

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

PLAN FOR THE ADEQUATE REPRESENTATION
OF DEFENDANTS PURSUANT TO THE
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED



February 1, 2016

PLAN FOR THE ADEQUATE REPRESENTATION
OF DEFENDANTS PURSUANT TO THE
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

February 1, 2016

I. AUTHORITY.

- A. Pursuant to the provisions of the Criminal Justice Act of 1964, [18 U.S.C. § 3006A](#), as amended (CJA), and the [Guidelines for the Administration of the Criminal Justice Act and Related Statutes \(CJA Guidelines\), Volume 7](#), the United States District Court for the District of North Dakota adopts the following Plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with the CJA.
- B. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan will be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

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, faces a modification or enlargement of a condition, or faces an extension or revocation of a term of supervised release (unless the modification sought is favorable to the probationer 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 seeking to set aside or vacate a death sentence under [28 U.S.C. §§ 2254 or 2255](#);

10. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under [18 U.S.C. § 4109](#);
11. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
12. is faced with loss of liberty in a case and federal law requires the appointment of counsel.

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, other than to set aside or vacate a death sentence, under [28 U.S.C. §§ 2241, 2254, or 2255](#);
3. is charged with civil or criminal contempt and faces loss of liberty;
4. 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;
5. is proposed by the United States Attorney for processing under a pretrial diversion program;
6. is held for international extradition under [18 U.S.C. §§ 3181- 3196](#);
7. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and who has been represented by counsel appointed under [18 U.S.C. § 3006A](#) in connection with a related criminal case.

C. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA. Examples of ancillary proceedings can be found in the [CJA Guidelines § 210.20.30](#).

III. APPOINTMENT OF COUNSEL

A. Appointments in General.

1. 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.

2. 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.
3. Retroactive appointment. An appointment may be made retroactive to include any appropriate representation furnished prior to appointment.
4. 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.
5. 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.
6. 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.

B. Federal Capital Prosecutions.

1. Number of counsel. Pursuant to [18 U.S.C. § 3005](#) and [21 U.S.C. § 848\(e\)](#), a defendant charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom must be learned in the law applicable to capital cases. In federal capital prosecutions, the Court will consider the recommendation of the Federal Public Defender.
2. Standards for Representation in Capital Cases. In the representation of defendants in federal capital cases and in federal capital habeas cases, appointed counsel should (1) comply with the [February 2003 ABA 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](#), and (2) consult regularly with Federal Death Penalty Resource Counsel or with the [2255 Project or with the Habeas Assistance and Training Counsel Project](#) available through the Office of Defender Services, Administrative Office of the United States Courts.

C. Habeas Corpus Proceedings. Under [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, judicial officers should consider appointing at least two counsel.

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 has been established as a combined-district organization under the CJA and is recognized as the Federal Public Defender organization for this district. The Federal Public Defender organization will be capable of providing high quality legal services throughout the district and will maintain offices in Fargo and Bismarck, North Dakota.
2. Supervision of the Defender Organization. The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender organization. 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.
3. Coordination with the CJA Panel.
 - a. The Federal Public Defender will provide orientation training to new members appointed to the CJA Panel.
 - b. The Federal Public Defender will provide training sessions for members of the CJA Panel at least annually.
 - c. The Federal Public Defender will serve on the Panel Selection Committee.
 - d. The Federal Public Defender will assist the Court, the Clerk's Office and the CJA Panel Representative in implementing the provisions of the CJA Plan.
 - e. The Federal Public Defender will assist the CJA Panel Representative in fulfilling the responsibilities described in section IV (B) of the CJA Plan.

