

United States District Court Southern District of Illinois



CRIMINAL JUSTICE ACT PLAN

I. Authority

Pursuant to the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (the “CJA”), and the *Guide to Judiciary Policy*, Volume 7A (hereinafter referred to as the “CJA Guidelines”), the judges of the United States District Court for the Southern District of Illinois adopt this Criminal Justice Act Plan (the “CJA Plan”), as approved by the circuit, to prescribe the procedures and requirements for furnishing representation in this Court to any person financially unable to obtain adequate representation in accordance with the CJA. This Plan supersedes all prior CJA Plans of this Court.

II. Objectives

The objectives of this CJA Plan are: (1) to attain the goal of equality before 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 the CJA Guidelines to meet the needs of this judicial district.

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.

III. Definitions

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

“**CJA Administrator**” is a person designated by the Federal Public Defender to administer the CJA Plan.

“**CJA Panel**” is the panel of private attorneys selected by the Court, in consultation with the Federal Public Defender, who are eligible and willing to be appointed to provide representation under the CJA.

“**CJA Panel Attorney District Representative**” (“**PADR**”) is a member of the district’s CJA Panel who is selected by the Federal Public Defender, with acquiescence from the Chief Judge, to serve as the representative of the district’s CJA Panel for the national Defender Services CJA PADR program and local CJA committees.

“**Clerk**” or “**Clerk of Court**” means the Clerk of the United States District Court for the Southern District of Illinois (including any Acting Clerk of Court) or his/her/their designee.

“**Court**” means the United States District Court for the Southern District of Illinois and includes any of the District Judges and Magistrate Judges assigned to this judicial district.

“**Judicial Officer**” includes a United States District Judge, a United States Magistrate Judge assigned to the Southern District of Illinois, or a Judge designated to sit in the Southern District of Illinois.

“**Representation**” includes counsel and investigative, expert, and other services authorized by the CJA.

IV. Compliance

The Court, the Clerk of Court, the Federal Public Defender, and private attorneys appointed under the CJA shall comply with this CJA Plan and with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services.

V. 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.

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.

VI. Provision of Representation

A. Timing

1. Timing of Appointment

Counsel shall be provided to a financially eligible person as soon as feasible after the person is taken into custody, when the person first appears before a Judicial Officer, when the person is formally charged or notified of charges (if formal charges are sealed), or when a Judicial Officer otherwise considers appointment of counsel appropriate under the CJA and related statutes, whichever occurs first.

2. 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.

3. Retroactive Appointment

Appointment may be retroactive to include representation provided prior to appointment.

B. Circumstances

1. Mandatory Representation

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

- is charged with a felony or a Class A misdemeanor;
- is a juvenile alleged to have committed an act of juvenile delinquency (as defined in 18 U.S.C. § 5031);
- 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);
- is under arrest, when such representation is required by law;

- is charged with a violation of probation or supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of probation or supervised release (unless the change to the condition or term is favorable to the offender, and the government has not objected to the proposed change);
- is subject to a mental condition hearing pursuant to 18 U.S.C. §§ 4241-4248;
- is in custody as a material witness;
- is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution;
- faces loss of liberty in a case, and federal law requires the appointment of counsel;
- is entitled to appointment of counsel in a proceeding to transfer to or from the United States under 18 U.S.C. § 4109;
- is entitled to appointment of counsel in parole proceedings; or
- is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255.

2. Discretionary Representation

Whenever a Judicial Officer determines that the interests of justice so require, representation *may* be provided for any financially eligible person who:

- is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- is seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. §§ 2241, 2254, or 2255;
- is charged with civil or criminal contempt and faces loss of liberty;
- 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;

- has been advised by the United States Attorney or a law enforcement officer that they are a target of a grand jury investigation;
- is proposed by the United States Attorney for processing under a pretrial diversion program; or
- is held for international extradition under Chapter 209 of Title 18 of the United States Code.

