

U.S. DISTRICT COURT
DISTRICT OF IDAHO

MAY 20 1993

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF IDAHO

LODGED _____ M. REC'D _____
FILED _____

AMENDMENT TO THE PLAN OF
THE DISTRICT OF IDAHO
FOR PROVIDING REPRESENTATION PURSUANT TO THE
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

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WHEREAS, the United States District Court for the Eastern District of Washington has designated a community defender organization to provide representation in that district pursuant to subsection (g)(2)(B) of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A;

WHEREAS, the United States District Court for the District of Idaho wishes to establish a community defender organization presence in the district;

WHEREAS, the geographical proximity of the District of Idaho and the Eastern District of Washington, and the number and distribution of appointments therein, make it practical and economically feasible for one defender organization to serve both jurisdictions;

WHEREAS, the District of Idaho and the Eastern District of Washington are adjacent districts which have a sufficient volume of appointments annually to enable the establishment of a defender organization pursuant to subsection (g)(1) of the CJA;

IT IS THEREFORE ORDERED, that, subject to the approval of the Judicial Council for the Ninth Circuit, the plan of the District of Idaho for providing representation pursuant to the CJA, is hereby amended to provide that Federal Defenders of the Eastern Washington and Idaho shall provide representation in this District pursuant to subsections (b)(a) and (g)(2)(B) of the CJA.

(1) The Executive Director of Federal Defenders of Eastern Washington and Idaho shall notify this court when he or she is available to accept appointments for representation;

(2) The Executive Director shall be responsible for the supervision and management of Federal Defenders of Eastern Washington. Accordingly, the Executive Director shall be appointed in all cases assigned to that organization for subsequent assignment of staff attorneys at the discretion of the Executive Director; and

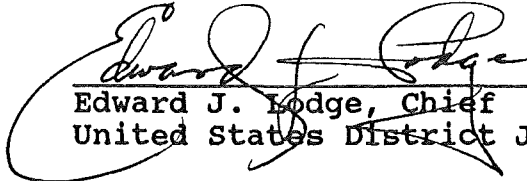
(3) Federal Defenders of Eastern Washington shall operate pursuant to the provisions of subsection (g)(2)(B) of the CJA, as well as the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary policies and Procedures.

A copy of the Bylaws of Federal Defenders of Eastern Washington and Idaho is incorporated as part of this CJA Plan and attached to this Plan.

The provisions of the CJA Plan, last amended on October 18, 1991, shall remain in effect except to the extent that they are inconsistent with the provisions of this amendment, in which case the provisions of this amendment shall govern.

This amendment shall take effect upon its approval by the Judicial Council of the Ninth Circuit.

Dated at Boise, Idaho, this 20th day of May, 1993.


Edward J. Lodge, Chief
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

FILED
U.S. DISTRICT COURT
MAY 20 1988
DISTRICT OF IDAHO
CAMERON S. BURKE

In Re)
))
CRIMINAL JUSTICE ACT PLAN)
))
_____)

GENERAL ORDER # 73

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (hereafter known as CJA), 18 USC §3006A, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the District of Idaho, adopt this Criminal Justice Act Plan, (hereafter known as the Plan), for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of a crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, or any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Act of 1988, (codified in part at 21 USC §848(q)), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance

1. The court, its clerk and the private attorneys appointed in this district under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the Clerk of Court with a then current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the CJA Act (CJA Panel). The clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert and other services.
- B. "Appointed attorney" means counsel ordered by court to represent indigent persons in this district.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation *shall* be provided for any financially eligible person who:
 - a. is charged with a felony or a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in Section 5031 of Title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under Chapter 313 of Title 18 United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under Sections 2254 or 2255 of Title 28 United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under Section 4109 of Title 18, United States Code;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judicial officer determines that the interests of justice so require, representation *may* be provided for any financially eligible person who:
 - a. is charged with a petty offense (Class B or Class C misdemeanor, or an infraction) for which a sentence of confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under Sections 2241, 2254, or 2255 of Title 27 United States Code;
 - c. is charged with civil or criminal contempt and who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. is proposed by the United States Attorney for processing under a pretrial diversion program; or
 - f. is held for international extradition under Chapter 209 of Title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a judicial officer, when they are formally charged or notified of charges if formal charges are sealed, or when a judicial officer otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, generally two attorneys should be appointed.
2. Qualifications. Except as provided by 21 USC §848(q)(7), at least one attorney appointed in a capital case shall meet the qualification requirements set forth in Sections 848(q)(5) and (6) of Title 21 United States Code. Pursuant to 21 USC §848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under Sections 848(q)(5) and (6), but who has the background, knowledge,

and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a judicial officer after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