B. CJA Panel Attorney Representative.

1. How Panel Attorney District Representatives are Chosen. The Chief District Judge will designate an attorney to serve as the District Representative after considering the recommendations of the Federal Public Defender that a particular attorney be designated or that the term of the current District Representative be extended.
2. Terms. The District Representative will serve 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 District Representative will:

- a. Attend the National Conference of CJA Panel Attorney District Representatives and be an active participant in the conference;
- b. Serve as a liaison between the CJA Panel and
 - I. the federal defender organization,
 - ii. the Court in this district, and
 - iii. the Office of Defender Services, Administrative Office of the United States Courts;
- c. Actively participate 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 District 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 the planning for training events for the district's CJA Panel attorneys;
 - v. serving on the Panel Selection Committee, the local practice committee and committees in the district affecting the operation of the CJA Plan, and
- d. Work 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 will make application forms for membership on the CJA Panel available upon request.
- 3. Management of Attorney List. The Clerk of Court will maintain a current list of all attorneys included on the Panel, in addition to maintaining a record of case assignments to the Panel.
- 4. CJA Forms and Voucher Processing. The Clerk of Court is responsible for reviewing all CJA payment voucher forms 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 must maintain records and produce such reports as required by the Administrative Office of the United States Courts, the District Court, and the CJA Panel Selection 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. ESTABLISHMENT OF PANEL

A. Composition of CJA Panel

1. Approval. The Court will establish a Panel of private attorneys who are eligible and willing to be appointed to provide representation under the CJA. The Court must approve attorneys for membership on the CJA Panel after receiving recommendations from the Panel Selection Committee (Committee), established pursuant to [Chapter V., Subsection F](#) of this Plan.
2. Size. The size of the Panel will be determined by the Committee, subject to review by the Court. 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 work. An attorney who seeks to be added to the CJA Panel must complete an application, which is available from the Clerk of Court.

B. Eligibility for CJA Panel

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

- b. 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.
- c. Continuing Education. While on the panel, attorneys must:
 - I. attend a minimum of 12 hours of continuing legal education programs on criminal defense, at least 2 hours of which must be devoted to federal sentencing including the Sentencing Guidelines, or
 - ii. attend the annual CLE conducted by the Federal Public Defender's Office.
- d. Equal Opportunity. All qualified attorneys are encouraged to serve on the CJA Panel, without regard to an attorney's race, ethnicity, gender, age, or disability.
- e. Application. Application forms for membership on the CJA Panel will be made available, upon request, by the clerk's office. Completed applications must be submitted to the Clerk of Court who will transmit these materials to the Chair of the Panel Selection Committee.

C. Reappointment to CJA Panel

- 1. Terms. Panel members may serve terms of two years each. Members seeking readmission should apply on or before June 30 of the year in which their membership term expires. The Clerk of Court will give notice on June 1 to Panel 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 apply for new membership at any subsequent 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.
- 2. 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.

D. Special Appointment Panel

- 1. Special Appointment Panel. The Committee will also recommend to the Court a list of highly experienced attorneys who are willing to serve as CJA counsel on complex or difficult cases to supplement the depth of the Panel. The Special Appointment Panel will be comprised of attorneys who are not part of the regular rotation of CJA appointments but who are

willing to serve the Court 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.

2. Immigration Law. The Committee will also recommend to the Court a list of experienced attorneys who are knowledgeable in the speciality of immigration law and willing to serve as CJA counsel. The Committee may show preference to attorneys that are fluent in languages in addition to English.

E. Removal from Panel

1. Mandatory Removal from CJA Panel. A member whose license to practice law in the state 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. Discretionary Removal. The Panel Selection Committee and the Court will monitor the performance of Panel attorneys, and the Chief Judge may remove a member from the Panel on recommendation of the Committee or on his or her own initiative when the quality of legal representation is deemed to be unsatisfactory. The Chief Judge will provide Panel attorneys with (a) prior notice of the any proposed removal, including a brief oral or written statement of the reason(s) for removal, and (b) an opportunity for counsel to address the matter.

