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UNITED STATES DISTRICT COURTS  
FOR THE NORTHERN AND SOUTHERN DISTRICTS OF IOWA  
CRIMINAL JUSTICE ACT PLAN

I. Authority

Under the [Criminal Justice Act \(CJA\) of 1964, as amended, 18 U.S.C. § 3006A](#), and [Guide to Judiciary Policy \(Guide\), Volume 7A](#), the judges of the United States District Courts for the Northern and Southern Districts of Iowa adopt this Plan, as approved by the United States Court of Appeals for the Eighth Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation consistent with the CJA.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at [18 U.S.C. § 3599](#)), and *Guide*, Vol. 7A, in a way that meets the needs of these districts.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

B. Compliance

1. The court, its clerk, the Federal Public Defender organization, and private attorneys appointed under the CJA must comply with *Guide*, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.
2. The court will ensure that a current copy of the CJA Plan is made available on the court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA Panel of private attorneys

(CJA Panel).

### III. Definitions

#### A. Representation

“Representation” includes counsel and investigative, expert, and other services.

#### B. Appointed Attorney

“Appointed attorney” is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys appointed under the CJA, the Federal Public Defender, and staff attorneys of the Federal Public Defender organization.

#### C. Panel Attorney District Representative

“Panel Attorney District Representative” or “PADR” is a member of the District’s CJA Panel who is selected by the Federal Public Defender, with concurrence from the chief district judge, to serve as the representative of the district’s CJA Panel for the National Defender Services CJA PADR program and local CJA committees. Each district shall have one PADR.

#### D. Panel Attorney Local Representative

“Panel Attorney Local Representative” or “PALR” is a member of the district’s CJA Panel who is selected by the Federal Public Defender, with concurrence from the chief district judge, to serve as a representative on the district’s CJA Panel on local CJA committees, and to assist the PADR with duties related to the National Defender Services CJA PADR Program.

### IV. Determination of Eligibility for CJA Representation

#### A. Subject Matter Eligibility

##### 1. Mandatory

Representation **must** be provided for any financially eligible person who:

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in [18 U.S.C. § 5031](#);
- c. is charged with a violation of probation and faces an unfavorable change of a term or condition of probation to which the person

does not consent and for which the court orders the person's appearance in court;

- 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 and faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release, to which the person does not consent and for which the court orders the person's appearance in court;
- g. is subject to a mental condition hearing under [18 U.S.C. chapter 313](#);
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under [28 U.S.C. § 2254](#) or [§ 2255](#);
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under [18 U.S.C. § 4109](#);
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

Whenever a district judge or magistrate judge 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 C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under [28 U.S.C. §§ 2241](#), 2254, or 2255 other than to set aside or vacate a death sentence;
- c. is charged with civil or criminal contempt and 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. has been advised by the United States Attorney or a law enforcement officer that she or he is the target of a grand jury investigation;
- f. is proposed by the United States Attorney for processing under a pretrial diversion program; or
- g. is held for international extradition under [18 U.S.C. chapter 209](#).

3. Ancillary Matters

Representation may also be provided for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the court should consider whether such representation is reasonably necessary:

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;
- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under [18 U.S.C. § 983](#), [19 U.S.C. § 1602](#), [21 U.S.C. § 881](#), or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18. U.S.C. § 3006A(f); or
- f. to effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under [Fed. R. Crim. P. 41\(g\)](#), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement

- (i) Upon arrest, and where the defendant has not retained counsel, federal law enforcement officials must promptly notify the appropriate court personnel, who in turn will notify the Federal Public Defender of the arrest of an individual in connection with a federal criminal charge.
- (ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

b. Duties of United States Attorney's Office

- (i) Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney or the probation officer, as appropriate, must immediately mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on the defendant's bond papers or to the jail in which the defendant is incarcerated.
- (ii) Upon issuance of a target letter, and where the individual has not retained counsel, the United States Attorney must promptly notify the appropriate court personnel, who in turn will notify the Federal Public Defender, unless the United States Attorney's Office notifies the court of an actual or potential conflict.
- (iii) Employees of the United States Attorney's Office should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

c. Duties of Federal Public Defender's Office

- (i) In cases in which the Federal Public Defender may be appointed, the office will:
  - immediately investigate and determine whether an

actual or potential conflict exists; and

- in the event of an actual or potential conflict, promptly notify the court to facilitate the timely appointment of counsel from the CJA Panel.

