

**UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA**



**PLAN FOR THE ADEQUATE REPRESENTATION  
OF DEFENDANTS UNDER THE CRIMINAL  
JUSTICE ACT OF 1964, AS AMENDED**

May 1, 2023

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I. AUTHORITY

A. Under the provisions of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended (CJA), and the Guide to Judiciary Policy Volume 7, Defender Services, Part A: Guidelines for Administering the CJA and Related Statutes, the United States District Court for the District of North Dakota adopts the following Plan for furnishing representation to any person financially unable to obtain adequate representation under the CJA.

B. Objectives

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

This Plan must 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 the lack of financial resources. See Guide to Judiciary Policy, Vol. 7A, Appx. 2A.

C. Compliance

The court, the clerk of court, the Federal Public Defender, and private attorneys appointed under the CJA must comply with the Guide to Judiciary Policy, Volume 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.

II. PROVISION OF REPRESENTATION

A. Mandatory. Representation must be provided to an applicant found to be financially eligible and who:

1. is charged with a felony or with a Class A misdemeanor;
2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;

3. 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);
4. is under arrest, when such representation is required by law;
5. is entitled to appointment of counsel in parole proceedings;
6. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or an extension or revocation of a term of supervised release (unless the modification sought is favorable to the supervisee and the government has not objected to the proposed change);
7. is subject to a mental condition hearing under 18 U.S.C. §§ 4241 - 4248;
8. is in custody as a material witness;
9. is entitled to appointment of counsel under the Sixth Amendment to the Constitution, or faces loss of liberty and federal law requires the appointment of counsel;
10. is seeking to set aside or vacate a death sentence under 28 U.S.C. §2255; or
11. is entitled to appointment of counsel in connection with prisoner transfer proceedings under 18 U.S.C. § 4109.

See Guide to Judiciary Policy, Vol. 7A, Ch. 2, § 210.20.10

B. Discretionary. Representation may be provided whenever the court determines that the interests of justice require representation for any financially eligible person who:

1. is charged with a petty offense (Class B or C misdemeanor or an infraction), for which a sentence of confinement is authorized;
2. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255, other than to set aside or vacate a death sentence (appointment in capital cases is governed by Appendix A);
3. 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 criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
4. is proposed by the United States Attorney for processing under a pretrial diversion program;
5. has been advised by the United States Attorney or a law enforcement officer that they are the target of a grand jury investigation; or
6. is held for international extradition under 18 U.S.C. §§ 3181- 3196.

See Guide to Judiciary Policy, Vol. 7A, Ch. 2, § 210.20.20.

C. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the 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:

1. to protect a constitutional right;
2. to contribute in some significant way to the defense of the principal criminal charge;
3. to aid in preparation for the trial or disposition of the principal criminal charge;
4. to enforce the terms of a plea agreement in the principal criminal charge;
5. 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
6. 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).

See Guide to Judiciary Policy, Vol. 7A, Ch. 2, § 210.20.30.

### III. APPOINTMENT OF COUNSEL

- A. Right to court-appointed counsel. Unless a person entitled to court-appointed counsel waives representation, the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, must appoint counsel to represent the person.
- B. Determining financial eligibility. In determining whether the defendant is financially unable to obtain counsel, the court may act upon statements made by the defendant (a) under oath in open court, (b) by sworn affidavit, or (c) other information the court deems reliable. The personal appearance of the defendant is not required.
- C. Retroactive appointment. An appointment may be made retroactive to include any appropriate representation furnished prior to appointment.
- D. Separate counsel. The court must appoint separate counsel for persons having interests that cannot properly be represented by the same counsel or when other good cause is shown.
- E. Additional counsel. The court may appoint more than one counsel to represent a defendant when, in the judgment of the court, the nature of the case so requires or when other good cause is shown.
- F. Continued right to counsel. A judicial officer may at any time, if satisfied after appropriate inquiry that a defendant is financially unable to obtain counsel, appoint counsel to represent the defendant, even though the defendant has previously waived appointment of counsel.
- G. Timely Appointment of Counsel. Counsel must be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States magistrate judge or district judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States magistrate judge or district judge otherwise considers appointment of counsel appropriate under the CJA.
- H. Capital Cases. Appointment of counsel in capital cases is governed by Appendix A.