V. PRIVATE ATTORNEY PANEL

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA, is hereby recognized. See Appendix II.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.

VI. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 USC §2254.

- A. Appointment of Counsel. The court shall appoint a member of the Death Penalty Habeas Corpus Panel to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 USC §2254.
 1. Number. In a capital case, generally two attorneys should be appointed to financially eligible petitioners in state death penalty habeas corpus cases.
 2. Qualifications. Except as provided by 21 USC §848(q)(7), at least one attorney appointed in a death penalty case shall meet the qualification requirements set forth in Sections 848(q)(5) and (6) of Title 21, United States Code. Pursuant to Section 848(q)(7), the presiding judicial officer may appoint an attorney who may not qualify under Sections 848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the petitioner properly in a death penalty case, giving due consideration to the seriousness of the penalty and to the unique and complex nature of the litigation.

- B. Organization and Supervision. The Death Penalty Habeas Corpus Panel (DP-CJA Panel) shall be established, organized and supervised in accordance with the Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act at Appendix I of this CJA Plan. See Appendix III.

VII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Code of Professional Conduct.
- C. No Receipt of Other Payment. Appointed counsel may not require, request or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, or those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, arrange to have the person promptly presented before a judicial officer of this court for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. When practical, financially eligible defendants will be furnished appointed counsel prior to being interviewed by a pretrial services officer. If counsel has not been appointed and the defendant so requests, the pretrial services officer will obtain the necessary financial information from the defendant during the pretrial interview. If the interview is conducted in person,

the pretrial services officer will have the defendant execute a financial affidavit (CJA 23) and submit it to the Clerk of Court. In instances when the defendant has counsel, the pretrial services officer will arrange to interview the defendant with counsel when schedules permit.

- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, or the filing of criminal information, the United States Attorney shall mail or otherwise deliver a copy of the document to appointed counsel as appropriate. If the defendant is without counsel, a copy shall be provided to the defendant at the address shown on the defendant's bond papers or to the jail in which the defendant is incarcerated.
- D. Petition to Modify or Revoke Probation. Upon the filing of a petition to modify or revoke probation, the United States Probation Officer shall mail or otherwise deliver a copy of the petition to the counsel of record. If the defendant is without counsel, a copy shall be provided to the defendant at the current address maintained in the probation officer's file, or to the jail in which the defendant is incarcerated.

IX. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted in accordance with the Criminal Justice Act Panel Attorney Manual for the District of Idaho and as further outlined in Appendix I, Section III.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

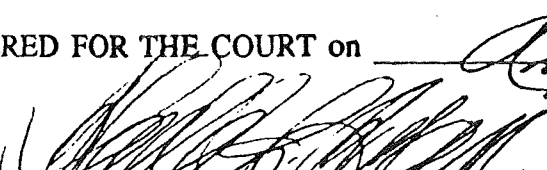
X. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the Ninth Circuit.

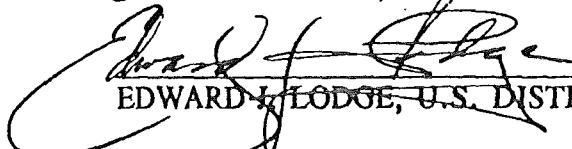
APPENDIX

- I. Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act.
- II. Criminal Justice Act Panel Roster.
- III. Death Penalty Criminal Justice Act Panel Roster.

ENTERED FOR THE COURT on August 28, 1991.