(ii) When practicable, the Federal Public Defender will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a [financial affidavit \(Form CJA 23\)](#) and arrange to have the person promptly presented before a magistrate judge or district judge of this court for determination of financial eligibility and appointment of counsel.

d. Duties of Pretrial Services Office

(i) A pretrial services officer must conduct an initial interview of a defendant to assist the court in deciding whether a defendant will be released or kept in custody pending trial. The pretrial services officer must advise the defendant of the right to speak with a lawyer before answering questions and must further advise the defendant that, if the defendant cannot afford a lawyer, one will be appointed. The pretrial services officer will only ask those questions necessary to complete the initial pretrial report and will not ask questions concerning the substantive offense or the alleged relevant conduct. This interview may be conducted prior to the appointment of counsel, but the interview must be immediately terminated if the defendant requests to speak with a lawyer at any time during the interview. Relevant information bearing on the defendant's financial eligibility must be reflected on a financial eligibility affidavit (Form CJA 23) which should be filled out by the defendant with the assistance of counsel. After completion, the form must be presented to a United States magistrate judge or judge of this court. Other officers or employees of the court (i.e., clerk, deputy clerk, or pretrial services officer) may be designated by the court to verify the facts contained within the affidavit upon which such determination is to be made. Employees of law enforcement agencies or the United States Attorney's Office must not participate in the completion of the Form CJA 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.



- (ii) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under 18 U.S.C. § 3006A(a) and related statutes, the court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.
- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
- d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless the family indicates willingness and ability to do so promptly.
- e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).
- g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).

- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed consistent with the general provisions of this Plan.

V. Timely Appointment of Counsel

A. Timing of Appointment

Counsel must be provided to eligible persons as soon as feasible in the following circumstances, whichever occurs earliest:

1. after they are taken into custody;
2. when they appear before a magistrate or district court judge;
3. when they are formally charged or notified of charges if formal charges are sealed; or
4. when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

B. Court's Responsibility

The court, in cooperation with the Federal Public Defender and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

C. Pretrial Services Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial services interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer.

D. Retroactive Appointment of Counsel

Appointment of counsel may be made retroactive to include representation provided prior to appointment.

VI. Provision of Representational Services

A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the Federal Public Defender organization and for the appointment and compensation of private counsel from a CJA Panel list maintained by the Federal Public Defender in cases authorized

under the CJA and related statutes.

B. Administration

Administration of the CJA Panel, as provided in this Plan, is delegated and assigned to the court, in consultation with the Federal Public Defender.

C. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

D. Number of Counsel

More than one attorney may be appointed in any case determined by the court to be extremely difficult, or if otherwise deemed necessary to ensure adequate representation or adequate training for maintenance of the Panel.

E. Capital Cases

Procedures for appointment of counsel in cases where the defendant is charged with a crime that may be punishable by death, or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255, are in section XV of this Plan.

VII. Federal Public Defender Organization

A. Establishment

The Federal Public Defender's Office is established in the Northern and Southern Districts of Iowa under the CJA and is responsible for rendering defense services on appointment throughout the districts.

B. Standards

The Federal Public Defender organization must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

C. Workload

The Federal Public Defender organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

D. Professional Conduct

The Federal Public Defender organization must conform to the highest standards of professional conduct, including the Iowa Rules of Professional Conduct and the Code of Conduct for Federal Public Defender Employees (*Guide*, Volume 2, Part A, Chapter 4).

E. Private Practice of Law

Neither the Federal Public Defender nor any defender employee may engage in the private practice of law except as authorized by the Code of Conduct for Federal Public Defender Employees.

