any court, bar or other association to disclose to the Criminal Justice Act Appellate Panel Administration Committee of the Central District of California all information contained in the files of such bodies concerning my present professional status, any complaints made against me, and the dispositions thereof. I expressly waive any right I may have to confidentiality in the foregoing information.

I also hereby authorize the custodian of any records or information related to my application for the Criminal Justice Act Appellate Panel for the Central District of California to permit the examination or receipt of such records or information by anyone designated by the Criminal Justice Act Appellate Panel Administration Committee.

Signature

Date

Print or Type Name

Social Security Number

ACKNOWLEDGMENT FORM

I understand that attorneys are selected to serve on the panel at the pleasure of the Court to represent indigent defendants; that this application only provides information for the use of the Federal Public Defender, by delegation from the Court, to select members of the panel and does not create entitlement for participation on the panel or appointment to cases; and that panel attorneys are subject to removal by the Federal Public Defender.

I understand and agree that representation of an indigent client upon appointment by the Court is a professional privilege and duty and that even if I am placed on the panel, I have no “right to appointment” to represent any indigent client.

I understand that failure to provide true and correct information in answer to any of the questions on this form will be grounds for denial of panel membership or removal from service on the panel at any time.

I certify that I have read and understand the above and agree to it.

Signature

Date

Print or Type Name

**PROCEDURES FOR THE CJA APPELLATE PANEL FOR THE
CENTRAL DISTRICT OF CALIFORNIA**
(Revised December 2016)

Since 1996, the Panel has been administered by the Office of the Federal Public Defender for the Central District of California (“FPDO”), by delegation from the Ninth Circuit. Panel members receive appointments under 18 U.S.C. § 3006A to handle direct criminal appeals and civil appeals from denial of relief under 28 U.S.C. §§ 2254 and 2255 in cases arising out of the Central District and elsewhere in the Ninth Circuit. Panel members are expected to have significant federal criminal appellate experience and a commitment to the representation of indigent defendants and petitioners. Terms on Panel for the Central District are renewable at the discretion of the Federal Public Defender (“FPD”), who reviews the applicant’s work, and also considers and solicits views from a number of institutional actors in this Circuit.

The procedures, standards, and policies outlined in this document were adopted to maximize the quality of representation for indigent defendants represented by CJA Appellate Panel (“Panel”) attorneys in Ninth Circuit appeals originating in the Central District of California. *See generally* Vera Institute of Justice, [*Good Practices for Panel Attorney Programs in the U.S. Courts of Appeals*](#) (2006) (AO-funded report) (setting out expected standards of appellate practice by panel attorneys, and recommending rigorous but flexible panel selection and appointments process).

I. DELEGATION OF AUTHORITY

The Ninth Circuit Court of Appeals has delegated authority to manage the appellate panel, and to assign panel appointments to a designee, in each district within the Circuit. In the Central District of California, the delegation has been made to the FPD; the program is currently administered by Chief Deputy Federal Public Defender Christopher Dybwad and his assistant, Mariah Ogden.

II. SELECTION, REAPPOINTMENT, STANDARDS OF PERFORMANCE, AND REMOVAL

When it is determined that additional attorneys are needed to appropriately staff the Panel, the FPDO will notify current members of both the trial and appellate panels, along with any others who have expressed interest in membership, and invite them to submit an application.

Selection. To apply, candidates who are not current Panel members must complete an application, submit two representative writing samples, and provide names of two or more references who are familiar with the applicant’s work, professional reputation commitment to indigent defense, and time management skills. Applications are accepted annually during the month of December. Applicants must be members in good standing of the State Bar of California, have their office within the state of California, and be able

to travel to any of the district courts or circuit courts when required. Preference is given to applicants practicing in the Central District of California.

A committee of experienced appellate practitioners will review applications, contact references, and decide which applicants will be selected for addition to the Panel. Members are added to the Panel for a term of three years, on the condition that they attend an initial mandatory orientation session and the annual mandatory training seminar.

Reappointment. Approximately two months before a term expires, Panel members will receive a letter asking whether they want to be considered for another 3 year term. Each Panel member is asked to complete an abbreviated application and submit a copy of his or her most recently filed non-*Anders* opening brief.

Terms are renewable at the discretion of the FPD, whose chief goal in reviewing all applications will be to maximize the quality of the Panel. As part of this review, the FPD solicits and considers the views of Ninth Circuit judges, the Appellate Chief of the United States Attorney's Office, the Appellate Commissioner, and the Supervisor of the Writs and Appeals Section of the FPDO. Factors considered include: the quality of the Panel attorney's work; the attorney's performance over the past three years; complaints about the attorney by clients, other counsel, or the Circuit; sanctions threatened or imposed on the attorney; any timeliness issues; and the quality of other applications received.

Standards of performance. Panel members are expected to conform to applicable standards for the provision of services to indigent criminal defendants and petitioners. These standards include the [ABA Standards for Criminal Justice: Defense Function](#) (3d ed. 1993), [ABA Formal Opinion 10-456](#) (2010), and the procedural requirements outlined in [Bittaker v. Woodford](#), 331 F.3d 715 (9th Cir. 2003).