HAROLD L. RYAN, CHIEF U.S. DISTRICT JUDGE



EDWARD J. LODGE, U.S. DISTRICT JUDGE

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT on
_____, 1991

CHIEF JUDGE, COURT OF APPEALS FOR THE
NINTH CIRCUIT

**PLAN FOR THE
COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF
PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT**

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Origin. The Court shall establish a panel of private attorneys (hereinafter referred to as the CJA Panel) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act, 18 USC §3006A. Members of the CJA Panel shall serve at the pleasure of the court.

a. Source of Names. On or before the first day of January of each year, each magistrate judge in the District of Idaho shall submit a separate roster of attorneys from their division to the Chief Magistrate Judge for compilation of the CJA Panel. Any judge of this court may supplement or delete from these rosters. The final roster shall be approved by the judges of this court and shall be submitted to the Clerk of Court as an amendment to General Order #73, Appendix II.

b. Divisions. The District of Idaho shall be divided into three divisions for the purpose of this Plan and there shall be a separate roster of attorneys for each division within the CJA Panel. The counties included in the divisions are as follows:

Southern Division

Ada	Cassia	Minidoka
Adams	Elmore	Owyhee
Blaine	Gem	Payette
Boise	Gooding	Twin Falls
Camas	Jerome	Valley
Canyon	Lincoln	Washington

Northern Division

Benewah	Kootenai
Bonner	Latah
Boundary	Lewis
Clearwater	Nez Perce
Idaho	Shoshone

Eastern Division

Bannock	Clark	Madison
Bear Lake	Custer	Oneida
Bingham	Franklin	Power
Bonneville	Fremont	Teton
Butte	Jefferson	
Caribou	Lemhi	

2. Size. The court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA case load, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of Criminal Procedure for the District of Idaho and the United States Sentencing Commission Guidelines. Qualified attorneys shall have practiced law for at least two years, and shall be residents of this State.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, the Chief Judge, or a magistrate judge determines that the appointment of an attorney who is not a member of the CJA panel is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice*, consistent with the Local Rules of this district, and shall be appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office within this district, should possess such qualities as would qualify him or her for admission to the district's CJA Panel in the ordinary course of panel selection.

4. Application. Application for membership on the CJA Panel may be made in letter form and shall be submitted to the Magistrate Judge for that division for consideration.

B. DEATH PENALTY CJA PANEL

1. Origin. The court shall establish a panel of private attorneys (hereinafter referred to as the DP-CJA Panel) who are eligible and willing to be appointed to provide representation in state death penalty habeas corpus proceedings under 28 USC §2254 pursuant to the Criminal Justice Act. Members of the DP-CJA Panel shall serve at the pleasure of the court.
 - a. Source of Names. The Chief Magistrate Judge shall compile a separate roster of attorneys from any division in the district who will serve as counsel in state death penalty habeas corpus cases. Any Judge of this court may supplement or delete from this roster. The final roster shall be approved by the judges of this court and shall be submitted to the Clerk of Court as an amendment to General Order #73, Appendix III.
2. Size. The court shall fix, periodically, the size of the DP-CJA Panel. The panel shall be large enough to provide sufficient number of experienced attorneys to handle the death penalty case load.
3. Eligibility. Attorneys who serve on the DP-CJA Panel must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Civil Procedure, Federal Rules governing Section 2254 Cases in the United States District Courts and the Local Rules of Procedure for the U.S. District Court for the District of Idaho. Qualified attorneys shall have practiced law in accordance with the criteria outlined in Paragraph VI(A)(2) of General Order #73, and shall be a member of the federal bar of this district.

Subsection (b) of the Criminal Justice Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the Chief Judge, determines that the appointment of an attorney who is not a member of the DP-CJA Panel is in the interest of justice, judicial economy

or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the DP-CJA panel *pro hac vice*, consistent with the Local Rules of this District, and shall be appointed to represent the Death Penalty Petitioner. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office within this district, should possess such qualities as would qualify him or her for admission to the district's DP-CJA Panel in the ordinary course of panel selection.

