

**FILED**

**NOV 14 2011**

**CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA**

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA**

IN THE MATTER OF

AMENDED AND SUBSTITUTED  
CRIMINAL JUSTICE ACT PLAN FOR  
THE SOUTHERN DISTRICT OF IOWA

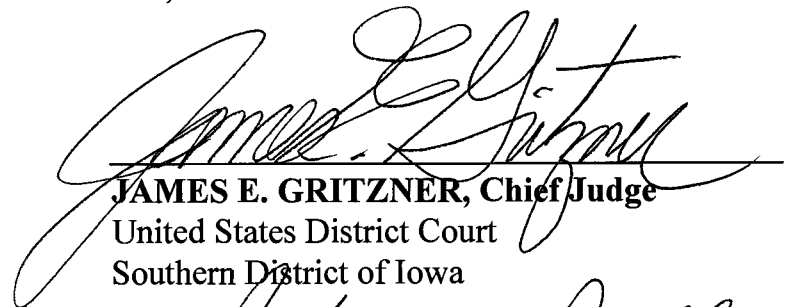
**ORDER**

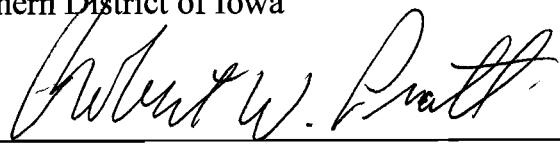
Public Administrative Order

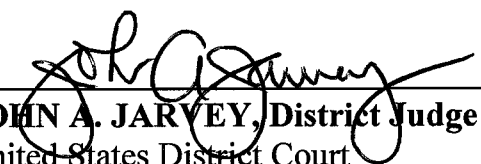
No. 11 - AO - 5 - P

IT IS HEREBY ORDERED that the Amended and Substituted Criminal Justice Act Plan for the Southern District of Iowa, set out as part of this order, is adopted, subject to the approval of the Eighth Circuit Judicial Council.

DATED this 14<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
**JAMES E. GRITZNER, Chief Judge**  
United States District Court  
Southern District of Iowa

  
\_\_\_\_\_  
**ROBERT W. PRATT, District Judge**  
United States District Court  
Southern District of Iowa

  
\_\_\_\_\_  
**JOHN A. JARVEY, District Judge**  
United States District Court  
Southern District of Iowa

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**UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF IOWA**  
**AMENDED AND SUBSTITUTED CRIMINAL JUSTICE ACT PLAN**

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA) section 3006A of title 18, United States Code, and the Guidelines for Administering the CJA and Related Statutes, Volume VII, *Guide to Judiciary Policy* (CJA Guidelines), the judges of the United States District Court for the Southern District of Iowa, adopt this Plan for furnishing representation in federal courts for any person financially unable to obtain adequate representation in accordance with the CJA.

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 crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of 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 Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk, the Federal Public Defender Organization, and private attorneys appointed 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 Federal Public Defender Organization 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 Criminal Justice Act (CJA Panel). The federal defender 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" includes private attorneys, the federal public defender, and staff attorneys of the Federal Public Defender Organization.

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 with a misdemeanor other than a petty offense;
  - 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 Constitution; or

1. 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 for which a sentence to 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 28, United States Code;
  - c. is charged with civil or criminal contempt 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;
  - f. is held for international extradition under chapter 209 of title 18, United States Code; or
  - g. is a target of a grand jury investigation.

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, when they have received a summons to appear in court to answer formal charges, or when a judicial officer otherwise considers appointment of counsel appropriate under this Plan or 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, at least two attorneys shall be appointed.
2. Qualifications. Except as provided by section 848(q)(7) of title 21, United States Code, 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 section 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. FEDERAL PUBLIC DEFENDER ORGANIZATION.

A. Establishment.

1. The Federal Public Defender Organization of the Southern District of Iowa, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.
2. The Federal Public Defender Organization shall be capable of providing legal services throughout this district and shall maintain an office in Des Moines and in Davenport, Iowa.

- B. Supervision of Defender Organization. The federal public defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the federal public defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the federal public defender.

VI. PRIVATE ATTORNEYS.

- A. 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.
- B. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall 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" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

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 Iowa Rules 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, and 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, notify the federal public defender who shall discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and 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. A Pretrial Services Officer shall 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 shall advise the defendant of the right to speak with a lawyer before answering questions, and shall 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 shall be immediately terminated if the defendant requests to speak with a lawyer at any time during the interview. Relevant information bearing on the person's financial eligibility shall be reflected on a financial eligibility affidavit (CJA Form 23) which should be filled out by that person with the assistance of counsel. After completion, the form shall be presented to a judicial officer. 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 United States Attorney's offices must not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.
- C. Notice of Indictment or Criminal Information. 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, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel, at the address shown on defendant's bond papers 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 on the appropriate CJA form to the federal defender's office. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judicial officer. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- 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 Eighth Circuit.

APPROVED BY THE JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT.

\_\_\_\_\_  
William J. Riley, Chief Judge  
Eighth Circuit Court of Appeals

\_\_\_\_\_  
Date

APPENDICES:

I. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.