3. Ancillary Matters

Representation *may* also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings. In determining whether representation in an ancillary matter is appropriate to the proceedings, the Court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives as set forth in the CJA Guidelines and 18 U.S.C. § 3006(A):

- to protect a Constitutional right;
- to contribute in some significant way to the defense of the principal criminal charge;
- to aid in preparation for the trial or disposition of the principal criminal charge;
- to enforce the terms of a plea agreement in the principal criminal charge;
- to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding under 21 U.S.C. § 881, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
- 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 Federal Rule of Criminal Procedure 41(g), which property, if recovered by the CJA client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

C. 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 or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, 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 the United States Attorney's Office

- (i) Upon the return or unsealing of an indictment or the filing of a criminal information and where the defendant has not retained or waived counsel, the United States Attorney's Office or their delegate, as appropriate, must promptly notify, telephonically or electronically, the appropriate Court personnel who will in turn notify the Federal Public Defender.
- (ii) Upon the issuance of a target letter, and where the individual has not retained or waived counsel, the United States Attorney's Office or their delegate must promptly notify, telephonically or electronically, the appropriate Court personnel of any needed appointment of counsel. Court personnel will in turn notify the Federal Public Defender of the appointment, unless the United States Attorney's Office is aware of an actual or potential conflict between the arrestee or target and the Federal Public Defender, in which case the United States Attorney's Office representative must promptly notify the Court of the 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 the 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 CJA Administrator to 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 Judicial Officer for determination of financial eligibility and appointment of counsel.

d. Duties of the Pretrial Services Office

- (i) When practicable, the Pretrial Services Officer will not conduct an interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived or the defendant otherwise consents to a Pretrial Services interview without counsel.
- (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/she/they have 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/she/they are 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 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 his/her/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) or otherwise in the Court record.

- g. If at any time after the appointment of counsel a Judicial Officer finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the Judicial Officer 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 Judicial Officer 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.

D. Number of Counsel

1. Non-Capital Cases

More than one attorney may be appointed in any case determined by the Court to be extremely difficult.

2. 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 XII of this Plan.

Pursuant to 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, a Judicial Officer should consider appointing at least two attorneys.

VII. Federal Public Defender Office

A. Establishment

The Federal Public Defender Office for the Southern District of Illinois previously established in this district pursuant to the CJA, *see* 18 U.S.C. § 3006A(g)(2)(A), is recognized as the Federal Public Defender organization for this district. The Federal Public Defender Office shall maintain offices in East St. Louis and Benton, Illinois, and shall be capable of providing legal services throughout the Southern District of Illinois. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Office for this district, including the assignment of cases to staff attorneys at his/her/their discretion.

B. Standards

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

D. Professional Conduct

The Federal Public Defender Office must conform to the standards for professional conduct adopted by the Court and the Code of Conduct for Federal Public Defender Employees.

E. Private Practice of Law

Neither the Federal Public Defender nor any Federal Public 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 Office. Accordingly, 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 PADR, the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

VIII. Composition of Panel of Private Attorneys

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

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee (“CJA Committee”) will be established by the Court in consultation with the Federal Public Defender. The CJA Committee will consist of one district court judge, one magistrate judge, the Federal Public Defender, the PADR, a criminal defense attorney who practices regularly in the district who has been a CJA Panel member for at least three years, and *ex officio* members employed by the Federal Public Defender. The Committee shall select its own Chairperson. The Court should make a

diligent effort to ensure that the composition of the CJA Panel Committee reflects the racial, ethnic, gender, and geographic diversity of the district.

2. The Federal Public Defender and the district's PADR are permanent members of the CJA Committee. Membership on the CJA Committee will be at the discretion of the Chief Judge, shall be reviewed every two years, and shall extend for no longer than eight consecutive years.
3. The CJA Committee will meet at least once a year and at any time the Court asks the CJA Committee to consider an issue.

B. Duties of the CJA Committee

1. CJA Panel Membership

The CJA Committee shall 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, as well as the rejection of the applications of those attorneys deemed unqualified. The CJA Committee shall be permitted to gather information from any source for purposes of determining an attorney's worthiness for appointment to the CJA Panel, or continued retention on the CJA Panel.

