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Chief Deputy Clerk

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

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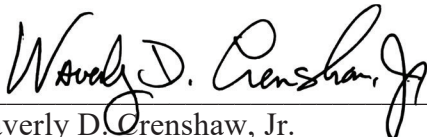
CRIMINAL JUSTICE ACT PLAN )

Administrative Order No. 38 **EFFECTIVE 6/3/2021**

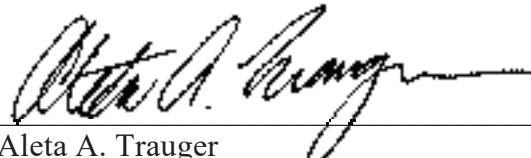
**ADMINISTRATIVE ORDER**

The Court hereby gives notice of its intent to amend the Criminal Justice Act Plan in effect as of December 20, 2018, as attached and incorporated herein by reference. This amended Plan supersedes all previous versions of the Criminal Justice Act Plan and shall become effective upon approval by the Sixth Circuit Judicial Council.

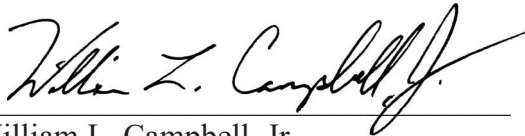
It is so ORDERED.



Waverly D. Crenshaw, Jr.  
Chief United States District Judge



Aleta A. Trauger  
United States District Judge



William L. Campbell, Jr.  
United States District Judge



Eli J. Richardson  
United States District Judge

## CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, *et seq*, the foregoing revised Criminal Justice Act Plan for the Middle District of Tennessee, has been duly received and approved via mail ballot dated May 18, 2021 as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said revised plan shall become effective upon the date of this approval.

This 3rd day of June 2021.



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Jeffrey S. Sutton, Chief Judge

# Criminal Justice Act (CJA) Plan



United States District Court for the  
Middle District of Tennessee

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# CRIMINAL JUSTICE ACT (CJA) PLAN

## I. Authority

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the *Guide to Judiciary Policy (Guide)*, Volume 7, Part A (Vol. 7A), the judges of the United States District Court for the Middle District of Tennessee adopt this Plan, as approved by the Sixth Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

## II. Statement of Policy

### A. Objectives

1. The objectives of this Plan are:
  - a. To attain the goal of equal justice under the law for all persons;
  - b. 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
  - c. 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 this District.
2. 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, attorneys provided by a bar association or legal aid agency, and private attorneys appointed under the CJA should 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, the Federal Public Defender and staff attorneys of the Federal Public Defender, and attorneys provided by a bar association or legal aid agency.

#### C. CJA Administrator

“CJA Administrator” is a person employed by the Federal Public Defender and approved by the Chief District Judge to administer the CJA Panel.

### 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, 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 18 U.S.C. chapter 313;



- h. Is in custody, or is at risk of being placed 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;
- l. Faces loss of liberty in a case and federal law requires the appointment of counsel; or
- m. Is seeking to set aside or vacate a prior sentence under 28 U.S.C. § 2254 or § 2255 and an evidentiary hearing is warranted.

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 they are 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 the Office of the Federal Public Defender (OFPD)
  - (i) In cases in which the Federal Public Defender may be appointed, the OFPD shall:
    - immediately investigate and determine whether an actual or potential conflict exists; and
    - in the event of an actual or potential conflict, promptly facilitate the timely appointment of other counsel.

- (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.
  - b. Duties of Pretrial Services Office
    - (i) The pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived during an on the record hearing with the United States Magistrate Judge.
    - (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. Other employees of the Court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
  - 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 their 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 in accordance with the general provisions set forth in 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:

- a. After they are taken into custody;
- b. When they appear before a magistrate judge or district court judge;
- c. When they are formally charged or notified of charges if formal charges are sealed; or
- d. When a magistrate judge 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 Service Interview

Financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer, unless the right to counsel is waived.

#### 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 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 set forth in this Plan, is hereby delegated and assigned to the Federal Public Defender and the Chief District Judge.

#### 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 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 extended and complex or otherwise appropriate. Participation by second counsel in a mentoring program administered under this Plan may be a factor in determining "otherwise appropriate."

#### 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 set forth in section XIV of this Plan.

### VII. Federal Public Defender

#### A. Establishment

The Federal Public Defender is established in this District under the CJA and is

responsible for rendering defense services on appointment throughout this district.

#### B. Standards

The Federal Public Defender 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. See Polk County v. Dodson, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).

#### C. Workload

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

#### D. Professional Conduct

The Federal Public Defender must conform to the highest standards of professional conduct, including but not limited to the Model Rules of Professional Conduct.