F. Supervision of Defender Organization

The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender organization. Therefore, the Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

G. Training

The Federal Public Defender will assess the training needs of Federal Public Defender staff and, in coordination with the PADRs and PALRs, the training needs of the local Panel attorneys, and provide training opportunities and other educational resources. In addition, all members of the CJA Panels are encouraged to contact the Federal Public Defender's Office for assistance with questions of federal law and procedure.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee ("CJA Committee") will be established at each court point by the Federal Public Defender in consultation with the court. The CJA Committee will consist of one district court judge, one magistrate judge, the Federal Public Defender, the PADR or the PALR, the Clerk of Court or her/his designee, and the Chief U.S. Probation Officer or her/his designee.
2. The CJA Committee for each court point will meet at least once per year. A CJA Committee may meet at other points in the year, as needed.

B. Duties of the CJA Committee

1. Membership

Examine the qualifications of applicants for membership on the CJA Panel and recommend to the chief judge the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified.

2. Recruitment

Engage in recruitment efforts to establish a diverse Panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

3. Annual Report

Review the operation and administration of the CJA Panel over the preceding year, and recommend any necessary or appropriate changes to the chief judge concerning:

- a. the size of the CJA Panel;
- b. the recruitment of qualified and diverse attorneys as required in this Plan; and
- c. recurring issues or difficulties encountered by Panel members or their CJA clients.

4. Removal

Recommend to the chief judge the removal of any CJA Panel member who:

- a. fails to satisfactorily fulfill the requirements of CJA Panel membership during their term of service, including the failure to provide high quality representation to CJA clients, or
- b. has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate.

**See also:** Section IX.C.7.

5. Training

Assist the Federal Public Defender in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

6. Voucher Review

Review and make recommendations on the processing and payment of CJA vouchers in those cases where the court, for reasons other than mathematical errors or at the request of CJA counsel, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel. The presiding judge will, at the time the voucher is submitted to the CJA Committee, provide a statement to the attorney describing questions or concerns with the voucher. Counsel will be notified of the potential reduction and given the opportunity to provide information or documentation relevant to the voucher and concerns raised by the judge, who may refer the matter to the CJA Committee if the attorney requests the referral. The CJA Committee will issue a written recommendation to the judge. If the presiding judge is on the CJA Committee, the Federal Public Defender will designate a different judge to participate in the review and recommendation process.

**See also:** Section XIII.B.6.

7. Mentoring

Administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel, as provided for in Appendix I to this Plan.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

1. The existing, previously established Panels of attorneys who are eligible and willing to be appointed to provide representation under the CJA are recognized.
2. The chief judge will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Committee.

B. Size of CJA Panel

1. The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the Panel attorneys, subject to review by the chief judge.
2. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA Panel members will receive an adequate number of appointments

to maintain their proficiency in federal criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available from the Federal Public Defender at <https://ias.fd.org/cja>.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, sexual orientation, age, national origin, or disabling condition.

3. Eligibility

a. Applicants for the CJA Panel must be members in good standing of the federal bar in the Northern District of Iowa or Southern District of Iowa and the U.S. Court of Appeals for the Eighth Circuit, or they must be willing and able to attain *pro hac vice* admission to facilitate representation.

b. Applicants must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Federal Rules of Appellate Procedure.

c. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

d. Attorneys who do not possess the experience above but believe they have equivalent other experience are encouraged to apply and provide in writing the details of that experience for the CJA Committee's consideration.

4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the chief judge will appoint or reappoint attorneys to the CJA Panel. Due to the

highly complex and demanding nature of capital cases and related habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases.

5. Terms of CJA Panel Members

Attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures in this Plan.

6. Reappointment of CJA Panel Members

- a. The Federal Public Defender will notify CJA Panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel.
- b. A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term prior to the expiration of his or her current term.
- c. The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. The CJA Committee also will consider how many cases the CJA Panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA Panel members as provided in this Plan.

7. Removal from the CJA Panel

a. Mandatory removal

Any member of the CJA Panel who is suspended or disbarred from the practice of law by the state court before whom such member is admitted, or who is suspended or disbarred from this court or any federal court, will be removed from the CJA Panel immediately.

b. Automatic disciplinary review

The CJA Committee will conduct an automatic disciplinary review of any CJA Panel member against whom any licensing authority, grievance committee, or administrative body has taken action, or when a formal finding of probable cause, contempt, sanction, or reprimand has been issued against the Panel member by any state or federal court.



c. Complaints

(i) Initiation

A complaint against a CJA Panel attorney may be initiated by any member of the CJA Committee or any judge. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the Federal Public Defender for dissemination to the CJA Committee, which will determine whether further investigation is necessary.