**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. Approval. The Court shall establish two panels of private attorneys (hereinafter referred to as the "Des Moines CJA Panel" and the "Davenport CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panels after receiving recommendations from the "Panel Selection Committees," established pursuant to paragraph B. of this Plan. Members of the two CJA Panels shall serve at the pleasure of the Court.
2. Size. The Court shall fix, periodically, the size of the CJA Panels. The panels shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, 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 a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panels must be members in good standing of the federal bar of this district, or members in good standing of the federal bar of another district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

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 a judicial officer 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* and 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 in the 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. Equal Opportunity. All qualified attorneys shall be 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.
5. Application. Application forms for membership on the CJA Panels shall be made available, upon request, by the Federal Public Defender Office. Completed applications shall be submitted to the Federal Public Defender's Office, who will transmit the applications to the Chairperson of the Panel Selection Committee.
6. Continuing Legal Education. The federal public defender shall regularly schedule and conduct meetings and programs for panel attorneys. These meetings or programs will be three hours in length. Such meetings and programs shall be held at least three (3) times during each calendar year. These meetings shall be designed to ensure that panel attorneys are kept current on recent developments in federal criminal law and to present speakers and topics of interest to attorneys who act as appointed counsel under the Criminal Justice Act. Attorneys on the panel must attend a minimum of two (2) of these meetings each calendar year in order to remain a member of the panel. Attendance at not less than six hours of other continuing legal education in the area of federal criminal law may, at the discretion of the federal public defender, be substituted for attendance at these meetings.

In addition, all members of the CJA panels are encouraged to contact the federal defender's office for assistance with questions of federal law and procedure. New members of the CJA panel who have relatively little experience in handling federal criminal cases should contact the federal defender's office to ask about opportunities to serve as second chair in trials. Lawyers who serve as second chair in these circumstances are not eligible to receive compensation for these services.

7. Acceptance of Appointments. By serving on the CJA Panel, an attorney agrees to accept at least three (3) appointments during each calendar year.

B. Panel Selection Committee.

1. Membership. Panel Selection Committees shall be established by the Court in Des Moines and Davenport. The Committees shall each consist of one district judge, one magistrate judge, the clerk of court, the Chief United States Probation Officer, one attorney who is a member of the CJA Panel, and the federal public defender. The federal public defender shall be the Chairperson.

2. Duties.

- a. The Panel Selection Committees shall each meet at least twice a year to consider applications for vacancies on the Panel. The Committees shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At their meetings, the Committees shall also discuss the status of current panel members, consider whether any members should be removed from the panel due to performance issues or for disciplinary reasons, review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committees regarding the appointment process and panel management. The Committees shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments. In addition, the Committees shall annually furnish information to the Court regarding recruitment efforts undertaken by the Committees in furtherance of the Equal Opportunity statement in paragraph I.A.4.

- b. Removal from CJA Panel. Membership on the CJA panel is not a right. The CJA Panel Selection Committee may determine from time to time that, by reason of information received by the committee, it should remove a member from the CJA panel or take other remedial action. Grounds for removal from the panel include refusing to accept appointments on a consistent basis, providing inadequate representation, or engaging in improper or unethical conduct. When the committee receives information that presents a potential reason to remove a panel member, the committee will address the issue during one of its biannual meetings, or it may

instead call a special meeting for this purpose.

Before disposing of the issue, the committee may, in its discretion, advise the court of the pendency of the matter and its nature, and may take any other protective action that is in the best interest of a defendant or the administration of the CJA Plan.

Before a final removal decision is made, the CJA panel member whose removal is being considered shall receive written notice stating generally the reasons removal is being considered, shall be given the opportunity to attend the committee meeting at which the issue will be addressed, and shall be permitted to present information, orally or in writing, for the committee to consider. A majority vote of the committee—taken by written, secret ballot—will decide the issue. If the request to remove the CJA panel member has been initiated by a member of the committee because of that committee member’s own assessment of the panel member’s deficiencies in representing defendants, that committee member shall not vote on the removal question. The committee’s decision shall be communicated in writing to the panel member, with reasons stated for the decision.

A CJA panel member who has been removed from the panel through this process may file an application to be placed back on the panel no earlier than one year from the date of removal. In the application for reinstatement, the lawyer must note the earlier removal and explain why the lawyer should be permitted to return to the CJA panel.

None of these procedures should be deemed to create a proprietary interest in being on or remaining on the CJA panel. *Roth v King*, 449 F 3d 1272 (DC Cir 2006).

- c. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committees shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

## II. SELECTION FOR APPOINTMENT

### A. Maintenance of List and Distribution of Appointments

The federal public defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses, e-mail addresses and telephone numbers, as well as a statement of qualifications and experience. The federal public defender shall furnish a copy of these lists to all federal judicial officers throughout the Southern District of Iowa. The federal public defender shall maintain a public record of the assignments to private counsel, the amount of compensation received by private counsel on each matter, and, when appropriate, statistical data reflecting the proration of assignments between attorneys for the Federal Public Defender Organization and private attorneys.

B. Method of Selection

Appointments from the list of private attorneys 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.

Upon the determination of a need for the appointment of counsel, the judicial officer shall notify the federal public defender of the need for counsel and the nature of the case.

The federal public defender shall advise the judicial officer as to the status of distribution of cases, where appropriate, as between the federal public defender and the panel of private attorneys. If the judicial officer decides to appoint an attorney from the panel, the federal defender 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, i.e., weekends, holidays, or other non-working hours of the federal public defender's office, the presiding judicial officer may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judicial officer shall notify the federal public defender 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 federal public defender. The federal public defender shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for

Administering the CJA and Related Statutes (Volume VII, *Guide to Judiciary Policy*) and, if correct, shall forward the claim form for the consideration and action of the presiding judicial officer.