#### 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 Federal Public Defender Code of Conduct.

#### F. Supervision of Defender

The Federal Public Defender will be responsible for the supervision and management of the OFPD. Accordingly, the Federal Public Defender will be appointed in all cases assigned to the OFPD 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 CJA Panel Attorney District Representative (PADR)<sup>1</sup>, the training needs of the CJA Panel attorneys, and provide training opportunities and

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<sup>1</sup> The PADR is a member of the district’s CJA Panel who is selected by the local Federal Public Defender, with acquiescence 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.

other educational resources. The Federal Public Defender will confer with the Chief Judge regarding the OFPD's assessment of CJA Panel attorney training needs.

## VIII. CJA Panel of Private Attorneys

### A. Establishment of the CJA Panel Committee

1. A CJA Panel Selection Committee ("Committee") will be established by the Court in consultation with the Federal Public Defender. The Committee will consist of the Chief District Judge, the Federal Public Defender, the PADR, at least one and as many as five criminal defense attorneys who practices regularly in the District who must be CJA Panel Members, and an ex officio staff member employed by the Federal Public Defender who will act as administrative coordinator. The Federal Public Defender will chair the Committee.
2. The Chief District Judge, the Federal Public Defender, and the district's PADR are permanent members of the Committee. Membership on the Committee will otherwise be for a term of three (3) years and may be extended for up to an additional three (3) years, and members may be subsequently reappointed to the Committee. Members' terms will be staggered to ensure continuity on the Committee.
3. The Committee will meet at least once a year, typically in the first week of December, and at any time that the Court asks the Committee to consider an issue.
4. The Committee may establish such subcommittees as needed to meet the responsibilities imposed by this Plan without undue hardship on Committee members. Such subcommittees may include Panel members not on the Committee, lawyers not on the Panel and non-lawyers, but must include at least one Committee member who will serve as chair of the subcommittee. Subcommittee memberships are subject to Committee approval.

### B. Duties of the Committee

#### 1. Membership

Examine the qualifications of applicants for membership on the CJA Panel and report to the Chief District Judge their selection of those attorneys who are deemed qualified, and those attorneys deemed unqualified. If the Chief District Judge accepts or rejects the decisions of the Committee, the report will be returned to the Committee along with any comments the Chief District Judge deems appropriate for the further action of the Committee.

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. The Committee will develop and maintain a diversity recruitment plan that may include outreach to minority and other bar associations and private firms, along with special training events.

3. Training

Assist the OFPD in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients. The Committee may adopt training participation opportunities for continued Panel membership, including programs addressing professional conduct and respectful behavior towards others in addition to those addressing substantive and procedural areas of federal criminal practice.

4. Mentoring

Consistent with the Judicial Conference of the United States, the Middle District of Tennessee recognizes the importance that CJA Panel Attorneys must reflect the rich diversity in the Middle District. Accordingly, a diverse and inclusive staff in the OFPD and the membership of the CJA Panel is important. This goal is advanced by providing a program to develop the skills and knowledge necessary to provide representation to those served by the Criminal Justice Act that meets the standards of practice established under this Plan. To that end, this Plan creates the CJA Fellows Program that encourages all lawyers, especially young lawyers, female lawyers, and lawyers of color to seek membership on the CJA Panel.

5. Removal

The Committee may remove CJA Panel Members and CJA Fellows as provided in Section IX.C.7.

6. Annual Report and Meeting

a. Reasonably in advance of the annual meeting of the Committee, the Chair and Administrative Coordinator will report to the Committee such information as will assist the Committee in conducting its business, including the nature and extent of participation in Panel activities by members of the Panel whose term is expiring, information regarding lawyers seeking membership on the Panel, changes in the volume or complexity of criminal cases brought in the District and summary of the activities of any subcommittee established by the



Committee. The Chief District Judge may share the report with other members of the Court or direct the Administrative Coordinator to do so.

- b. At its annual meeting, prior to determining the membership of the Panel for the upcoming year, the Committee will review the operation and administration of the CJA Panel over the preceding year, and consider any necessary or appropriate changes concerning:
  - (i) The size of the CJA Panel;
  - (ii) The recruitment of qualified and diverse attorneys as required and set forth in this Plan; and
  - (iii) Recurring issues or difficulties encountered by Panel members or their CJA clients.

7. Voucher Review

Upon request of the presiding judge in a case, review and make recommendations on the processing and payment of CJA vouchers in those cases where the judge, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel. The judge will, at the time the voucher is submitted to the Committee, provide a statement describing questions or concerns they have with the voucher. Counsel will be notified of the potential voucher reduction and given the opportunity to provide information or documentation relevant to the voucher and concerns raised by the judge. The Committee will issue a written recommendation to the judge. *See also* Section XII.B.6.

8. Other Panel Committees

The Panel, acting through the PADR and the Federal Public Defender, may establish such committees separate from the CJA Selection Committee, as needed to meet the responsibilities imposed by this Plan without undue hardship on Panel members. Such committees may include members not on the Panel and non-lawyers but must include at least one Panel member who will serve as chair of the committee. Other Panel committees are subject to Panel approval.

