



**Chambers of**  
**DALE S. FISCHER**  
United States District Judge

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
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## **MEMORANDUM**

To: CJA Trial Attorney Panel

From: Hon. Dale S. Fischer

Re: Associate Counsel Policy

Date: December 15, 2017

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I am pleased to announce that the Central District now has policies and procedures for the use of associate counsel in non-capital cases. The attached document explains the types of cases in which associate counsel will be approved and the process for seeking approval, as well as other important information. If you are considering a request for associate counsel, please review the attachment carefully - and feel free to contact me or Lauren Eskenazi-Ihrig if you have any questions.

c: Chief Judge Virginia A. Phillips  
Ms. Kiry Gray  
Lauren Eskenazi-Ihrig, Esq.

## CENTRAL DISTRICT OF CALIFORNIA POLICIES AND PROCEDURES FOR USE OF ASSOCIATE COUNSEL IN NON-CAPITAL CASES UNDER THE CRIMINAL JUSTICE ACT

Beginning January 1, 2018, any member of the Central District of California CJA Trial Panel appointed to represent a person under the Criminal Justice Act (“CJA”) may request approval to use Associate Counsel to assist in that representation. Requesting counsel will be referred to as “Lead Counsel” throughout this Policy. If the use of Associate Counsel is approved, Associate Counsel will not be formally appointed as counsel in the case and will not appear on the docket as counsel of record unless ordered by the presiding judge, but may seek compensation under the CJA as provided below. The goal in authorizing the use of Associate Counsel, who will be billing at a lower rate than Lead Counsel, is to reduce the overall cost of the representation. It is therefore expected that the use of Associate Counsel in a case will reduce the number of hours expended by Lead Counsel in that case. Lead Counsel must ensure that the aggregate number of hours expended by Lead and Associate Counsel is reasonable. The amount of compensation paid cumulatively to both Lead Counsel and Associate Counsel (including any compensation paid to prior appointed counsel due to attorney withdrawal or substitution) will be used to calculate when attorney compensation reaches or exceeds the statutory maximum under the CJA. Therefore, even if neither attorney has individually billed more than \$10,300 (or the applicable statutory maximum amount set in the future) all attorney vouchers must be submitted with a CJA-26 form and sent to the designated circuit judge for review and approval once the combined total of attorney billings reaches that threshold.

### **I. Qualifications for Associate Counsel**

When applying for assistance of Associate Counsel, Lead Counsel may request approval for any attorney who meets the qualifications set forth below, whether that attorney is an independent contractor or employed by Lead Counsel’s law firm. Associate Counsel must possess sufficient experience and ability to work independently on discrete assignments delegated by Lead Counsel, but Lead Counsel will remain responsible for all work product in the case and must provide all necessary supervision over Associate Counsel.

Associate Counsel must be a member in good standing of the State Bar of California and the bar of this court. It is anticipated that Associate Counsel will usually have at least three to five years of experience in the practice of law. Attorneys who have practiced law for less than one year will not be approved as

Associate Counsel.<sup>1</sup> Factors to be considered in evaluating a request for Associate Counsel may include the number of years in practice, experience in criminal defense, experience in federal court, expertise in fields related to the subject matter of the case, or other relevant experience.

## **II. Rates for Associate Counsel**

Consistent with the Ninth Circuit's CJA Policies and Procedures and subject to approval by the presiding judge, Associate Counsel will be paid between \$80 and \$115 per hour based on years of practice. Attorneys must have at least one year of practice in order to be approved as Associate Counsel. The calculation of experience starts when the attorney is sworn in to the California Bar, with deductions for any time the attorney was not an active member of the California Bar and practicing law. Associate Counsel with one to two years of experience will be paid at \$80 per hour and the rate will increase \$5 per hour for each additional year in practice, not to exceed \$115 per hour. If Associate Counsel's hourly rate charged to paying clients is less than the proposed CJA rate, payment will only be approved at the lower hourly rate. The Court expects Lead Counsel and Associate Counsel to provide the information necessary to notify the CJA Office when it is time for a rate increase.

## **III. Procedure for Requesting Associate Counsel**

To request funding for Associate Counsel, Lead Counsel must submit an AUTH through eVoucher, which will be reviewed by the CJA Supervising Attorney and forwarded to the presiding judge for approval. Lead Counsel must verify that Associate Counsel is in good standing and licensed to practice law by the State Bar of California and admitted to practice law before this Court. Lead Counsel must also indicate whether Associate Counsel is an independent contractor or employed by Lead Counsel's firm. Lead Counsel must attach a completed AUTH CACD form and the Associate Counsel's resume and a writing sample to the AUTH in eVoucher.