(ii) Notice

When conducting an investigation, the CJA Committee will notify the attorney of the specific allegations.

(iii) Response

An attorney subject to investigation may respond in writing and appear, if so directed, before the CJA Committee.

(iv) Protective action

Prior to disposition of any complaint, the CJA Committee may impose a temporary suspension from the Panel or removal from any pending case, and may take any other protective action that is in the best interest of any defendant or the administration of this Plan.

(v) Review and recommendation

After investigation, the CJA Committee may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the Panel, limiting the attorney's participation to particular types or categories of cases, directing the attorney to complete specific CLE requirements before receiving further appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another Panel attorney or other experienced practitioner, or any other appropriate remedial action.

(vi) Final disposition by the court

The CJA Committee will forward its recommendation to the chief judge for consideration and final disposition.

(vii) Confidentiality

Unless otherwise directed by the court, any information acquired concerning any possible disciplinary action, including any complaint and any related proceeding, will be confidential.

(viii) None of these procedures create a property interest in being on or remaining on the CJA Panel.

X. Establishment of CJA Training Panel

To address the need to provide for well-trained attorneys to fill Panel vacancies in the future, a CJA Training Panel is established pursuant to Appendix I of this Plan.

XI. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The Federal Public Defender will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers.

B. Appointment Procedures

1. The court is responsible for overseeing the appointment of cases to Panel attorneys. The court will maintain a record of Panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Public Defender's Office and Panel attorneys.
2. Appointment of cases to CJA Panel members will ordinarily 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 Panels, and quality representation of each CJA defendant.
3. Under special circumstances, the court may appoint an attorney who is not a member of the CJA Panel. Such special circumstances may include cases in which the court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason (including in multi-

defendant cases where there are not a sufficient number of available CJA attorneys within the district). It is not anticipated that special circumstances will arise often, and the procedures provided in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Committee.

4. Unless otherwise impracticable, a CJA Panel attorney must be available to represent a defendant at all stages of the case.

## XII. Duties of CJA Panel Members

### A. Standards and Professional Conduct

1. CJA Panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Iowa Rules of Professional Conduct.
3. CJA Panel members must notify the chief judge and the Federal Public Defender as soon as practicable and, in any event, within no more than 10 days of any of the following occurrences:
  - a. Any action by a licensing authority, grievance committee, or administrative body against the attorney (including any public or private admonition, suspension, or disbarment);
  - b. A formal finding of probable cause, contempt, sanction, or reprimand against the attorney by any state or federal court; or
  - c. A finding by a state or federal court that the attorney provided ineffective assistance that caused material prejudice to the client.

### B. Training and Continuing Legal Education

1. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the [Recommendation for Electronically Stored Information \(ESI\) Discovery Production in Federal Criminal Cases](#).
2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender, who will sponsor at least 15 hours of continuing legal education per year.

3. Attorneys on the CJA Panel will be guided in their practice by the [Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations](#).
4. CJA Panel members must attend at least six continuing legal education hours relevant to federal criminal practice annually.
5. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. Facilities and Technology Requirements

1. CJA Panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.
2. CJA Panel attorneys must comply with the requirements of electronic filing and eVoucher.
3. CJA Panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

D. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the [Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964](#)) or review by certiorari, is closed; or until substitute counsel has filed a notice of appearance; or until an order is entered allowing or requiring the person represented to proceed *pro se* without standby counsel; or until the appointment is terminated by court order.

E. Miscellaneous

1. Minimum number of appointments

By serving on the CJA Panel, an attorney agrees to accept at least three appointments during each calendar year.

2. Case budgeting

In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost, the court may require development of a case budget consistent with [Guide, Vol. 7A, §§ 230.26.10-20](#).