F. Panel Selection Committee

1. Membership. The Court will establish a Panel Selection Committee consisting of the following members who agree to serve without compensation: the District's Magistrate Judges; the CJA Panel Attorney Representative for the District of North Dakota; the Federal Defender for the Districts of North Dakota and South Dakota or a designee; and the clerk or designee, who will serve *ex officio* and act 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 Court as needed.
3. Duties.
 - a. Create an application process and application form for distribution by the clerk's office.
 - b. Annually evaluate applications for reappointment and modifications in the CJA Panel.

- c. At least twice a year, evaluate new applications for appointment, and make recommendations to the Court to ensure that applicants meet the criteria for inclusion in the CJA Panel.
- d. Annually furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in [Paragraph V\(B\)\(1\)\(d\)](#) of this Plan.
- e. Offer recommendations to the Court for a list of Special Appointment Attorneys.
- f. Work with the Federal Public Defender and the CJA Panel Attorney Representative to:
 - I. Provide training programs for the CJA Panel attorneys and other members of the criminal defense bar; and
 - ii. Recruit and train less experienced attorneys as potential Panel members.
- g. Develop policies for the internal governance of the CJA Panel.
- h. Receive, review, and make recommendations to the Court 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.
- I. Whenever the number of vacancies significantly decreases the size of the CJA Panel, such that it 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, convene a special meeting to review the qualifications of the applicants, and recommend prospective Panel members to the Court for approval.

G. Selection for Appointments.

- 1. Maintenance of CJA Panel and Distribution of Appointments. The Clerk of Court must maintain a list or automated program which contains pertinent data for all attorneys included on the CJA Panel. Panel members are responsible for keeping all contact information current. The clerk will maintain a record of CJA Panel attorney appointments and statistical data reflecting the number of total appointments, appointments by attorney name, and allocation of appointments between the Federal Public Defender and the CJA Panel.

2. Method of Selection. Counsel from the CJA Panel will be appointed based upon considerations of availability, experience, continuity of representation, judicial economy, and equal distribution of workload among the Panel. The goal of this procedure is a fairly balanced distribution of appointments and compensation among the members of the CJA Panel and a high quality of representation for each CJA defendant.
-
- I. Limited CJA Appointments. When the Office of the Federal Public Defender notifies the Court of a scheduling conflict that will not permit an Assistant Federal Public Defender to attend a pretrial services interview or other pretrial matter, the Court will contact one of the attorneys who have 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 assumes responsibility for full representation. The list of attorneys who have agreed to accept these limited appointments is maintained by the clerk's office.

VI. DURATION AND SUBSTITUTION OF APPOINTMENTS

- A. Duration and Substitutions. 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 District 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. In the event 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 this Court or by the Court of Appeals.
- C. Change in Defendant's Financial Eligibility.
 1. If at any stage of the proceedings, including appeal, the Court finds that the defendant is financially unable to pay counsel who had been retained, 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 financially able to obtain counsel or to make partial payment for the representation, the Court may terminate the appointment of counsel or direct payment by the defendant in an amount fixed by the Court to the Clerk of Court for deposit in the Treasury as reimbursement for the cost of

CJA representation. No appointed attorney may request or accept any payment or promise of payment from the defendant for the representation under the Criminal Justice Act.

VII. PAYMENT FOR REPRESENTATION BY PANEL ATTORNEYS

- A. 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 [CJA Guidelines, Volume 7](#), for guidance in matters of attorney compensation, expenses, and the cost of experts and outside services.
1. Rates. The designated hourly rates of compensation are maximum rates established under the CJA. In fixing fair compensation, the Court will consider the nature, duration and complexity of the case, and the difficulties encountered in providing high quality representation. Charges in excess of the statutory maximum may only be sought in complex or extended cases.
 2. 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 times the prevailing CJA Panel attorney non-capital hour rate, rounded up to the nearest thousand for appointed counsel and services other than counsel for an individual CJA defendant.
 3. Claims. A claim for compensation and reimbursement must be made within forty five (45) days after the conclusion of the CJA appointment. Each claim must be made using the appropriate method as designated by the Administrative Office of the United States Courts, specifying the time expended, services rendered and actual expenses incurred, along with the amount of any compensation and reimbursement applied for or received in the same case from any other source. Duplicate claims for time spent in common on more than one CJA representation must not be submitted. The Court will, in each instance, fix the compensation and reimbursement to be paid to the attorney. If the Court determines that a claim should be reduced, appointed counsel will be provided (a) prior notice of the proposed reduction with a brief oral or written statement of the reason(s) for it, and (b) an opportunity for counsel to address the matter. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.
 4. Excess. Claims for payment in excess of the statutory maximum for extended or complex representation must be supported by a written request from counsel setting forth the reasons justifying excess payment. The Court will certify to the Chief Judge of the Eighth Circuit Court of