4. Chairs. The Chief Magistrate Judge may divide the DP-CJA Panel into two sections. The first chair shall consist of attorneys who satisfy the experience conditions pursuant to 21 USC §848(q)(5) and (6) and are willing to act as principal counsel in death penalty habeas corpus cases. The second chair shall consist of those attorneys who satisfy the qualifications pursuant to 21 USC §848(q)(B)(7), or who only wish to act as co-counsel in death penalty cases.
5. Application. Application forms for membership on the DP-CJA Panel shall be made available in the office of the Chief Magistrate Judge for the District of Idaho. Completed applications should be submitted to the Chief Magistrate Judge for consideration.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS.

The Clerk of Court shall maintain the current list of all attorneys included on the CJA Panel and the DP-CJA Panel, with current office addresses and telephone numbers. The clerk shall furnish a copy of this list to each judge and magistrate judge. The clerk shall also maintain a public record of assignments and any statistical data reflecting the proration of appointments.

B. METHOD OF SELECTION.

Appointments from the CJA Panel should be made on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant or death penalty petitioner.

Upon the determination of a need for the appointment of counsel, the judicial officer shall notify the Clerk of Court for the need of counsel and the nature of the case.

When appropriate, the Clerk of Court shall advise the judicial officer as to the status of distribution of cases. If the judicial officer decides to appoint an attorney from the panel, the Court shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judicial officer.

In the event of an emergency, the presiding judicial officer may appoint any attorney from the list. In all cases where members of the CJA Panel or DP-CJA Panel are appointed out of sequence, the appointing judicial officer shall notify the Clerk of Court as to the name of the attorney appointed and the date of the appointment.

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of Court no later than 45 days after final disposition of the case. A motion and order shall be filed with the court requesting payment of those vouchers which are submitted after that date.

The Clerk of Court shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures). If the voucher is correct, the Clerk of Court shall forward the claim form for the consideration and appropriate action to the presiding judge or magistrate judge. Any inaccuracies shall be brought to the attention of the presiding judicial officer and a corrected copy shall be provided to counsel.

The presiding judge, after approval of claims for compensation which are in excess of the statutory maximum, shall certify the excess amount to the Chief Judge of the Ninth Circuit Court of Appeals for approval. Payment of vouchers in excess will not be made until approved by the Chief Judge of the Ninth Circuit.

The Clerk of Court shall enter the appropriate data into the CJA automated payment system for all vouchers which have been approved for payment. Payment will be made immediately thereafter by the Administrative Office of the Courts.

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
UNITED STATES COURTHOUSE
550 WEST FORT STREET
BOISE, IDAHO 83724

MIKEL H. WILLIAMS
UNITED STATES MAGISTRATE

(208) 334-9330
FTS 554-9330

May 26, 1993

Ms. Judy Clarke
Executive Director
Federal Defenders of
Eastern Washington
905 West Riverside, Suite 208
Spokane, Washington 99201

Dear Judy:

I am forwarding the signed original of the plan that modifies the Criminal Justice Act Plan for the District of Idaho so that we may be part of the Eastern District of Washington's community defender program in the future. I am also enclosing one copy of the Idaho Criminal Justice Act Plan even though I think we have forwarded a copy earlier.

It is my understanding that Judge Quackenbush has not yet signed the order amending the plan for the Eastern District of Washington but will do so in the near future. After discussing this with your administrative assistant, we decided it would be best if your office forwarded both Judge Lodge's order and Judge Quackenbush's order to the Ninth Circuit Judicial Council as opposed to having separate submissions from each district.

After reviewing your letter, it appears that the Federal Defenders of Eastern Washington will amend its bylaws to incorporate the District of Idaho after the Ninth Circuit Judicial Council has approved the amendments to the two plans.

If anything further is needed, please contact me. If not, I understand the next step will be the approval from the Ninth Circuit Judicial Council and hopefully we can get this on the agenda at the council's next meeting.

Sincerely,



Mikel H. Williams
United States Magistrate Judge

cc: The Honorable Edward L. Lodge
The Honorable Justin L. Quackenbush
Defender Services Division of the AO
Circuit Executive of the Ninth Circuit
Clerk of Court, District of Idaho

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