

PROGRAM DESCRIPTION
CRIMINAL JUSTICE ACT MENTORING PROGRAM
Eastern District of New York

I. OBJECTIVES

In order to increase the diversity of the members of the Criminal Justice Act Panel (the “CJA Panel”) and ensure quality representation for all defendants, particularly the indigent, the CJA Panel Committee (the “Committee”) has designed a mentoring program (the “Program”) to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. While an important objective of the Program is to encourage increased participation of women and minorities on the CJA Panel, its primary goal is to obtain the best qualified CJA Panel candidates. As such, the Program is open to all qualified candidates.

II. ORGANIZATION AND STRUCTURE

A. CJA Mentoring Subcommittee

The District Court will seek and obtain approval from the Chief Judge of the Second Circuit for the Program to be implemented.

The Program will be administered by the CJA Mentoring Subcommittee (“Subcommittee”), which currently consists of five members of the CJA Panel Committee (a district judge, a magistrate judge, the attorney-in-charge of federal defenders office in this district, and two CJA panel members who may also serve as Co-Directors). The Subcommittee will be responsible for overseeing the Program and for providing continuing guidance concerning the overall objectives and administration of the Program.

The Subcommittee’s specific responsibilities include: 1) review of Mentee applications and admission into the Program; 2) selection and approval of Mentors for the Program; 3) administration of orientation and training programs for Mentees, and 4) identification of appropriate cases for the Program.

Two (2) Co-Directors, who will serve exclusively at the pleasure of the CJA Panel Committee, will administer parts of the Program. Such administration will include: 1) pairing of Mentees with Mentors; 2) providing Mentors with guidance regarding the overall objectives, protocol and methods of the Program; and 3) evaluation of the success of the Mentor - Mentee relationships under the Program, with periodic reports to the Subcommittee and CJA Panel Committee.

The Co-Directors will not be compensated for administering the Mentoring Program.

B. Mentors and Mentees

1. Mentors: The Subcommittee will propose a pool of approximately five (5) Mentors to serve in the Program, subject to approval by the CJA Panel Committee. Additional Mentors will be recruited if demand requires.

a) Qualifications: Mentors are expected to be experienced and respected members of the criminal bar who have practiced extensively in the federal courts, as a member of the CJA Panel, public defender, Assistant United States Attorney, or private criminal defense attorney, and who have worked closely with junior attorneys and law students or interns, or are willing to do so. Qualified Mentor volunteers will be drawn from both the CJA Panel and from the private federal criminal defense bar.

b) Requirements: Mentors will be required to submit a curriculum vitae, and a list of federal cases in which the Mentor has been assigned or retained in the past 5 years.

c) Assignments: No Mentor will be assigned more than one (1) Mentee, as long as there are willing Mentors who have not yet been assigned a Mentee. Mentees may have more than one (1) Mentor.

d) Training: Mentors will be instructed on:

i) the goals and objectives of the Program;

ii) the protocols and manner of instruction to be used in training Mentees, including the selection of appropriate cases to use as teaching vehicles, the critical need to expose Mentees to all aspects of federal criminal practice, as well as the assessment and development of a Mentee's oral and written advocacy skills, and computer/Electronic Case Filing ("ECF") and voucher submission proficiency;

iii) the permissible roles and tasks to be performed by Mentees;

iv) the review and frank assessment of the Mentee's progress and ability to practice in federal court.

e) No Reimbursement: No Mentor shall bill the CJA Panel for time spent training Mentees. The Subcommittee is exploring the possibility of providing Continuing Legal Education ("CLE") or *pro bono* credit for participation in the Program.

f) Review and Assessment: The Co-Directors of the Program will meet on a periodic basis with each Mentor to discuss the matters that the Mentee and Mentor have worked on together and the progress of the Mentee in the Program.

2. **Mentees:** Qualified candidates include state and federal practitioners with five or more years of criminal experience, including substantial trial experience, either as lead counsel or second chair or other comparable in-court experience, who, with additional federal criminal experience obtained through the Program, would merit consideration for membership on the CJA Panel. In addition, prospective Mentee candidates must exhibit strong research and writing skills. Mentees also must attend CLE programs that focus on federal criminal practice. Although an important Program goal is to encourage women and minority applicants, the Program is designed to assist and benefit all interested and qualified candidates.

a) **Admission to the EDNY:** Candidates must be admitted to practice in the Eastern District of New York. Applicants will be required to submit a Certificate of Good Standing from the Bar of the state or states in which s/he is admitted.