Appeals that the amount of excess payment is necessary to provide fair compensation. Claims for payment above the maximum amount must be approved by the Chief Judge of the Eighth Circuit Court of Appeals or his or her designee. The District Court may provide the CJA Panel attorney with a copy of its transmittal to the Court of Appeals of the certification for excess payment.

5. Expenses. With regard to the payment of certain expenses, counsel must: comply with the provisions of [Federal Rules of Criminal Procedure, Rule 17\(b\)](#) regarding the issuance of subpoenas; receive court approval for transcripts by submitting a CJA 24 Authorization and Voucher for Payment of Transcript; and receive court approval for investigative, expert, or other services by submitting a CJA 21 Authorization and Voucher for Expert and Other Services. With regard to mileage expenses, the number of miles, the origination, and destination of travel must be submitted. Copies of receipts must be provided for each expense item in excess of \$50.
6. Record Keeping. 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 for an appointment.

B. Services Other than Counsel. Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an *ex parte* application. Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the Court will authorize counsel to obtain the services.

1. Claims. A claim for compensation for investigative, expert or other services, and for reimbursement must be promptly made to the Court by each organization or person who rendered the service. Each claim must be made using the appropriate method as designated by the Administrative Office of the United States Courts, specifying the time expended, services rendered, and actual expenses incurred, along with the amount of any compensation and reimbursement applied for or received in the same case from any other source. Duplicate claims for time spent in common on more than one CJA representation must not be submitted. Documentation evidencing actual expenditures must be submitted to support a claim for expenses. With regard to mileage claims, the number of miles, the origination, and destination of travel must be submitted. The Court will, in each instance, determine the reasonable compensation for the services and direct payment to the organization or person who rendered them. Copies of receipts must be provided for each expenses item in excess of \$50.

2. Changes to Defendant's Eligibility for Service. If at any time after counsel has been authorized to obtain investigative, expert or other necessary services for a defendant, the Court finds that the defendant is financially able to obtain such services or to make partial payment therefor, the Court may terminate the authorization of such services or authorize or direct payment by the defendant in an amount fixed by the Court, either to the person or organization who rendered such services, or to the Clerk of Court for deposit in the Treasury as reimbursement of CJA Services. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for assisting in the representation of a defendant.

C. Reports; Vouchers and Claims for Payment; Forms.

1. Reports. The Clerk of Court must submit a report of every appointment of counsel and authorization of other services in this District to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify.
2. Vouchers and Claims for Payment. Upon approval by the Court, all vouchers and claims for compensation and reimbursement of expenses must be promptly processed for payment and retained in this District for filing purposes.

This amended Plan for the Adequate Representation Of Defendants Pursuant to 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 4th day of January, 2016

FOR THE COURT:

s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court

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

IN THE MATTER OF:)	
)	ORDER
REVISION OF CJA PLAN)	
)	

It is **ORDERED** that the Plan for the Adequate Representation of Defendants Pursuant to the Criminal Justice Act of 1964, as Amended (CJA Plan) for the United States District Court for the District of North Dakota are **REVISED, AMENDED, and ADOPTED**, effective February 1, 2016. Prior adopted CJA Plans are hereby **REVOKED**.

Dated this 4th day of January, 2016.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court

/s/ Daniel L. Hovland
Daniel L. Hovland, Judge
United States District Court