2. Recruitment

The CJA Committee shall 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.

Recruitment efforts to establish a diverse CJA Panel could include, but are not limited to, the following: notifying bar associations comprised of racially and ethnically diverse populations of the availability of CJA Panel membership; advertising in legal journals directed towards women, people with disabilities, and people of color to encourage panel membership; informal person-to-person recruiting of women, people of color, and the disabled community by CJA Committee members and CJA Administrators; and contacting current or former members of the CJA Panel, or other prominent local attorneys who have disabilities, are people of color, or women for recommendations of potential CJA Panel members.

3. Annual Review

At its annual meeting, the CJA Committee shall review the performance of each member of the CJA Panel and shall advise the Chief Judge of CJA Panel attorneys recommended for dismissal or other remedial action. The CJA Committee also shall review the operation and administration of the CJA Panel over the preceding year and recommend to the Chief Judge any changes deemed necessary or appropriate regarding the appointment process

and CJA Panel management. Other matters for annual consideration by the CJA Committee shall include, among other things: the size of the CJA Panel; the recruitment of qualified and diverse attorneys as required and set forth in this Plan; and recurring issues or difficulties encountered by Panel members or their CJA clients.

4. Removal

The CJA Committee shall recommend to the Chief Judge the removal of any CJA Panel member in accordance with the Complaint process as described in Section VIII.C.5.c.

5. Training

The CJA Committee shall assist the Federal Public Defender's Office in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

6. Voucher Review

Any Judicial Officer may present a CJA voucher to the Committee for evaluation. The Judicial Officer will, at the time the voucher is submitted to the CJA Committee, provide a statement describing questions or concerns they have with the voucher. The CJA Committee shall review and make recommendations on the processing and payment of any CJA voucher forwarded by the Court where it, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel. Counsel will be notified of the potential voucher reduction and given the opportunity to provide information or documentation to the CJA Committee relevant to the voucher and concerns raised by the Judicial Officer. The CJA Committee will issue a written recommendation to the Judicial Officer, and the Judicial Officer will make the final decision on the matter.

7. Mentoring Program

- a. All Judicial Officers in the district and the CJA Committee shall actively recruit attorneys for participation in a mentoring program aimed at maintaining the strength and size of the CJA Panel. In addition, requests for mentoring will be reviewed by the Judicial Officers and CJA Committee. Those selected to be mentored will be paired with an experienced member of the CJA Panel, who has practiced extensively in the federal courts.
- b. Upon motion of a designated mentor, a Judicial Officer may authorize a mentee to enter his/her/their appearance in a case. The mentee may be compensated: (1) under the CJA at the prevailing hourly rate when appointed as second counsel in cases determined by the Court to be extremely difficult; or (2) under the CJA at a reduced associate rate with prior authorization by the Court. All payments to mentees must

ultimately comport with the relevant parameters prescribed by law and the Administrative Office's Defender Services Office.

C. The CJA Panel

1. Establishment, Size, and Term

The Chief Judge, in consultation with the CJA Committee, has established a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the CJA. The existing, previously established CJA Panel of attorneys is hereby recognized.

CJA Panel attorneys will serve a term of at least four years but may be removed from the CJA Panel at any time by the Chief Judge.

Periodically, the Chief Judge shall fix the size and structure of the CJA Panel. The CJA Panel 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 high quality of representation. The Court may differentiate between attorneys on the CJA Panel based on the attorney's experience and geographic considerations.

The Federal Public Defender shall maintain a current list of attorneys on the CJA Panel, with current office and email addresses and telephone numbers. The Federal Public Defender shall furnish a copy of this list to each Judicial Officer.

Every four years, the Chief Judge shall reconstitute the CJA Panel, at which time all Panel members may reapply. The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment. 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 set forth in this Plan.

2. Application for Membership

Application forms for CJA Panel membership shall be made available upon request by the Federal Public Defender. Completed applications shall be submitted to the Federal Public Defender who will forward the applications to the Chairperson of the CJA Committee.