#### IV. RESPONSIBILITIES UNDER THIS PLAN

##### A. Federal Public Defender

1. Establishment. The Federal Public Defender Office for the Districts of South Dakota and North Dakota is a combined-district organization under the CJA and is recognized as the Federal Public Defender organization for this district. The Federal Public Defender organization provides high quality legal services throughout the district and maintains offices in Fargo and Bismarck, North Dakota.
2. Supervision of the Federal Public Defender Organization. The Federal Public Defender is responsible for the supervision and management of the Federal Public Defender organization.
3. Coordination with the CJA Panel.
  - a. The Federal Public Defender provides orientation training to new members appointed to the CJA panel.
  - b. The Federal Public Defender provides training sessions for members of the CJA panel at least annually.
  - c. The Federal Public Defender serves on the CJA Panel Committee.
  - d. The Federal Public Defender assists the court, the clerk of court, and the CJA Panel Representative in implementing the provisions of the CJA Plan.
  - e. The Federal Public Defender assists the CJA Panel Representative in fulfilling the responsibilities described in section IV (B) of the CJA Plan.

##### B. CJA Panel Representative

1. Selection Process. The chief district judge designates an attorney to serve as the CJA Panel Representative after considering the recommendations of the Federal Public Defender.
2. Term of Service. The CJA Panel Representative serves a three-year term and may serve additional terms if the representative is willing to continue to serve and to play an active role as the representative.
3. Responsibilities of the CJA Panel Representative. The CJA Panel Representative:
  - a. Attends the National Conference of CJA Panel Representatives and actively participates in the conference;
  - b. Serves as a liaison between the CJA panel and
    - i. the Federal Public Defender's Office,
    - ii. the court, and
    - iii. the Defender Services Office of the Administrative Office of the United States Courts;
  - c. Actively participates in panel attorney matters in the district by:
    - i. communicating regularly with local panel attorneys about panel attorney issues, training needs, and case administration;

- ii. communicating regularly with the court and the Federal Public Defender about local panel attorney issues and following up on action items arising from the annual conferences;
  - iii. communicating regularly with the assigned Defender Services Advisory Group (DSAG) Panel Representative about national panel attorney issues and needs;
  - iv. assisting in planning training events for the district's CJA panel attorneys;
  - v. serving on the CJA Panel Committee, the local federal practice committee, and committees in the district affecting the operation of the CJA Plan; and
- d. Works generally toward improvement of the quality of representation as well as the conditions under which panel attorneys provide representation.

C. Clerk of Court

1. Administration. The clerk of court is responsible for the administration and maintenance of the CJA panel list.
2. Application Forms. The clerk of court provides application forms for membership on the CJA panel via the court's website.
3. Management of Attorney List. The clerk of court maintains a current list of all attorneys included on the panel, in addition to maintaining a record of cases assigned to members of the panel.
4. CJA Voucher Processing. The clerk of court is responsible for reviewing all CJA payment vouchers for accuracy prior to submission to a judicial officer for approval.
  - a. The clerk of court must promptly process for payment all CJA vouchers submitted for reimbursement.
  - b. The clerk of court must notify counsel of all errors or omissions on any CJA voucher so corrections can be made in a timely manner.
5. Reports. The clerk of court maintains records and produces such reports as required by the Administrative Office of the United States Courts, the court, and the CJA Panel Committee.
6. Deposit of Funds. The clerk of court must promptly deposit into the Treasury any amount a defendant tenders as ordered by the court for reimbursement of CJA representation.

V. CJA PANEL

A. CJA Panel Committee

1. Membership. The CJA Panel Committee ("Committee") consists of the following members: the district's magistrate judges; the district's CJA Panel

- Representative; the district's Federal Public Defender; and the clerk of court or their designee. The clerk of court acts as the recorder for the Committee.
2. Committee Chair. The Committee will annually select its own Chair. The Chair will report the Committee's activities to the chief judge as needed.
  3. Duties.
    - a. Create an application process and application form.
    - b. Annually evaluate applications for reappointment.
    - c. Upon receipt, evaluate new applications for appointment to ensure that applicants meet the criteria for inclusion on the CJA panel, including requesting additional information from an applicant or conducting an independent investigation to supplement the application.
    - d. Annually review the membership of the special appointment panel.
    - e. Work with the Federal Public Defender and the CJA Panel Representative to:
      - i. Provide training programs which may include mentorship for the CJA panel attorneys and other members of the criminal defense bar;
      - ii. Recruit and train less experienced attorneys as potential panel members; and
      - iii. Retain qualified attorneys as panel members.
    - f. Develop policies for the internal governance of the CJA panel.
    - g. Receive, review, and make recommendations to the chief judge concerning any comments or complaints regarding:
      - i. the performance of CJA panel attorneys;
      - ii. the fairness or functioning of the CJA panel appointment process; and
      - iii. the processing and payment of CJA vouchers.
    - h. Whenever the number of panel members affects the ability of the panel to provide adequate representation to indigent defendants under the CJA, the Committee may solicit applications to fill the vacancies.