3. 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 CJA, unless such payment is approved by order of the court.

4. Redetermination of need

If, at any time after appointment, counsel has reason to believe that a party is financially able to obtain counsel, or make partial payment for counsel, and the source of counsel's information is not protected as a privileged communication, counsel will advise the court.

XIII. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA Panel attorneys must be compensated for time expended in court and time reasonably expended out of court, and reimbursed for expenses reasonably incurred.
2. Voucher cuts should be limited to:
  - a. Mathematical errors;
  - b. Instances in which work billed was not compensable;
  - c. Instances in which work was not undertaken or completed;
  - d. Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task; and
  - e. Instances in which the attorney voluntarily requests to reduce compensation.

**See:** [JCUS-SEP 2018](#), p. 42.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The Clerk of Court or her/his designee will review the claim for mathematical and technical accuracy and for conformity with *Guide*, Vol. 7A and, if correct, will forward the claim for consideration and action by

the presiding judge.

4. Absent extraordinary circumstances, the court should act on CJA compensation claims within 30 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
5. Except in cases involving mathematical corrections or at the request of CJA counsel, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.
6. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons or due to a requested voluntary reduction, may refer the voucher to the CJA Committee for review and recommendation before final action on the claim is taken. **See:** Section VIII.B.6 of this Plan.
7. Notwithstanding the procedure described above, the court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the court and CJA Panel member, the claim for compensation need not be referred to the CJA Committee for review and recommendation.

#### XIV. Investigative, Expert, and Other Services

##### A. Financial Eligibility

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request such services in an *ex parte* application to the court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the court must authorize counsel to obtain the services.

##### B. Applications

Requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the court (using the court's eVoucher system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

##### C. Compliance

Counsel must comply with Judicial Conference policies in [Guide, Vol. 7A, Ch. 3](#).

#### XV. Appointment of Counsel and Case Management in CJA Capital Cases

A. Applicable Legal Authority

The appointment and compensation of counsel in capital cases and the authorization and payment of persons providing investigative, expert, and other services are governed by [18 U.S.C. §§ 3005, 3006A, and 3599](#), and [Guide, Vol. 7A, Ch. 6](#).

B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions of this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See: [18 U.S.C. § 3599\(e\)](#).
3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the U.S. Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”), which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the court for assistance with selection and

appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.

5. The Federal Public Defender should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.
6. In appointing counsel in capital cases, judges should consider and give due weight to the recommendations made by the Federal Public Defender and resource counsel and articulate reasons for not doing so.
7. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA Panel attorney or an attorney appointed *pro hac vice*. See: [18 U.S.C. § 3006A\(a\)\(3\)](#).
8. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.
9. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.
10. All attorneys appointed in federal capital cases should comply with the [American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases](#) (Guidelines 1.1 and 10.2 *et seq.*), and the [2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases](#).
11. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
12. There should be no formal or informal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter.
13. All capital cases should be budgeted with the assistance of case-budgeting attorneys and/or resource counsel where appropriate.
14. Questions about the appointment and compensation of counsel and the



authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO's Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or by email at [ods\\_lpb@ao.uscourts.gov](mailto:ods_lpb@ao.uscourts.gov).

C. Appointment of Trial Counsel in Federal Death-Eligible Cases

1. General Requirements

- a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. See: [18 U.S.C. § 3005](#).
- b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capitally qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
- c. At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for "learned counsel" as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. See: [18 U.S.C. § 3005](#).
- d. When appointing counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See: [18 U.S.C. § 3005](#).
- e. In appointing counsel, judges should give due weight to the recommendations made by the Federal Public Defender and resource counsel and articulate reasons for not doing so.
- f. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender's recommendation be provided to the court, the judge should ensure the Federal Public Defender has been notified of the need to appoint capitally qualified counsel.
- g. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- h. Out-of-district counsel, including federal defender organization

staff, who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation together with cost and other efficiencies.