3. Qualifications

- a. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.
- b. Attorneys who serve on a CJA Panel must be members in good standing of the bar of this Court and the bar of the Court of Appeals for the Seventh Circuit.
- c. CJA Panel attorneys must have demonstrated strong litigation skills and experience and proficiency in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Sentencing Guidelines, sentencing procedures, and the Bail Reform Act. Attorneys who serve on the CJA Panel will also be expected to have and maintain acceptable standards of competence, judgment, character, and demeanor to provide their clients with all the benefits of high-quality legal counsel. Appointed attorneys shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Rules of Professional Conduct adopted by the Supreme Court of the State of Illinois and other standards for professional conduct adopted by the Court. All qualified attorneys shall furnish representation in CJA cases, without regard to race, color, religion, sex, age, national origin, sexual orientation, or disabling condition.
- 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 CJA Committee's consideration. The mentoring program may also assist attorneys in gaining the necessary experience to qualify for CJA Panel membership.

4. Training and Continuing Legal Education

- a. 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.
- b. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender.

5. 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 any state court before whom such member is admitted, or who is suspended or disbarred from this Court or any federal court, will be removed immediately from the CJA Panel.

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 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 member may be initiated by the CJA Committee member, a Judicial Officer, another CJA Panel member, a defendant, or a member of the Federal Public Defender's Office. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency or conduct that renders continued service on the CJA Panel inappropriate with specificity. Any complaint should be directed to the CJA Committee, which will determine whether further investigation is necessary. A CJA Panel member must notify the Federal Public Defender 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 CJA Panel member by any state or federal court.

(ii) Notice

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

(iii) Response

A CJA Panel member subject to investigation may respond in writing and appear, if so directed, before the CJA Committee or its subcommittee.

(iv) Protective Action

Prior to disposition of any complaint, the CJA Committee may recommend temporary suspension or removal of the CJA Panel member from any pending case, or from the CJA Panel, and may take any other protective action that is in the best interest of the client 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 panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another CJA Panel member 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. The Federal Public Defender will be immediately notified when any member of the CJA Panel is removed or suspended.

(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.

IX. CJA Panel Attorney Representation in Non-Capital Cases

A. Appointments

The Federal Public Defender (or his/her/their designee) is responsible for overseeing the appointment of cases to CJA Panel attorneys.

When it is determined that there is a need for appointment of counsel, the Judicial Officer shall notify the Federal Public Defender (or his/her/their designee) of the need for counsel and the nature of the case. Appointments from the list of CJA Panel attorneys should be made on a random 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. After consulting with the Federal Public Defender's Office, a Judicial

Officer may appoint any attorney from the current list. If a member of the CJA Panel is appointed out of sequence, the appointing Judicial Officer shall inform the Federal Public Defender of the attorney's name and date of appointment.

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 provided in the Plan are presumed to be sufficient in the overwhelming majority of cases in which counsel is to be appointed. Appointments made under this section will be reported to the CJA Committee.

The Federal Public Defender shall maintain a record of assignments of private attorneys and, when appropriate, supporting statistical data.

B. Facilities and Technologies Requirements

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

C. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (unless provided otherwise by the Seventh 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.

X. Costs and Compensation

A. 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 the CJA Guidelines, Ch. 2, §§ 230.26.10-20.

The Court and appointed counsel are encouraged to contact the CJA Budgeting Attorney for the Circuit to discuss whether a case may be appropriate for budgeting. The CJA Case Budgeting Attorney also can assist appointed counsel with preparing and reviewing a case

budget prior to submission to the Court.

B. 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.

C. 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 reductions 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; and (d) instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

D. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's eVoucher system, or as otherwise directed by the Federal Public Defender's Office.
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 Federal Public Defender and/or his/her/their designee will review the claim for mathematical and technical accuracy, for conformity with the CJA Guidelines and for reasonableness. The claim is then forwarded for consideration and action by the Judicial Officer.
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. A CJA Panel attorney who has been given a notice of reduction in a voucher may consult with the Federal Public Defender.

