



## OFFICE OF THE FEDERAL DEFENDER

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# Federal Defender Newsletter

## January 2020

### CJA PANEL TRAINING

#### SACRAMENTO:

January 15, 2020, 5-6 pm  
U.S. District Court (Sacramento) Jury  
Lounge. AFD Carolyn Wiggin will be  
presenting on *Restitution*.

#### FRESNO,

January 21, 2020, 5:30-6:30 pm  
U.S. District Court (Fresno) Jury Lounge.  
David Wasserman, Supervising Deputy  
Federal Public Defender, Los Angeles  
“*There’s No There There: Using the  
Government’s Negative Fingerprint Expert  
to Your Advantage*”

### CJA REPRESENTATIVES

David Torres of Bakersfield, (661) 326-  
0857, [dtorres@lawtorres.com](mailto:dtorres@lawtorres.com), is our  
District’s CJA Representative. The  
Backup CJA Representative is Kresta  
Daly, (916) 440.8600, [kdaly@barth-  
daly.com](mailto:kdaly@barth-daly.com).

### 2018 SENTENCING GUIDELINES

#### STILL IN EFFECT

The Sentencing Commission did not pass  
any amendments this year, therefore the  
2018 Sentencing Guidelines (Red Book)  
are still the operative guidelines.

### CJA RATES INCREASE IN 2020

Per AO Director Duff’s Memo of 12/31/2019  
(attached):

*CJA Panel Attorney Hourly Rate Increases*  
The panel attorney hourly rates increase to  
\$152 (up from \$148) for non-capital work  
and to \$195 (up from \$190) for capital work.  
The new rates apply to services performed on  
or after January 1, 2020. Where appointment  
of counsel occurred before January 1, 2020,  
the new hourly compensation rates apply to  
that portion of services provided on or after  
the effective date.

#### *CJA Panel Attorney Case Compensation Maximums (Non-Capital Cases)*

Because of the increase in the non-capital  
hourly rate, the waivable case compensation  
maximum amounts for non-capital  
representations increase to:

\$11,800 (previously \$11,500)

\$8,400 (previously \$8,200)

\$3,400 (previously \$3,300)

(The \$2,500 case compensation maximum  
does not change.)

The new case compensation maximums  
apply to a voucher submitted by appointed  
counsel if that person furnished any CJA-  
compensable work on or after January 1,  
2020. The former case compensation  
maximums apply to a voucher submitted by  
appointed counsel if that person’s CJA-  
compensable work on the representation was  
completed before January 1, 2020.

## TOPICS FOR FUTURE TRAINING SESSIONS

Know a good speaker for the Federal Defender's panel training program? Want the office to address a particular legal topic or practice area? Email suggestions to:

Fresno: Peggy Sasso, [peggy\\_sasso@fd.org](mailto:peggy_sasso@fd.org)  
or Karen Mosher, [karen\\_mosher@fd.org](mailto:karen_mosher@fd.org)  
Sacramento: Lexi Negin, [lexi\\_negin@fd.org](mailto:lexi_negin@fd.org)

## CJA ONLINE & ON CALL

Check out [www.fd.org](http://www.fd.org) for unlimited information to help your federal practice. You can also sign up on the website to receive emails when fd.org is updated. CJA lawyers can log in, and any private defense lawyer can apply for a login from the site itself. Register for trainings at this website as well.

The Federal Defender Training Division also provides a **telephone hotline** with guidance and information for all FDO staff and CJA panel members: 1-800-788-9908.

## VALUABLE IMMIGRATION RESOURCES

Franklin Draper, Supervisory Attorney, Defender Training Division, [Frank\\_Draper@ao.uscourts.gov](mailto:Frank_Draper@ao.uscourts.gov), offers this reminder:

Please remember that the Defender Services Office has established a partnership with National Immigrant Justice Center (NIJC), through its Defenders Initiative, and is available to answer queries from CJA practitioners regarding non-citizen clients. The *Defenders Initiative* can assist with the following:

- Ascertaining how pending charges will affect a non-citizen's current immigration status, or ability to obtain lawful status in the future, based on the specific facts of their case;
- Suggesting alternate pleas that would avoid harmful immigration consequences;

- Exploring arguments for release under the Federal Bail Reform Act;
- Explaining your client's options under immigration law and what clients can expect to happen once their criminal case has concluded.

Please contact the *Defenders Initiative* by emailing [defenders@heartlandalliance.org](mailto:defenders@heartlandalliance.org) (preferred) or calling at 312-660-1610.