b) **Applications:** All Mentee applicants will be required to submit a completed application form, brief resume and writing sample. Applications will be posted on the Court website at www.nyed.uscourts.gov under the CJA tab at the top of the webpage.

c) **Evaluations:** The Co-Directors of the Program will meet with each Mentee on a periodic basis to review the Mentee's progress in the Program. Each Mentee will also be required to complete an evaluation form as to his/her Mentor at the conclusion of the training period. The training period will terminate when the matters the Mentor and the Mentee have worked on together have concluded or at a time that may be mutually agreed upon by the Mentor and the Subcommittee.

d) **Endorsement and Appointment of Mentee:**

i) Participants in the Program are not guaranteed appointment to the EDNY CJA Panel. No person has a right either to be appointed to the Panel or to be selected as a Mentee.

ii) Mentees who successfully complete the Program will be encouraged to apply for appointment to the Panel. If a Mentee does apply, in addition to following the normal application review process, the Committee will solicit the views of the Mentor, the Subcommittee, and the judge(s) before whom the Mentee has appeared as to whether the Mentee qualifies for appointment.

III. Program Parameters

A. Program Cases

1. Cases that will serve as teaching vehicles for the Program (a "Program case") will be newly presented cases that will expose the Mentee to myriad issues across the spectrum of representation (*e.g.*, fast track program procedures, bail and release, discovery

review, proffer sessions, plea negotiations, sentence guideline calculations and negotiations, client interviews and conferences regarding various issues and themes, legal research and writing, and possible evidentiary hearing or trial).

2. In keeping with the District's preference for random assignment of cases to defense counsel and judges alike, once a Mentee is paired with a Mentor, the Mentor shall advise the Mentee as to when s/he has a Duty Day. The Mentee should be prepared to spend the day with the Mentor and to work on those cases to which the Mentor is randomly assigned that day. The Mentee may also work on other cases to which the Mentor may be assigned. Mentors who are members of the private defense bar (*i.e.*, not CJA Panel members) should bring their assigned Mentee into the appropriate case as close to its commencement as possible, *e.g.*, grand jury, arraignment on a complaint or indictment, or initial status conference.

B. Mentee Protocols

Mentees will be expected and permitted to:

1. Appear and argue on the record on behalf of the defendant. The Mentor, as counsel of record, must be present in court with the Mentee at all times. The Mentee will be required to register for and otherwise comply with the Court's ECF requirements.

2. Under the direction and in the presence of the Mentor, confer on behalf of the defendant with: the government, chambers, U.S. Pretrial Services Agency personnel, U.S. Probation Officers, federal, state and local law enforcement agents and agencies, U.S. Bureau of Prison personnel, defendant's family, friends and potential witnesses, interpreters, and other members of the defense team, such as investigators or paralegals.

3. Obtain, organize, and review discovery material, perform legal research, draft and file submissions, pleadings, memoranda and motions, under the direction, review and co-authorship of the Mentor, organize exhibits, and engage in other trial preparation activities.

4. Under the direction and in the presence of the Mentor, participate in hearings, trials and evidentiary proceedings. Examination of witnesses or any addresses or statements to a jury will be done only under the direction of the Mentor and with the Mentor present during the examination, the address, or statement.

5. Mentees will be required to complete a minimum of six (6) CLE credits that focus on federal criminal practice skills. In addition, Mentees must attend Program orientation sessions and other seminars and workshops coordinated by the Subcommittee or Committee on specific CJA Panel requirements and federal criminal practice skills.

C. Mentee Compensation

1. Since the Mentee will provide actual legal services and will work as associate counsel with the Mentor, and the prototype Program case will be the type of case that normally warrants authorization of an associate counsel or paralegal, the Mentor will be permitted to apply to the District Court to have the Mentee authorized as associate counsel at the reduced rate of sixty-five dollars (\$65.00) per hour.

2. An application to the District Court requesting compensation as associate counsel may only be made after the Mentee has provided at least fifteen (15) *pro bono* hours of legal services on the instant matter. The 15 hours of *pro bono* legal services, and the exact nature of those services, are to be reflected in the Mentee's worksheet attached to the CJA form 21.