## IX. Establishment of a CJA Panel

### A. Approval of CJA Panel

The existing, previously established Panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized and will continue as presently constituted pending action by the CJA Committee under this Plan.

### B. Size of CJA Panel

1. The size of the CJA Panel will be determined by the Committee based on the caseload and activity of the Panel members, subject to review by the Court.
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.
3. The Committee may establish an overflow or reserve panel of qualified lawyers who will be available for appointment in circumstances where the number of conflict free Panel members is insufficient to meet the existing need for appointed counsel. The term of membership will be one year, renewable at the discretion of the Committee. The Committee may also establish a Mentoring Panel in conjunction with Section VIII.B.4. above, and a Second Chair Panel to provide training and ad hoc experience opportunities for prospective panel applicants beyond the mentoring program.

### 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.

#### 2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

3. Eligibility

- a. Applicants for the CJA Panel must be members in good standing of the federal bar of this District and the Sixth Circuit Court of Appeals.
- b. Applicants must maintain a primary, satellite, or shared office in this District.
- c. Applicants must possess and maintain strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.
- d. 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
- e. Attorneys who do not possess the experience set forth above, but believe they have equivalent other experience, are encouraged to apply and set forth in writing the details of that experience for the Committee's consideration

4. Appointment to CJA Panel

The Chief District Judge will appoint or reappoint to the CJA Panel attorneys recommended by the Committee.

5. Terms of CJA Panel Members

The existing three-tiered Panel, with approximately one-third having expiring terms each year, will continue. As vacancies occur by any means, the Selection Committee will place new members in tiers in such numbers as to keep the relative balance among the tiers.

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 at least three (3) months prior to the expiration of his or her current term.
- c. The Committee will solicit input concerning the quality of

representation provided by lawyers seeking reappointment.

- d. The Committee will also 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 set forth 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 (other than temporary suspensions not to exceed 30 days related to compliance with CLE requirements or payment of fees) 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 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 (other than temporary administrative sanctions related to CLE requirements or payment of fees), or when a finding of probable cause, contempt, sanction, or reprimand has been issued against the Panel member by any state or federal court.

c. Discretionary removal

The Committee may remove a member based on performance or conduct inconsistent with the goals of this Plan and the professional standards expected of members. The Committee may conduct such inquiry as is necessary to fairly resolve such matter, including hearing from the Panel member in question or other persons with information bearing on the issue. Membership on the Panel is a privilege, not a right. This section does not create any due process rights regarding the Committee's actions.

d. Notification

The Court will be immediately notified when any member of the CJA Panel is removed or suspended.

## D. Fellows Program and Panel

### 1. CJA Fellows Program

In Section VIII.B.4, the Plan creates the CJA Fellows Program (Program) to prepare attorneys for criminal practice, to foster a client-centered approach to litigation, and to increase diversity on the CJA Panel. The Program will provide the CJA Fellow the opportunity to learn federal practice and ultimately to become a member of the CJA Panel through an intensive, one-year mentorship program.

### 2. CJA Fellows Panel

- a. The CJA Fellows Panel will include lawyers who have completed the Program and continue to be engaged in the Program. This may include panel lawyers who have spent time as “second-chair” counsel working with veteran CJA Panel members or otherwise demonstrated sufficient knowledge and skill to warrant appointment as associate counsel.
- b. If appointed, compensation will be at the “associate counsel” CJA rate then in effect. Members of the CJA Fellows Panel may be considered for transfer to the CJA Panel. Should an appointed CJA Fellow be moved to the CJA Panel during the pendency of a case, compensation may be raised, upon authorization by the presiding judge, to the full CJA Panel rate.
- c. Members of the Fellows Panel are subject to removal by the Committee in the same manner as prescribed for CJA Panel Members in Section IX.C.7.

## X. 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 Federal Public Defender is responsible for overseeing the appointment of cases to Panel attorneys. The Federal Public Defender will maintain a record of Panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the OFPD and Panel attorneys.

2. Appointment of cases to CJA Panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Federal Public Defender may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
3. Under special circumstances, the Court may appoint a member of the bar of the Court 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. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. The Federal Public Defender or the Panel Administrator should ordinarily be consulted before such an appointment. Appointments made under this section will be reported to the Committee.
4. Unless otherwise impracticable, CJA Panel attorney(s) must be available to represent defendant(s) at the same stage of the proceedings as is the Federal Public Defender.

## XI. 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. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))). Panel members should strive to meet the expectations of the current edition of the ABA Standards. 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.
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct.
3. CJA Panel members must notify the chair of the CJA Committee within 30 days when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the Panel member by any state or federal court.

