



HONORABLE THOMAS F. HOGAN
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JILL C. SAYENGA
Deputy Director

WASHINGTON, D.C. 20544


THEODORE J. LIDZ
Assistant Director

Office of Defender Services

September 4, 2012

MEMORANDUM

To: Judges, United States District Court
Clerks, United States District Court

From: Theodore J. Lidz 

RE: SERVICES OF COORDINATING DISCOVERY ATTORNEYS AVAILABLE IN SELECTED
FEDERAL CRIMINAL JUSTICE ACT CASES (**IMPORTANT INFORMATION**)

This memorandum is to advise you of the availability of three contractors to assist Criminal Justice Act (CJA) counsel with management of large volumes of discovery in selected federal CJA cases.

The Office of Defender Services' National Litigation Support Team (NLST) is available for CJA panel attorneys and federal defender organization (FDO) staff to serve as a resource for litigation support aspects of their cases. As part of a set of national litigation support strategies approved by the Judicial Conference Committee on Defender Services and managed by the NLST, Coordinating Discovery Attorneys (CDAs) work with defense counsel on cases in which there are a large number of defendants, voluminous discovery, or complicated electronic discovery issues.

The three CDAs under contract with the Administrative Office are Russell M. Aoki of Aoki Law PLLC in Seattle, Washington; Shazzie Naseem of Berkowitz, Oliver in Kansas City, Missouri; and Emma Greenwood, who is in private practice in New York City, New York. These attorneys have experience working on CJA cases and are knowledgeable about the use of technology to manage discovery in federal criminal litigation. In many CJA cases, they have been responsible for the effective use of technology and litigation support vendors to organize, search, review and analyze large volumes of discovery, in both paper and electronic form. They have been appointed by district courts to serve as the CDA in complex criminal cases and have been successful in efficiently and cost effectively facilitating the management of large volumes of discovery. In this capacity, they have ensured that defense counsel have the necessary technology support to organize the discovery, been responsible for controlling costs by seeking cost-sharing opportunities with the Government whenever possible, and made certain that vendors provide quality services at the best possible rates.

CDAs can provide additional in-depth and significant hands-on assistance to CJA panel attorneys and FDO staff in cases that require technology and document management expertise, including facilitating the implementation of the recently released "Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases." CDAs evaluate each lawyer's or other staff's level of computer sophistication; identify the types of discovery involved; assist in dialogue with the U.S. Attorney's Office regarding the volume, form and timing of discovery productions (as explicitly encouraged in the Recommendations); assist in deciding how best to distribute the discovery; help determine what technology and other resources are necessary for discovery review and management; and aid in maintaining quality control of the discovery review process. By using a CDA, discovery is generally provided in a more useful form; one knowledgeable person assesses the case's litigation support needs and assists counsel in obtaining the resources necessary to meet them; discovery is more effectively and efficiently tracked; the purchase of litigation support software, hardware, and services is more cost effective; discovery is provided in a more timely manner; and the overall case processing times and costs are likely to be reduced.

To contain costs and maximize benefits, the CDAs will focus on a limited number of cases each year that have been identified as needing a CDA based on the complexity of the matter, the number of parties involved, or the nature and/or volume of the discovery. **If the court, a panel attorney, or FDO is interested in utilizing the services of a CDA, one of the CJA attorneys in the case should communicate first with the NLST, whose contact information is listed below.** After an initial consultation with the NLST, and a second one with one of the CDAs, a decision will be made about the use of the CDA's services in the subject case. Factors considered in determining whether a CDA will work on a particular case are:

- Whether the number of co-defendants is so large as to create a risk of costly duplicative efforts, which could otherwise be eliminated or reduced upon the appointment of a CDA, or whether there are other factors that create a likelihood that the CDA's participation would enable costs to be contained;
- Whether the volume of discovery is so large that addressing the organizational needs in the case would interfere with defense counsel's ability to address the legal and factual issues in a case;
- Whether unusual organizational or technological issues exist, not commonly found even in complex cases, that would interfere with defense counsel's ability to address the legal and factual issues in a case;
- Whether the case is prosecuted in a region that lacks experts who can provide necessary technology support and document management expertise in addressing the factors described above;
- Whether the timing of the request, which preferably should be made early in a case, is such that the CDA's participation is likely to be of assistance to defense counsel, promote efficiency, and contain costs; and,
- The CDA's workload.

All factors need not be present to seek the services of the CDA. In determining how much weight to provide each factor, the seriousness of the alleged offense will be considered. The National Litigation Support Administrator makes the final decision on assignment of a CDA. After it is determined that the services of a CDA would be of assistance, CJA counsel should petition the court to appoint the CDA for participation in the particular case. The court's appointment of the CDA to work with all defense counsel in the case provides authority for the CDA to confer directly with the prosecution on issues of discovery, which allows for better coordination and overall cost-efficiencies regarding information exchange.

If you have any questions regarding the services of a Coordinating Discovery Attorney, please contact Sean Broderick, Administrator or Kelly Scribner, Assistant Administrator, National Litigation Support Team at 510-637-3500, or by email at, sean_broderick@fd.org, or kelly_scribner@fd.org.

cc: CJA Panel Attorney District Representatives
Federal Public/Community Defenders
Russell M. Aoki, CDA
Emma Greenwood, CDA
Shazzie Naseem, CDA
Sean Broderick, Administrator, NLST
Kelly T. Scribner, Assistant Administrator, NLST