- i. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

## 2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission *pro hac vice* based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- b. Learned counsel must meet the minimum experience standards in [18 U.S.C. §§ 3005](#) and [3599](#).
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.
- d. "Distinguished prior experience" contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.
- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

## 3. Qualifications of Second and Additional Counsel

- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as provided above.
- b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training, and commitment to serve as counsel in this highly specialized and demanding litigation.
- c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

D. Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases

1. When appointing appellate counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
2. In appointing appellate counsel, judges should give due weight to the recommendations made by the Federal Public Defender and resource counsel and articulate reasons for not doing so.
3. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
4. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.
6. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
7. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by [18 U.S.C. § 3599\(c\) or \(d\)](#).

8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
  9. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.
- E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases ([28 U.S.C. § 2255](#))
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See: [18 U.S.C. § 3599\(a\)\(2\)](#).
  2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
  3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.
  4. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project.
  5. In appointing post-conviction counsel, judges should give due weight to the recommendations made by the Federal Public Defender and resource counsel and articulate reasons for not doing so.
  6. Out-of-district counsel, including Federal Public Defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.
  7. Local or circuit restrictions prohibiting capital habeas units (CHUs) from engaging in cross-district or cross-circuit representation should not be imposed without good cause. Every district should have access to a CHU.
  8. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

9. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
  10. In evaluating the qualifications of proposed post-conviction counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
  11. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.
- F. Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings ([28 U.S.C. § 2254](#))
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. **See:** [18 U.S.C. § 3599\(a\)\(2\)](#).
  2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
  3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the Federal Public Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.
  4. In appointing counsel in a capital § 2254 matter, judges should give due weight to the recommendations made by the Federal Public Defender and resource counsel and articulate reasons for not doing so.
  5. Local or circuit restrictions prohibiting Capital Habeas Units (CHUs) from engaging in cross-district or cross-circuit representation should not be imposed without good cause. Every district should have access to a CHU.
  6. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.
  7. For federal counsel to avail themselves of the full statute of limitations period to prepare a petition, the court should appoint counsel and provide appropriate litigation resources at the earliest possible time permissible by law.

8. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the defendant, capital § 2254 counsel must represent the defendant throughout every subsequent stage of available judicial proceedings and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. See: [18 U.S.C. § 3599\(e\)](#).
9. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
10. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
11. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
12. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

#### XVI. Effective Date

This Plan will become effective when approved by the Judicial Council of the Eighth Circuit.

## APPENDIX I

### PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF TRAINING PANEL ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

#### I. Overview

The Training Panel will consist of attorneys selected based upon their ability or potential to provide high quality, zealous representation of indigent criminal defendants under the provisions of the Criminal Justice Act. Training Panel Attorneys (TPAs) will be appointed for one-year terms. During their one-year terms, they will be assigned to assist experienced Assistant Federal Public Defenders and CJA attorneys (“mentor counsel”). They will be paid for actual representational services at a rate below the maximum allowed under the Criminal Justice Act. At the end of their one-year term, TPAs will be evaluated by the CJA Committee, and if, in the judgment of the Committee, they are deemed capable of performing the duties required under the Criminal Justice Act, they will be appointed to the regular CJA Panel if vacancies exist.

#### II. Qualifications for Membership

- A. Admission to the bar in Iowa and in the United States District Court for the Northern or Southern District of Iowa (depending on the jurisdiction in which the prospective TPA intends to practice), and maintenance of good standing.
- B. Commitment to the representation of indigent defendants.
- C. Demonstrated ability or aptitude for providing zealous representation of criminal defendants, including, but not limited to:
  - 1. Success in litigation at either the trial or appellate level.
  - 2. Academic achievement.
  - 3. Proven writing ability.
  - 4. References from judges and attorneys familiar with the applicant’s legal work.

#### III. Selection Process

- A. The CJA Committee will select applicants for the Training Panel to recommend to the court for appointment.
- B. The Federal Public Defender will make an application form available on its

website.

C. Solicitation of Applicants

1. The Federal Public Defender will utilize appropriate media to encourage attorneys to apply for Training Panel membership.
2. The Federal Public Defender will seek opportunities to address groups to encourage lawyers to apply for Training Panel membership.
3. The Federal Public Defender will proactively attempt to reach a diverse group of attorneys to advise them of the opportunity to apply for Training Panel membership.

