

## 2016 WAPA DRAFT INSTRUCTION ON COMPENSATED WITNESSES

The proposed new instruction would further caution jurors regarding the weight to be given to compensated witnesses:

### TESTIMONY OF COMPENSATED WITNESSES

You have heard testimony from [a witness] [one or more witnesses] who received compensation from the [State][City][County] [federal government] [ other ]. In evaluating the testimony of a compensated witness, you should consider the extent to which or whether the witnesses' testimony may have been influenced by the compensation. You should not find the defendant guilty upon compensated testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

This draft deviates from the Ninth Circuit jury instruction, in that the name of the compensated witness is not included. Naming the compensated witness would violate article IV, section 16 of the Washington Constitution. It is anticipated that the above draft would be accompanied by this proposed note on use and comment:

#### Note of Use

Use this instruction, if requested by the defense, in every case in which the prosecution relies upon the testimony of a compensated witness. Use WPIC \_\_\_\_, Compensated Witness – Definition, with this instruction.

#### Comment

This instruction is based, in part, on the Ninth Circuit United States Court of Appeals' model criminal jury instruction 4.9. This cautionary instruction is similar to the cautionary instruction for an accomplice's testimony. When substantial corroborating evidence exists, the instruction need not be given, although it is always the better practice for a trial court to give the cautionary instruction whenever testimony from a compensated witness is introduced. *Cf. State v. Harris*, 102 Wn.2d 148, 155, 685 P.2d 584 (1984) (statement supporting use of cautionary accomplice instruction), overruled on other grounds in *State v. Brown*, 113 Wn.2d 520, 782 P.2d 1013 (1989).

A starting point for the definition of “compensated witness,” which was drafted from cases interpreting what constitutes a “benefit” that must be disclosed to a defendant pursuant to the United State Supreme Court’s opinion in *Giglio v. United States*, 405 U.S. 150 (1972) , is as follows”

WPIC \_\_\_\_ Compensated witness – Definition

A compensated witness is any person who has received a promise of non-prosecution, a promise of reduced charges or sentence, or other benefit that was made by any prosecutor in exchange for that person’s testimony.

A defendant will have the information available to establish that a person is a “compensated witness.” Washington prosecutors are required to disclose to the defense by court procedural rules, *see* CrR 4.7(a)(3) and CrRLJ 4.7(a)(3), by the Rules of Professional Conduct, *see* RPC 3.8(d), and by case law, *see Giglio v. United States*, 405 U.S. 150 (1972) (due process requires the prosecution to disclose any promises of non-prosecution or other benefit that was made by any prosecutor to a government witness in exchange for that witness's testimony).