3. Authorization of the Mentee as co-counsel and compensation, if any, for the Mentee will be determined by the District Court on a case by case basis (*see infra*). The Mentor should identify the Mentee at any initial presentment or other appearance before the Magistrate Judge or District Judge.

a) At an initial appearance in Magistrate's Court, by a Mentor and Mentee on a Program case, the Mentor will inform the Magistrate Judge and the Mentor will be appointed as counsel of record. Once a District Court Judge is assigned, the Mentor will apply to the District Court to authorize the appointment of Mentee as associate counsel, which appointment will be *nunc pro tunc* if appropriate.

b) Such application for appointment to the District Court requesting appointment of the Mentee as associate counsel will be decided on a case by case basis, and is appropriate only if the District Court finds that the case in question would have warranted the authorization of a paralegal or associate counsel. If the case warrants the authorization of associate counsel, the Mentee will then be authorized to perform, inter alia, paralegal tasks at paralegal rates, as well as act as associate counsel as part of the Program. The Court will issue an Order of authorization, which is required before a Mentee can submit an voucher.

c) When the Mentor requests approval from the District Judge for use of a Mentee and the Mentee expects to bill more than eight hundred dollars (\$800.00), the Mentor shall ask the District Judge to pre-authorize more than eight hundred dollars (\$800.00), in accordance with Volume 7, Section A, Chapter III, Part A, Section 3.02(A) of the Guide to Judiciary Policies and Procedures.

d) The Mentee shall bill for billable services (*i.e.*, non-duplicative, necessary legal services after the first 15 hours (which will be provided *pro bono*)) on CJA form 21, under the category "other services." Since Mentees are paid as service providers, the Mentor submits an Authorization ("Auth") request through the voucher System. As in all CJA cases, payment of amounts in excess of two thousand four hundred dollars (\$2,400.00) for such "other services"

will require certification of the District Judge and approval from the Chief Judge of the Circuit (or his or her designee) once the voucher is submitted. If the “Auth” request is approved, the Mentor then creates the CJA form 21 linking the Auth for the Mentee to use for payment. The system then monitors the costs associated with the Mentee’s submissions.

4. The Mentor may not bill for work actually performed by the Mentee, except that, in the case of CJA Panel attorneys, the Mentor may submit vouchers on behalf of the Mentee, if s/he has been approved for payment. Moreover, the Mentor and Mentee agree that they will not bill for time spent principally on training and teaching, which time must be provided on a *pro bono* basis.

5. Any Mentee must be identified as such to the Court and to the defendant by the Mentor.

6. If a District Judge needs to appoint new CJA counsel, and the Court believes that the case is the type, and is at a stage, where it could serve as a Program case, the Judge is encouraged to appoint a Mentor and authorize the use of a Mentee under the Program. The Judge may contact the Co-Directors for the names of the members of the next available Mentor/Mentee team.

IV. Identifying Potential Mentees and Promotion of the Program

A. Posted on the Court’s website at www.nyed.uscourts.gov under the CJA tab at the top of the webpage, will be a Program description, as well as the application and evaluation forms, in fillable or downloadable format (PDF/WORD), which will be referred to the Subcommittee for review.

B. The Board of Judges of the District, including the Chief Judge, will be encouraged to promote the Program and to provide names of prospective Mentees to the Subcommittee.

C. The CJA Committee will also refer applicants deemed potential Mentees to the Subcommittee.

D. The Board of Judges, including the Chief Judge and the CJA Committee, will help promote the Program and recruit Mentors and Mentees by, *inter alia*, notifying all New York Metropolitan Bar Associations of the Program’s existence.

E. The CJA Panel Committee will inform the CJA Clerks of the existence of the Program, including, the authorization and billing details for a Program Mentee/associate counsel.

F. To enable the District Court to provide the Office of Defender Services with pertinent and specific data about the Program, its participants and its results, the Subcommittee will assist the District Court in collecting and maintaining data regarding the Program, including:

a current roster of all participating Mentors and Mentees (including those Mentees who do not submit vouchers); documentation of the 15 hours of *pro bono* work performed by mentees; the types of cases that are designated as a Program Case; which Mentees are subsequently appointed to the CJA Panel, and any other data that may prove helpful to the Office of Defender Services and the District in an evaluation of the Program.

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*Dated: Brooklyn, NY
October 18, 2016*

The CJA Committee of the Eastern District of New York:

Hon. Cheryl L. Pollak, U.S.M.J., Committee Chair

Hon. Sandra J. Feuerstein, U.S.D.J.

Hon. Pamela K. Chen, U.S.D.J.

Hon. Kiyo A. Matsumoto, U.S.D.J.

Hon. Kathleen Tomlinson, U.S.M.J.

Randi L. Chavis, Esq., Attorney-in-Charge, Federal Defenders Office, EDNY-Central Islip Office

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Michael Hueston, Esq., Member, EDNY CJA Panel

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