Removal. An attorney may be removed from the Panel at the discretion of the FPD. The attorney will be advised of the proposed removal, and be offered an opportunity to respond to the reasons for the proposed removal. The selection committee will consider all available options, including a temporary suspension from the Panel. Attorneys removed from the Panel are free to apply anew during any subsequent application period.

Occasionally, a Panel attorney may be sanctioned by the Appellate Commissioner, who may remove the attorney's eligibility to serve as CJA counsel on appointed matters. Such will also result in that attorney's automatic and unappealable removal from the Panel. Upon reinstatement of the attorney's eligibility by the Commissioner, the attorney will be free to apply anew in any subsequent application period.

III. ASSIGNMENT OF CASES

When the Ninth Circuit determines that appointment of counsel is appropriate, the Circuit emails the order to the FPDO and sends the order to the client, to former counsel, or to both. The order will direct the FPD to locate counsel and will also schedule briefing dates. If the order involves an appeal of a §§ 2254 or 2255 matter, the order may also include a statement of the issues in the certificate of appealability.

Upon receipt of the order, Mr. Dybwad first considers whether the case should be assigned to the FPDO. If the FPDO does not accept appointment on the case, the FPDO

determines whether the appeal presents extraordinary circumstances or will likely require specialized expertise¹ and then makes the assignment based on the nature of the case and the qualifications and experience of the available panel members.

Once an assignment is made, a letter notifying the Court of the name of the assigned attorney is emailed to the Ninth Circuit, the District Court, and counsel. The voucher is emailed to the assigned attorney via electronic vouchering system after the Ninth Circuit receives the letter of assignment. Work on appeals is at the CJA rate in effect at the time. Please see Judiciary Policies and Procedures Chapter VII for more information on current rates and what is and is not reimbursable.

Unless you have made a request in advance to be excused from new assignments during a specific period (see Section 4 (“Other Requirements”), below), you are expected to accept the appointment and not move to be relieved for a reason other than a conflict of interest. Frequent motions to be relieved are a basis for removal from the Panel.

IV. OTHER REQUIREMENTS

Panel members may request to be excused from taking on any new assignments for a specific amount of time. However, such requests *must* be directed to Ms. Aguillon (Maria_Aguillon@fd.org), and must be made in advance.

Panel members are otherwise expected to keep—and not seek to be relieved from—any case assigned to them, unless there is a conflict, or unless the Panel member seeks to be relieved pursuant to an *Anders* brief. *Any other motion to be relieved must be forwarded immediately* to Ms. Aguillon.

Panel members must also *immediately* inform Ms. Aguillon about:

- *any changes to their contact information* (e.g., phone number, email, or address).
- *any disciplinary actions*, or any formal or informal investigations, by any federal or state government, court, administrative agency or bar association;
- *any removal from eligibility to receive appointments* in any other federal district or circuit court; and
- *any order to show cause*, issued to the panel member by any court, a copy of which must be forwarded to Ms. Aguillon, along with the panel member’s response to the order.

V. NOTICE TO, AND INQUIRES FROM, CLIENTS

The FPDO *does not* notify the client of the initial assignment. Rather, it is assigned counsel’s responsibility to immediately communicate directly with the client about the assignment.

Occasionally, a client (who does receive a copy of the order of appointment from the Ninth Circuit) will write to the FPD inquiring about the assignment. If Mr. Dybwad

¹ Panel members are listed under one of three categories: (1) general; (2) those with experience in habeas litigation who take appointments in § 2254 and § 2255 matters; and (3) highly experienced—those qualified to accept appointments in complex, extensive matters, including death penalty appeals.

responds, he will give the client the assigned attorney's name, address, and telephone number, and will copy the appointed attorney on the correspondence sent to the client. If a client writes to complain about an assigned attorney, Mr. Dybwad will contact the attorney and, if appropriate, send a follow-up letter to the client.

VI. TRAINING

Mr. Dybwad schedules an all-day Appellate Practice Seminar in the Spring of each year. This seminar is mandatory for Panel members, and open to other CJA attorneys. MCLE credit is available. Unexcused failures to attend the annual training will result in the suspension of appointments until the Panel member attends the next annual training. Requests to be excused from the training must be based on unavoidable conflicts, and must be communicated to Mr. Dybwad as soon as possible.

Other trainings, including technology trainings, are offered on an ad hoc basis. Panel members will be notified of these trainings via email. Other practice materials are available on the Panel website (<http://cja.fpdcaed.org>), maintained by the FPDO. The site includes a searchable resource bank, a blog, links, an expert list, and directories for the benefit of the CJA trial and appellate panels in the Central District.

VII. MOOT COURTS

Mr. Dybwad will arrange moot courts for any Panel member who so requests and will insist, to the extent possible, on moot courts for any Panel member arguing a case of exceptional significance to criminal defendants or habeas petitioners, or before an *en banc* panel of the Ninth Circuit or the United States Supreme Court.

VIII. INQUIRIES AND ASSISTANCE

Mr. Dybwad is available to answer inquiries from the Court and keeps in regular contact with Ninth Circuit Appellate Commissioner Peter L. Shaw. In addition, he troubleshoots for Panel members with the courts and federal agencies and otherwise is available to help resolve problems that arise in the course of their representation of their clients.

The FPDO also has a duty appellate attorney available each weekday to assist Panel members with substantive or procedural questions relevant to appeals. To speak with the duty attorney, call (213) 894-2854 and ask to be connected.