B. Composition of CJA Panel

1. Approval. The CJA panel is comprised of private attorneys who are eligible and willing to be appointed to provide representation under the CJA, and who have been approved for membership by the Committee. Membership on the CJA panel is established under Section V(C).
2. Size. The size of the panel will be determined by the Committee, subject to review by the chief judge. The 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 representation.

C. Eligibility for the CJA Panel

Eligibility. Attorneys who serve on the CJA panel must be members in good standing of the federal bar of this district and must have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of Court, and federal sentencing law including the United States Sentencing Guidelines.

1. Quality of Representation. Attorneys must demonstrate a commitment to provide high quality representation to those individuals eligible for their services, commensurate with those services rendered when counsel is privately retained.
2. New Panel Attorney Orientation. Attorneys newly appointed to serve on the CJA panel must attend an orientation training session conducted by the Federal Public Defender's Office.
3. Continuing Education. While on the panel, attorneys must:
  - a. attend a minimum of six hours of continuing legal education programs on criminal defense every two years, a portion of which must be devoted to federal sentencing, or
  - b. attend the annual CLE conducted by the Federal Public Defender's Office.
4. Equal Opportunity. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.
5. Application. Application forms for membership on the CJA panel are available via the court's website. Completed applications must be submitted to the clerk of court who will transmit the applications to the Committee.

D. Appointment to the CJA Panel

1. Terms. Panel members are appointed for two-year terms.
2. Reappointment. Members seeking reappointment must apply on or before June 30 of the year in which their membership term expires. The clerk of court notifies attorneys whose terms are about to expire. Members who fail to reapply by June 30 will be deemed to have resigned from the CJA panel, but may reapply for membership at any time. Should a panel member's term expire while the panel member is appointed to represent a defendant, the panel member will continue to represent that defendant until the conclusion of the representation.
3. Report of Training. Each panel attorney, as part of the reappointment process, must report compliance with the training requirements on the form provided by the clerk of court. The clerk of court will maintain compliance records on behalf of the Committee and the court.

E. Special Appointment Panel

The Committee will select a list of highly experienced attorneys who are willing to serve as CJA counsel on complex or difficult cases to supplement the CJA panel. The special appointment panel will be comprised of attorneys who may not be part of the



regular CJA panel, but who are willing to serve on cases requiring specific experience and expertise. Attorneys must demonstrate proficiency equivalent to the annual training requirements of the regular CJA panel attorneys. The application requirement is waived for attorneys on the special appointment panel.

F. Removal from Panel

1. Mandatory Removal from CJA Panel. A member whose license to practice law in any state or federal court has been suspended or revoked or whose good standing in the bar of the federal district court has been suspended or revoked will be automatically removed from the panel.
2. Complaints.
  - a. Initiation. A complaint against a panel member may be initiated by the Committee, CJA Panel Representative, judge, another panel member, a defendant, an employee of the Federal Public Defender's office, an employee of the United States Attorney's Office, or an employee of the court. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the Committee, which will determine whether further investigation is necessary.
  - b. Notice. If the Committee determines further investigation is necessary, the Committee will notify the panel member of the specific allegations, when conducting an investigation.
  - c. Response. A panel member subject to investigation may respond in writing and appear, if so directed, before the Committee.
  - d. Protective Action. Prior to disposition of any complaint, the Committee may recommend temporary suspension or removal of the panel member from any pending case, or from the panel, and may recommend any other protective action that is in the best interest of the client or the administration of this Plan.
  - e. Review and Recommendation. After investigation, the Committee may recommend dismissing the complaint, or recommend appropriate remedial action. Remedial actions may include 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 panel member or other experienced practitioner, or any other appropriate action.
  - f. Final disposition by the court. The Committee will forward its recommendation to the chief judge for consideration and final disposition.
  - g. Confidentiality. Unless otherwise directed by the court, any information acquired concerning any possible disciplinary action, including any complaint and any related proceeding, is confidential.