## 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.
2. CJA Panel members must include a significant number of continuing legal education hours relevant to federal criminal practice in their annual training and must attend any training event designated as mandatory by the CJA Committee.
3. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel or non-renewal at the expiration of a member's term.

## C. Facilities and Technology Requirements

1. CJA Panel attorneys must have access to facilities, resources, and technological capability to effectively and efficiently manage assigned cases.
2. CJA Panel attorneys must comply with the current requirements and processes for seeking compensation and reimbursement of expenses.
3. CJA Panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

## D. Continuing Representation

1. Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the Sixth Circuit's CJA Plan) 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; or until the appointment is terminated by court order.
2. Counsel will maintain client confidences and loyalty obligations of the Tennessee Rules of Professional Conduct pertaining to former clients.

## E. Miscellaneous

1. 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, Ch. 2, §§ 230.26.10–20.

2. 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.

3. 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.

## XII. Compensation of CJA Panel Attorneys

### A. Policy of the Court Regarding Compensation

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.

### B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the court's voucher 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 Panel Administrator or their 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, 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 reasons other



than mathematical reasons, may refer the voucher to the Committee for review and recommendation before final action on the claim is taken. See Section VIII of this Plan.

7. Notwithstanding the procedure described above, the Court may, in the first instance, contact appointed counsel directly or through the Panel Administrator 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 Committee for review and recommendation.

### XIII. 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 current 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 is expected to comply with Judicial Conference policies set forth in Guide, Vol. 7A, Ch. 3.

### XIV. 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 set forth in 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, including when an individual has been identified as the target of a federal criminal investigation involving the possibility of a death-eligible charge against the individual. The Court must consider the recommendation of the Federal Public Defender regarding counsel to be appointed, including learned counsel in accordance with 18 U.S.C. §3005. In such situations, the initial application for learned counsel and necessary resources, including an initial budget, may be submitted to the Chief District Judge. If an indictment is returned against the individual, applications for additional resources or budget approval should be submitted to the District Judge presiding over the case.
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 United States Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include:
  - a. Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials),
  - b. Federal Capital Appellate Resource Counsel Project,

- c. Federal Capital Habeas § 2255 Project, and
- d. 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. 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). In appropriate circumstances, including when a conflict of interest exists between an individual entitled to appointment of counsel and an individual represented by the Federal Public Defender of this District, the Court may appoint a Federal Defender Organization from another district, consistent with policies of the Defender Services Office of the AOUSC.
- 7. 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.
- 8. 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.
- 9. 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.
- 10. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.

11. Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases may be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at (202) 502- 3030 or via email at [ods\\_lpb@ao.uscourts.gov](mailto:ods_lpb@ao.uscourts.gov) or the Sixth Circuit case budgeting authority.

## C. Appointment of Trial Counsel in Federal Death-Eligible Cases<sup>2</sup>

### 1. General Requirements

- a. Appointment of qualified capital trial counsel must as soon as practicable 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. 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.
- f. 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

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<sup>2</sup> The Judicial Conference adopted detailed recommendations on the appointment and compensation of counsel in federal death penalty cases in 1998 (JCUS-SEP 98, p. 22). In September 2010, the Defender Services Committee endorsed revised commentary to the Judicial Conference’s 1998 recommendations. CJA Guidelines, Vol. 7A, Appx. 6A (Recommendations and Commentary Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010)) (“Appx. 6A”) is available on the judiciary’s website.

conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.

- g. 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. At least one counsel will generally be selected from the members of the CJA Panel of this district.
- h. 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 represent effectively 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 set forth 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 set forth 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. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
3. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
4. 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.
5. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
6. 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).

7. 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.
8. 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. Out-of-district counsel, including federal 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.
6. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
8. 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.

9. 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\(a\)\(2\)](#). In appropriate circumstances, the Federal Public Defender of this District is authorized to file a petition for habeas corpus relief, a motion for stay of execution, a motion for appointment of counsel and other related and supporting documents on behalf of an individual in advance of appointment and to conduct such investigation and preparation as is necessary to fairly present the matter to the Court.
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.

The defender's recommendation may be to appoint this District's CHU, a CHU from another district, or other counsel who qualify for appointment under [18 U.S.C. § 3599](#) and this Plan, or any combination of the foregoing appropriate under the circumstances.

4. 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.
5. In order 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.
6. 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).*

7. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
8. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
9. 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.
10. 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 effectively represent the interests of the client.

#### G. [Appointment of the Federal Public Defender in other judicial districts.](#)

The Federal Public Defender of this District is authorized to accept appointments in capital proceedings in other districts, consistent with existing policies of the Defender Services Office, AOUSC, when the Federal Public Defender concludes, with the approval of the Chief District Judge, that accepting the appointment will not interfere with that office's ability to meet its representation obligations in this District.

## XV. [Effective Date](#)

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