The justification required for use of Associate Counsel must identify discrete assignments that Associate Counsel is qualified to perform independently, under the supervision of Lead Counsel, and must explain how the assignment of these

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<sup>1</sup> If an attorney is less experienced and not yet qualified to act as Associate Counsel, Lead Counsel should consider applying for paralegal/lawyer funding, at \$50 to \$55 per hour, especially if Lead Counsel envisions the paralegal/lawyer role to be more widespread throughout the case and not restricted to discrete, individual tasks.

discrete tasks to Associate Counsel will reduce hours expended by Lead Counsel without compromising the quality of representation in the case.

#### **IV. Factors Supporting Approval of Associate Counsel**

The factors supporting approval of Associate Counsel include:

- A. Lead Counsel has identified tasks that do not require Lead Counsel's expertise, but for which the services of an attorney, rather than a paralegal, investigator, etc. are appropriate;
- B. The case is extended or complex (even if not yet officially designated as such); and
- C. The case is likely to proceed to trial.

#### **V. Obligations of Lead Counsel**

Lead Counsel shall:

- A. Not abdicate his or her role or responsibilities by delegating to Associate Counsel tasks that should be handled by Lead Counsel including, but not limited to, court appearances, pre-trial and probation interviews, plea negotiations, proffer sessions, and providing legal advice to the client.
- B. Wait to request Associate Counsel until an appropriate phase of the case, when the need for Associate Counsel is evident (e.g., after an initial review of the discovery and identification of legal issues and tasks to be performed).
- C. Thoughtfully consider when use of Associate Counsel is appropriate in a case and not make requests for Associate Counsel routinely or simultaneously in multiple cases.
- D. Disclose any familial relationship between Lead Counsel and Associate Counsel in the AUTH.
- E. Identify why the case merits use of Associate Counsel and provide sufficient detail in the AUTH to allow the CJA Supervising Attorney and presiding judge to evaluate the need for Associate Counsel, his or her qualifications, and the discrete assignment(s) to be delegated to Associate Counsel (e.g., a wiretap suppression motion; a motion based on factually or legally complex issues; or accompanying the investigator to interview select key witness when justified).

F. Evaluate and monitor the time Associate Counsel spends conferring with any member of the defense team, including the client. Associate Counsel may be compensated for reasonable time conferring with Lead Counsel. While meetings are needed to effectively divide responsibilities and to coordinate efforts, counsel should avoid unnecessary conferences and meetings. In-person team meetings are compensable if the frequency and time billed are reasonable given the needs of the case, but Lead Counsel should always assess the need for a meeting in advance and consider whether the purpose of the meeting could be served equally by a conference call.

G. Obtain prior approval from the presiding judge before Associate Counsel appears in court, whether with or without Lead Counsel, in order for Associate Counsel to be compensated for that appearance. Contact the CJA Supervising Attorney to obtain the necessary approval for a court appearance. In general, only one attorney will be paid for attending hearings, joint defense meetings, jail visits, meetings with clients, or other meetings, though it is recognized that exceptions can be made for critical meetings or hearings that justify attendance of both counsel provided sufficient justification is given.

H. Supervise Associate Counsel to ensure that he/she is performing the discrete assignments zealously and effectively; Lead Counsel is responsible for all work product in the case.

I. Supervise Associate Counsel to ensure that he/she is not performing tasks that should be performed by an administrative staff member or less expensive personnel such as a paralegal.

J. Supervise Associate Counsel's timekeeping and billing to insure compliance with Central District CJA rules and guidelines.

## **VI. Billing When Associate Counsel Is Approved:**

A. Associate Counsel must submit time through eVoucher on his or her own CJA-20 voucher;

B. Associate Counsel must submit his or her CJA-20 at the same time as Lead Counsel (in the same billing quarter and on approximately the same day), as it is necessary for the CJA Supervising Attorney to review both attorneys' vouchers together;

C. Associate Counsel must submit a CJA-20 voucher in every billing quarter in which Lead Counsel submits a voucher and in which the Associate Counsel has performed any work, even if Associate Counsel is claiming less than \$500 in compensation during that quarter;

D. Associate Counsel must keep separate contemporaneous time records in compliance with CACD policy;

E. Lead Counsel must not include Associate Counsel's time on his or her own CJA-20 vouchers;

F. Lead Counsel must expressly reference any time spent conferring with Associate Counsel or independently working on the project assigned to Associate Counsel in the service tab entries of his or her CJA-20;

G. Lead Counsel is responsible for reviewing and correcting any errors in billing submitted by Associate Counsel even though the eVoucher system does not have the ability to route the Associate Counsel's CJA-20 voucher to Lead Counsel for review.