- h. Property Interest. None of these procedures create a property interest in being on or remaining on the CJA panel.
- i. Notification. The Federal Public Defender and CJA Panel Representative will be immediately notified if any member of the CJA panel is removed or suspended.

G. Case Appointments

- 1. Maintaining the List of CJA Panel Members. The clerk of court must maintain a list which contains pertinent data for all attorneys included on the CJA panel. Panel members are responsible for keeping all contact information current.
- 2. Method of Selection. CJA panel attorneys will be appointed based upon considerations of availability, experience, continuity of representation, judicial economy, and equal distribution of workload among members of the panel. The goals of this procedure are a balanced distribution of appointments and compensation among the members of the CJA panel and a high quality of representation for each CJA defendant.
- 3. Appointment of Non-Panel Attorneys. 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 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 vast majority of cases in which counsel are to be appointed.
- 4. Capital Cases. Appointment in capital cases is governed by Appendix A.

- H. Limited CJA Appointments. If a scheduling conflict will not permit an Assistant Federal Public Defender or a CJA panel member to attend a pretrial services interview or other pretrial matter, the court will contact another CJA panel member who has agreed to be appointed by the court for a limited representation. The limited CJA appointment remains in effect until the court orders a substitution of counsel, at such time as the Federal Public Defender's Office or appointed CJA panel member assumes responsibility for full representation. The list of attorneys who have agreed to accept these limited appointments is maintained by the clerk of court.

VI. DURATION AND SUBSTITUTION OF APPOINTMENTS

- A. Duration and Substitutions. CJA counsel appointed for a defendant must represent the defendant at every stage of the proceedings from the time of initial appointment through appeal, including ancillary matters appropriate to the proceedings, unless the appointment is terminated by the court or by any appellate court in which an appeal is pending. The court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

- B. Appeals. If a defendant is convicted by guilty plea or at trial, counsel must advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do so by the defendant, counsel must file a timely notice of appeal and must continue to represent the defendant unless, or until, relieved by an appellate court.
  
- C. Change in Defendant's Financial Eligibility
  - 1. If at any stage of the proceedings, the court finds that the defendant is financially unable to pay retained counsel, the court may appoint an attorney to represent the defendant in the interests of justice.
  - 2. If at any time after the appointment of counsel, the court finds that the defendant is or becomes financially able to obtain counsel or to make partial payment for the representation, the court may terminate the appointment of CJA counsel or order the defendant to pay a fixed amount to the clerk of court for deposit in the Treasury as reimbursement for the cost of CJA representation.
  - 3. Appointed attorneys may not request or accept compensation or anything of value from any source other than the court, in connection with a CJA representation.

VII. PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR NON-CAPITAL CASES.

- A. Policy of the Court Regarding Compensation. A panel attorney appointed to represent a defendant will be compensated at the rate allowed for the time reasonably expended on the representation and will be reimbursed for actual expenses reasonably incurred consistent with the applicable rules, regulations, or statutes. The court will look to the Guide to Judiciary Policy, Volume 7, for guidance in matters of attorney compensation and expense reimbursement.
  
- B. Payment Procedures
  - 1. Claims for compensation must be submitted via eVoucher.
  - 2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
  - 3. The clerk of court will review the claim for mathematical and technical accuracy and for conformity with the Guide to Judiciary Policy, Volume 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 as soon as possible after submission.
  - 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.
    - a. Prior to making a voucher reduction, the court must provide appointed counsel notice of the proposed reduction with a brief oral or written statement of the reason(s) for it.