Point of Contact:

**Hena Mansori**, Defenders Initiative  
**National Immigrant Justice Center**  
A **HEARTLAND ALLIANCE** Program

224 S. Michigan Ave., Suite 600  
Chicago, IL 60604

T: 312.660.1610 | F: 312.660.1505 |

E: [defenders@heartlandalliance.org](mailto:defenders@heartlandalliance.org)

[www.immigrantjustice.org](http://www.immigrantjustice.org) | [Facebook](#) | [Twitter](#)

## INTERESTING PODCASTS

- *The 3<sup>rd</sup> Chair's D.E.S.K., Dialogue, Education, Strategy, and Knowledge:* Defender Services Office Training Division (DSOTD) podcast designed to provide valuable information and inspiration for federal criminal defense practitioners. Topics will include substantive federal criminal law subjects, from sentencing to mental health, to trial skills. Sign into fd.org. <https://www.fd.org/training-division-podcasts>

**ACCESS TO FD.ORG is limited to** Federal/Community Defender Offices staff and Panel attorneys. If you already applied and were approved for [www.fd.org](http://www.fd.org) log-in credentials, simply click the link above and enter your username and password. If you have questions about access to [www.fd.org](http://www.fd.org), please email [fdorg\\_help@ao.uscourts.gov](mailto:fdorg_help@ao.uscourts.gov).

- *The GEN WHY Lawyer: Discovering the Y of Law:* interviews with lawyers

on how to build a meaningful life and fulfilling legal career.

- *First Mondays*: about the Supreme Court, co-hosted by former Court law clerks.
- *The Moth*: storytelling at its best.
- *Ear Hustle*: podcast from inside San Quentin Prison.
- *Conversations with People Who Hate Me*: Host Dylan Marron deliberately interviews people with whom he disagrees and who disagree with him and who he is.
- *Criminal*: no description really needed, is there?
- *Code Switch*: Helping with the delicate, minefield of today's race and identity issues.
- *70 Million*: documents how locals are addressing the role of jails in the broader criminal justice system.

## **NINTH CIRCUIT**

US v. Rodriguez-Gamboa, No. 19-50014 (12-27-19)(Hurwitz w/Wardlaw & Bataillon). This opinion asks a fundamental question: do geometric isomers of methamphetamine exist? It is more than just an existential question. If they do, or can be easily constructed, or are not wholly illusory, then the California methamphetamine statute is broader than the federal meth statute; there is no categorical fit; and the defendant's state conviction is not an aggravated felony. If geometric isomers are only a "theoretical" possibility, then the statutes may be one and the same, which carries bad news for the defendant. Please note the odd posture of this case: The defendant pled guilty; then withdrew the plea when Lorenzo I, 902 F.3d 930 (9<sup>th</sup> Cir 2018) came out, which found the state definition broader. That case was then replaced by Lorenzo II, a memo disposition. The memo disposition stated that the government is

not foreclosed in arguing that any difference between the two statutes is illusory. The argument is that both statutes make isomers of meth illegal, which actually exist, while geometric isomers do not. So here we are now. This panel declined such organic chemistry findings. It remanded to the district court to determine whether geometric isomers are theoretical

US v. Wang, Nos. 17-10275, 17-10277 (12-16-19). The Ninth Circuit reversed the sentencing for plain error in imposing a guideline cross-reference. Mr. Wang suffered convictions in two different fraud cases and was sentenced in one hearing. One case had to do with visa and mail fraud, and had a money laundering count; the other was just a visa fraud. The district court used the general fraud guideline for the first case rather than the visa fraud guideline pursuant to the cross-reference in § 2B1.1(c)(3). Using the general fraud guideline rather than the visa fraud guideline led to a much higher guideline range. The court held that using the general fraud guideline was plain error: the cross-reference was to fraud cases that establish an offense covered by another guideline. The visa fraud involved in the mail fraud count was specifically covered by the visa fraud guideline. In any case where your client is being prosecuted under a general fraud statute, but a more specific fraud statute also covers the offense, look at this cross-reference and consider whether another guideline should apply.

## **NOTABLE OUT OF CIRCUIT CASE**

US v. Mitchell, No. 17-1095 (3d Cir. 12-5-19). A panel of the Third Circuit found that the district court had committed plain error by "relying on Mitchell's bare arrest record to determine his sentence." Mitchell, who was being sentenced for multiple drug and

firearm offenses, had 7 juvenile adjudications, 6 prior adult convictions, and a total of 18 arrests from the age of 18 to 46. The district court raised Mitchell's arrest record several times during the sentencing hearing. Specifically, it "enumerate[ed] each of Mitchell's 18 arrests without mentioning the details of disposition"; it raised the arrests directly with the prosecutor and cited them in response to defense counsel's sentencing memorandum; and it referenced the arrests in concluding that Mitchell's criminal record is "long and serious." The court imposed a sentence of 1,020 months. In the court's Statement of Reasons it checked only "extensive criminal history" as justification for the sentence it imposed. Based on the record in its entirety, the court of appeals found plain error. It vacated Mitchell's sentence and remanded to the district court for resentencing.