7. A Judicial Officer, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the circuit's Case Budgeting Attorney or CJA Committee for review and recommendation before final action on the claim is taken. *See* Section VIII (B)(6) of this Plan.
8. Notwithstanding the procedure described above, the Judicial Officer may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. If the matter is resolved to the satisfaction of the Judicial Officer and CJA Panel member, the claim for compensation need not be referred to the CJA Committee or the circuit's Case Budgeting Attorney for review and recommendation.
9. If the claim for compensation exceeds the threshold amount of the Judicial Officer's authority (and must, therefore, be submitted to the Chief Judge of the Seventh Circuit for additional approval), the attorney shall provide a reasonably detailed statement as to why the representation was "extended or complex."

XI. 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 Judicial Officer must authorize counsel to obtain the services.

B. Applications

Requests for authorization of funds for investigative, expert, and other services must be submitted in a sealed, *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 set forth in The CJA Guidelines, Ch. 3.

XII. CJA Panel Attorney Appointment in 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, The CJA Guidelines, Ch. 6, and Local Rule 83.7.

See also the judiciary’s website for the Judicial Conference’s recommendations and guidance the appointment, compensation, and the quality of counsel in federal death penalty cases.

B. General Applicability and Appointment of Counsel Requirements

A Judicial Officer should ensure that all attorneys appointed in a federal death penalty case are well qualified by virtue of their prior defense experience, training, and commitment to serve as counsel in highly specialized and demanding litigation. Ordinarily, “learned” counsel, as that term is used in 18 U.S.C. § 3005, should have (1) distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or (2) distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high-quality representation. When appointing counsel in federal capital prosecutions, the Court shall consider the recommendation of the Federal Public Defender.

If an appointment is made in a death penalty case before judgment, at least one of the attorneys appointed must have been admitted to practice in this Court for not less than five years and must have experience of at least three years in the actual trial of felony prosecutions. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be experienced in and knowledgeable about the defense of capital cases. If an appointment is made in a death penalty case after judgment, at least one of the attorneys appointed must have been admitted to practice in a federal court of appeals for not less than five years and must have experience of at least three years in handling federal appeals in felony cases. In appointing post-conviction counsel in a case where the defendant is sentenced to death, a Judicial Officer should consider the attorney’s experience in federal post-conviction proceedings and capital post-conviction proceedings, as well as the general qualifications identified above.

If an attorney does not meet the qualifications set forth above, for good cause shown, the Court may appoint an attorney as second or additional counsel whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

XIII. Miscellaneous

Each private attorney shall be provided a copy of this CJA Plan by the Federal Public Defender at the time the attorney is designated as a CJA Panel member. The Federal Public Defender also 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. The CJA Plan shall also be available for access by attorneys and the public on the Court's website, www.ilsd.uscourts.gov.

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 CJA Plan.

Nothing contained in this Plan or in the CJA Guidelines should be construed as requiring a hearing or as discouraging the Court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

XIV. Effective Date

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

APPROVED AS TO FORM AND SUBSTANCE.

DATED: November 15, 2023

The image shows a handwritten signature in black ink that reads "Nancy J. Rosenstengel". The signature is written in a cursive style and is positioned above a circular official seal of the U.S. District Court for the Seventh Circuit.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge



JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

SARAH O. SCHRUP
CIRCUIT EXECUTIVE

January 31, 2024

VIA EMAIL

The Honorable Nancy J. Rosenstengel, Chief Judge
Melvin Price Federal Building and
United States Courthouse
750 Missouri Avenue, Room 255
East St. Louis, IL 62201

Dear Chief Judge Rosenstengel,

The Judicial Council has approved your request of November 15, 2023, for a revised Criminal Justice Act Plan on behalf of the Southern District of Illinois.

Very truly yours,

A handwritten signature in blue ink that reads "Sarah O. Schrup".

Sarah O. Schrup
Circuit Executive

cc: Monica A. Stump, Clerk of Court