- b. If counsel indicates that the reduction is not contested, or if no response is received within ten days, the reduced voucher will be processed.
  - c. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.
  - d. If after reviewing counsel’s response submitted under subsection (c), the presiding judge reduces the voucher, counsel may, within ten days, seek review of the reduction by the chief district judge. If the chief district judge is the presiding judge who reduced the voucher, counsel may seek, within ten days, review by the longest-serving district judge on senior status. Deadline extensions may be granted for good cause shown.
    - i. Counsel must submit a written request for review, including justification for the claimed time or expense, to the clerk of court.
    - ii. Counsel is encouraged to contact the CJA Panel Representative or the Public Defender if faced with a voucher reduction.
  - e. If the reviewing judge finds the request for review to be meritorious, the voucher will be processed for the appropriate amount.
6. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the Circuit Budgeting Attorney and/or ask the clerk of court to obtain additional information from the attorney, the CJA Panel Representative, and/or the Federal Public Defender before taking final action on the claim. The court should give due weight to the Circuit Budgeting Attorney’s opinion when reviewing vouchers and must articulate reasons for departing from those recommendations. See Guide to Judiciary Policy, Volume 7, Chapter 2, § 230.26.15.
7. Claims for payment of attorney fees in excess of the statutory maximum for extended and/or complex representation must be supported by a letter. Additional information regarding claims for payment may be found in the CJA Information Packet, Quick Reference Guide, and the eVoucher attorney manual.
8. Payment of attorney fees and expenses for capital cases is governed by Appendix A.
- C. Case Budgeting. A case budget must be submitted to the court, *ex parte*, in representations that appear likely to become extraordinary in terms of potential cost. “Extraordinary” means a representation in which attorney hours are expected to exceed 300 hours for an individual CJA defendant. The presiding judge is encouraged to seek a recommendation from the Circuit Budgeting Attorney when contemplating approval of a case budget. The court should give due weight to the Circuit Budgeting Attorney’s opinion when reviewing case budgets and must

articulate reasons from departing from those recommendations. See Guide to Judiciary Policy, Vol. 7, Ch. 2, § 230.26.15.

- D. Recordkeeping. Appointed counsel must maintain contemporaneous time records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three (3) years after approval of the final voucher.

## VIII. INVESTIGATIVE, EXPERT, AND OTHER SERVICES.

- A. Financial Eligibility. Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary to an effective defense may request such services via eVoucher as provided in 18 U.S.C. § 3006A (e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that services are necessary, and that the person is financially unable to obtain them, the court must authorize counsel to obtain the services.
- B. Authorizations. Requests for authorization of funds for investigative, expert, and other services, including transcripts must be submitted using eVoucher and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.
- C. Payment Procedures
1. Claims to compensate expert services must be submitted via eVoucher.
  2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
  3. The clerk of court will review the claim for mathematical and technical accuracy and for conformity with the Guide to Judiciary Policy, Volume 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 compensation claims as soon as possible after submission.
  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.
    - a. Prior to making a voucher reduction, the court must provide appointed counsel notice of the proposed reduction with a brief oral or written statement of the reason(s) for it.
    - b. If counsel indicates that the reduction is not contested, or if no response is received within ten days, the reduced voucher will be processed.
    - c. If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.

- d. If after reviewing counsel’s response submitted under subsection (c), the presiding judge reduces the voucher, counsel may, within ten days, seek review of the reduction by the chief district judge. If the chief district judge is the presiding judge who reduced the voucher, counsel may seek, within ten days, review by the longest-serving district judge on senior status. Deadline extensions may be granted for good cause shown.
    - i. Counsel must submit a written request for review, including justification for the claimed time or expense, to the clerk of court.
    - ii. Counsel is encouraged to contact the CJA Panel Representative or the Federal Public Defender if faced with a voucher reduction.
  - e. If the reviewing judge finds the request for review to be meritorious, the voucher will be processed for the appropriate amount.
6. The court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the Circuit Budgeting Attorney and/or ask the clerk of court to obtain additional information from the attorney, the CJA Panel Representative, and/or the Federal Public Defender before taking final action on the claim. The court should give due weight to the Circuit Budgeting Attorney’s opinion when reviewing vouchers and must articulate reasons for departing from those recommendations. See Guide to Judiciary Policy, Volume 7, Chapter 2, § 230.26.15.
  7. Claims for payment of expert services in excess of the statutory maximum for extended and/or complex representation must be supported by a letter. Additional information regarding claims for payment may be found in the CJA Information Packet, Quick Reference Guide, and the eVoucher attorney manual.
  8. Payment for expert services in capital cases is governed by Appendix A.

This amended Plan for the Adequate Representation of Defendants Under the Criminal Justice Act of 1964 is hereby adopted and shall become effective upon the approval of the Judicial Council of the Eighth Circuit.

Dated this 1<sup>st</sup> day of May, 2023.