## FEDERAL RULE OF CRIMINAL PROCEDURE

### 16.1

### EFFECTIVE DECEMBER 1, 2019

New Fed.R.Crim.Proc. 16.1 now governs disclosure issues. It is a first step to try to make disclosure timely, organized and complete. It will be especially useful the more disclosure we get in electronic format and which is electronically stored information (ESI). It should be used in conjunction with the ESI Policy agreed upon in 2015 between DOJ & FPDs.

#### Rule 16.1 Pretrial Discovery Conference; Request for Court Action

(a) Discovery Conference. No later than 14 days after the arraignment, the attorney for the government and the defendant's attorney must confer and try to agree on a timetable and procedures for pretrial disclosure under Rule 16.

(b) Request for Court Action. After the discovery conference, one or both parties may ask the court to determine or modify the time, place, manner, or other aspects of disclosure to facilitate preparation for trial.

**Notes** (Added Apr. 25, 2019, eff. Dec. 1, 2019.)

From the Federal Judicial Center – the 2015 ESI Policy:

<https://www.fjc.gov/sites/default/files/2016/Criminal%20e-Discovery.pdf>



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

JAMES C. DUFF  
Director

WASHINGTON, D.C. 20544

December 31, 2019

MEMORANDUM

To: Judges, United States Courts of Appeals  
Judges, United States District Courts  
United States Magistrate Judges  
Circuit Executives  
Federal Public/Community Defenders  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts  
Senior Staff Attorneys  
Circuit CJA Case-Budgeting Attorneys

From: James C. Duff 

RE: IMPLEMENTATION OF INCREASES UNDER THE CRIMINAL JUSTICE ACT OF PANEL  
ATTORNEY HOURLY RATES AND CASE COMPENSATION MAXIMUMS  
**(IMPORTANT INFORMATION)**

This memorandum provides information about increases to hourly rates and case compensation maximums under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, as a result of the “Consolidated Appropriations Act of 2020,” which provided fiscal year 2020 funding for the Judiciary’s Defender Services account.

CJA Panel Attorney Hourly Rate Increases

The panel attorney hourly rates increase to \$152 (up from \$148) for non-capital work and to \$195 (up from \$190) for capital work. The new rates apply to services performed on or after January 1, 2020. Where appointment of counsel occurred before January 1, 2020, the new hourly compensation rates apply to that portion of services provided on or after the effective date.

CJA Panel Attorney Case Compensation Maximums (in Non-Capital Cases<sup>1</sup>)

Because of the increase in the non-capital hourly rate, the waivable case compensation maximum amounts for non-capital representations increase to:<sup>2</sup>

\$11,800 (previously \$11,500)

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\$3,400 (previously \$3,300)

(The \$2,500 case compensation maximum does not change.)

The new case compensation maximums apply to a voucher submitted by appointed counsel if that person furnished any CJA-compensable work on or after January 1, 2020. The former case compensation maximums apply to a voucher submitted by appointed counsel if that person's CJA-compensable work on the representation was completed before January 1, 2020.

eVoucher System Instructions

The new hourly rate and case compensation maximums will be updated in eVoucher and an announcement will be sent to verify the completion of the update. Please call the National Support Desk at (210) 536-5000 with any eVoucher inquiries. If a court's CJA Administrator updates the court's service rates or excess fee limits tables before the national update is completed, there will be no negative impact.

\* \* \*

The JNet charts ([Current CJA Rates and Case Compensation Maximums](#) and [History of CJA Rates](#)) indicate the new and previous hourly rates and case compensation maximums. The charts in the publicly accessible *Guide to Judiciary Policy*, Volume 7A (*CJA Guidelines*) are in the process of being revised.

Questions concerning the CJA hourly rates or case compensation maximums may be directed to the Defender Services Office, Legal and Policy Division Duty Attorney at (202) 502-3030, or via e-mail to [dso\\_lpd@ao.uscourts.gov](mailto:dso_lpd@ao.uscourts.gov).

cc: CJA Panel Attorney District Representatives

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<sup>1</sup> There are no case compensation maximums for appointed counsel in capital cases. See *Guide to Judiciary Policy*, Vol. 7A, § 630.10.20 and § 635.

<sup>2</sup> The CJA provides that the panel attorney case compensation maximums for non-capital representations rise simultaneously with aggregate percentage increases in the hourly rate, rounded to the nearest \$100, since the case maximums were last amended by Congress. 18 U.S.C. § 3006A(d)(2).