IV. Expiration of One-Year Term of Appointment of TPAs

A. Upon the expiration of the TPA's one-year term, the TPA's performance will be evaluated by the CJA Committee. At that time, the Committee will exercise one of the following options:

1. The Committee will recommend to the court that the attorney should be added to the regular CJA Panel;
2. The Committee will recommend to the court that the attorney be reappointed to another one-year term as a TPA; or
3. The Committee will recommend to the court that the attorney not be added to the regular CJA Panel and not be reappointed to another one-year term as a TPA.

B. If, at any time, the Committee determines that the TPA's performance has been unsatisfactory, the Federal Public Defender will so advise the TPA and terminate the TPA's participation in the Training Panel.

V. Appointment of TPAs to Cases and Compensation

A. When the Federal Public Defender's Office is appointed to a case, and the Federal Public Defender determines that the case is appropriate for assignment of a TPA, the Federal Public Defender will notify the Clerk of Court's Office and the Clerk's Office will have the next TPA in the rotation appointed as Associate Counsel. Similarly, when one of the CJA mentor counsel receives an appointment, and that attorney believes the case is appropriate for assignment of a TPA, that attorney will notify the Clerk of Court's Office to appoint the next TPA in the rotation as Associate Counsel. The Clerk's Office shall provide notice to the Federal Public Defender of all Associate Counsel appointments.



The purposes of appointing Associate Counsel on a rotational basis are to ensure that the burden of supervising TPAs does not fall to one or two attorneys, to ensure that TPAs are appointed to a variety of cases, and to ensure that TPAs are exposed to a variety of styles and approaches to practice.

B. Assignment to Cases

1. When assigned to cases, TPAs will be designated as Associate Counsel to signify their subordinate role to CJA mentor counsel or Assistant Federal Public Defenders. This designation will also signify that they should be paid at a reduced rate.
2. The Federal Public Defender's Office will assign Assistant Federal Public Defenders to serve as Lead Counsel in cases to which TPAs will be assigned.
3. The CJA Committee will select experienced CJA attorneys who are willing to serve as Lead Counsel in cases to which TPAs will be assigned.
4. The Assistant Federal Public Defender or CJA mentor counsel serving as Lead Counsel will have primary responsibility for the defense of assigned cases, but will, in their discretion, assign discrete tasks to the TPAs, and will review and supervise the work of the TPAs.

C. Compensation

1. CJA funds may be used to pay TPAs for actual casework performed in conjunction with, and under the supervision of, experienced CJA counsel or Assistant Federal Public Defenders. CJA funds may be used to pay for non-duplicative representational work performed by the TPAs.
2. The appointment of Associate Counsel does not increase the maximum fee caps in a case. In other words, the fact that a TPA is appointed as Associate Counsel does not raise the fee cap in a felony case from \$12,800 to \$25,600.
3. Work performed by the TPAs must be at the direction of and subject to the supervision of the experienced CJA Panel attorney or Assistant Federal Public Defender. Supervision, however, can vary depending on the task. For example, if Lead Counsel asks Associate Counsel to go to the jail to meet with the client and review discovery, supervision may consist only of Lead Counsel reviewing with Associate Counsel the materials reviewed with the client, any questions the client had, and

Associate Counsel's responses.

4. Duplicative services are not compensable. For example, if both Lead Counsel and Associate Counsel meet with the client, then both attorneys cannot bill for the meeting.
5. TPAs will be required to keep detailed time records and submit vouchers under the eVoucher System for payment in the same manner required of regular CJA Panel attorneys.
6. TPAs will be paid at a rate of ninety percent (90%) of the standard CJA Panel rate.

VI. Educational Requirements for TPAs

- A. TPAs shall attend at least 12 hours of continuing legal education offered by the Federal Public Defender's Office.
- B. In addition, each member of the Training Panel will be required to attend at least one National Federal Criminal Defense training program presented by an organization such as NACDL, the American Bar Association, or the Defender Services Office ("DSO") training branch. If attendance at a national seminar would be cost-prohibitive, the TPA shall coordinate with the Federal Public Defender regarding alternative training opportunities.