FOR THE COURT:

/s/ Peter D. Welte  
Peter D. Welte, Chief Judge  
United States District Court

## APPENDIX A

### CAPITAL PROSECUTIONS AND CAPITAL HABEAS CORPUS PROCEEDINGS

#### I. 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 to Judiciary Policy, Vol. 7A, Ch. 6.<sup>1</sup>

#### II. General Applicability and Appointment of Counsel Requirements

- A. Unless otherwise specified, the provisions of this section apply to all capital proceedings in the federal courts. 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. § 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.
- B. 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).
- C. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
- D. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the U.S. Courts (“AO”), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”), which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, and (3) Federal Capital Habeas § 2255 Project. The court may rely on these death penalty experts for assistance with

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<sup>1</sup>Because the State of North Dakota does not impose the death penalty, this Plan does not address the appointment of CJA counsel for proceedings under 28 U.S.C. § 2254.

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

- E. 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.
- F. In appointing counsel in capital cases, judges should consider and give due weight to the recommendations made by the Federal Public Defender and Resource Counsel projects and articulate reasons for not doing so.
- G. 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).
- H. 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.
- I. 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.
- J. 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.
- K. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
- L. There should be no formal or informal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter.
- M. All capital cases should be budgeted with the assistance of case-budgeting attorneys and/or Resource Counsel projects where appropriate.



- N. Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO's Defender Services Office, Legal and Policy Division Duty Attorney.

### III. Appointment of Trial Counsel in Federal Death-Eligible Cases

#### A. General Requirements

1. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. See 18 U.S.C. § 3005.
2. 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 capably qualified counsel upon request, consistent with Appendix A, Section II.
3. 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.
4. 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.
5. In appointing counsel, judges should give due weight to the recommendations made by the Federal Public Defender and Resource Counsel projects and articulate reasons for not doing so.
6. 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 capably qualified counsel.
7. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
8. 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.
9. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

B. Qualifications of Learned Counsel

1. Learned counsel must either be a member of this district's bar or be eligible for admission *pro hac vice* based on their 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.
2. Learned counsel must meet the minimum experience standards of 18 U.S.C. §§ 3005 and 3599.
3. 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.
4. "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.
5. 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.
6. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
7. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

C. Qualifications of Second and Additional Counsel

1. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as provided above.
2. 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.
3. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
4. 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.

- IV. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)
- A. 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).
  - B. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
  - C. 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.
  - D. 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.
  - E. In appointing post-conviction counsel, judges should give due weight to the recommendations made by the Federal Public Defender and Resource Counsel Projects and articulate reasons for not doing so.
  - F. 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.
  - G. Local or circuit restrictions prohibiting capital habeas units (CHUs) from engaging in cross-district or cross-circuit representation should not be imposed without good cause. Every district should have access to a CHU.
  - H. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post- conviction proceedings.
  - I. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
  - J. 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.
  - K. 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.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

**IN THE MATTER OF:** )  
 ) **ORDER**  
**REVISION OF CJA PLAN** )  
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It is ORDERED that the Plan for the Adequate Representation of Defendants Under the Criminal Justice Act of 1964, as Amended (CJA Plan) for the United States District Court for the District of North Dakota is **REVISED, AMENDED, and ADOPTED**, effective May 1, 2023. Prior adopted CJA Plans are hereby **REVOKED**.

Dated this 1<sup>st</sup> day of May, 2023.

/s/ Peter D. Welte  
Peter D. Welte, Chief Judge  
United States District Court

**United States Courts**  
*Judicial Council of the Eighth Circuit*  
Thomas F. Eagleton United States Courthouse  
111 South 10th Street - Suite 26.325  
St. Louis, Missouri 63102-1116

Millie B. Adams  
*Circuit Executive*


Voice (314) 244-2600  
Fax (314) 244-2605  
[www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)

**EIGHTH CIRCUIT JUDICIAL COUNCIL**

**ORDER**

\_\_\_\_\_

I hereby certify that the Eighth Circuit Judicial Council has approved the amended Criminal Justice Act Plan for the District of North Dakota, effective May 1, 2023.

  
Millie B. Adams  
Circuit Executive

St. Louis, Missouri  
March 27, 2023

cc: Judicial Council Members  
Chief Judge Peter D. Welte  
Kari M. Knudson, Clerk of Court  
Jason Tupman, Federal Public Defender  
Administrative Office

Approval was given by the Defender Services Committee (CJA).

JCO 3300