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United States District Court for the District of Kansas  
Criminal Justice Act Plan

Language from existing Kansas plan.

Language from Model plan that is new.

Suggested language that is not in either the existing Kansas plan or the Model plan.

No highlighting is language common to existing Kansas plan and Model plan.

I. Authority

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

II. Statement of Policy

A. Objectives

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, 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 *Guide*, Vol. 7A, in a way that meets the needs of this 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.

B. Compliance

1. The court, its clerk, the Office of the Federal Public Defender and private attorneys appointed under the CJA must comply with Guide, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.
2. **The CJA Resource Counsel** will ensure that a current copy of the CJA Plan is made available on the Kansas Federal Public Defender website and the Court's website, and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel). **A current copy of Guide, Vol.7A will also be available on the Kansas Federal Public Defender website.**

### III. Definitions

#### A. Representation

"Representation" includes counsel and investigative, expert, and other services.

#### B. Appointed Attorney

"Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the federal public defender, and staff attorneys of the federal public defender organization. ~~and attorneys provided by a bar association or legal aid agency.~~

#### C. **CJA Resource Counsel**

**"CJA Resource Counsel" is an attorney designated by the federal public defender to administer the CJA Panel.**

#### ~~C. CJA Administrator~~

~~"CJA Administrator" is a person designated by the [federal public defender/community defender/court] to administer the CJA Panel.~~

### IV. Determination of Eligibility for CJA Representation

#### A. Subject Matter Eligibility

##### 1. Mandatory

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

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in [18 U.S.C. § 5031](#);
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under [18 U.S.C. chapter 313](#);
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under [18 U.S.C. § 4109](#) ;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

## 2. Discretionary

Whenever a district judge or magistrate judge determines that the interests of justice so require, representation **may** be provided for any financially eligible person who:

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized; **or**

- b. is seeking relief under 28 U.S.C. § § 2241, 2254, or 2255 other than to set aside or vacate a death sentence;.
- c. **Counsel may be appointed under the CJA for a person** is charged with civil or criminal contempt ~~and~~ **who** faces loss of liberty.;
- d. **Upon application of a witness** ~~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, **counsel may be appointed where** there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;.
- e. **has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;**
- f. **Counsel may be appointed for financially eligible persons** proposed by the United States attorney for processing under a pretrial diversion program.
- g. **Counsel may be appointed for persons** is held for international extradition under [18 U.S.C. chapter 209](#).

### 3. Ancillary Matters

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

- a. **to protect a constitutional right;**
- b. **to contribute in some significant way to the defense of the principal criminal charge;**
- c. **to aid in preparation for the trial or disposition of the principal criminal charge;**
- d. **to enforce the terms of a plea agreement in the principal criminal charge;**

- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under [18 U.S.C. § 983](#), [19 U.S.C. § 1602](#), [21 U.S.C. § 881](#), or similar statutes, which property, if recovered by the client, may be considered for reimbursement under [18 U.S.C. § 3006A\(f\)](#); or
- f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under [Fed. R. Crim. P. 41\(g\)](#), which property, if recovered by the client, may be considered for reimbursement under [18 U.S.C. § 3006A\(f\)](#).

## B. Financial Eligibility

### 1. Presentation of Accused for Financial Eligibility Determination

#### a. Duties of 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 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 or their delegate will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the federal public defender.
- (ii) Upon issuance of a target letter, and where the individual has not retained or waived counsel, the United States attorney or their delegate must promptly

notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the federal public defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the federal public defender, in which case they must promptly notify the court or CJA Resource Counsel.

- (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 Federal Public Defender 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 [court/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 magistrate judge or district judge of this court for determination of financial eligibility and appointment of counsel.

d. Duties of Pretrial Services Office

- (i) When practicable, the pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel.

- (ii) When counsel has been identified as being available for the appointment, or 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.

**Defender Services Committee Comment:** The Judicial Conference recognizes the importance of the advice of counsel for persons subject to proceedings under the Bail Reform Act, [18 U.S.C. § 3142 et seq.](#), prior to their being interviewed by a pretrial services or probation officer. Accordingly, the Conference encourages districts to take the steps necessary to permit the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing. [JCUS-MAR 88](#), p. 18-19.

## 2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under [18 U.S.C. § 3006A\(a\)](#) and related statutes, the court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.
- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.

- d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.
- e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person's financial eligibility should be reflected on a [financial eligibility affidavit \(Form CJA 23\)](#).
- g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in [18 U.S.C. § 3006A\(f\)](#).
- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

## V. Timely Appointment of Counsel

### A. Timing of Appointment

Counsel must be provided to eligible persons as soon as feasible in the following circumstances, whichever occurs earliest:

1. after they are taken into custody;
2. when they appear before a magistrate or district court judge;
3. when they are formally charged or notified of charges if formal charges are sealed; or
4. when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

### B. [Court's Responsibility](#)

The court, in cooperation with the federal public defender and the United States attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

#### C. Pretrial Service Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer.

~~**Defender Services Committee Comment:** Some courts make use of an “on call” or “duty day” attorney for this purpose. A CJA panel attorney or attorneys may be appointed to be on call to advise persons who are in custody, or who otherwise may be entitled to counsel under the CJA, during the pretrial service interview process.~~

#### D. Retroactive Appointment of Counsel

Appointment of counsel may be made retroactive to include representation provided prior to appointment.

### VI. Provision of Representational Services

#### A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the federal public defender and for the appointment and compensation of private counsel from a CJA Panel list maintained by the federal public defender in cases authorized under the CJA and related statutes.

#### B. Administration

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the federal public defender.

#### 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.

#### D. Number of Counsel

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

E. **Capital Cases**

Procedures for appointment of counsel in cases where the defendant is charged with a crime that may be punishable by death, or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255, are set forth in [section XIV of this Plan](#).

VII. Federal Public Defender Organization

A. Establishment

The **federal public defender** is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district. **The federal public defender will provide legal services throughout the district, and shall maintain offices in Kansas City, Topeka, and Wichita.**

B. **Standards**

The federal public defender organization must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).

C. **Workload**

The federal public defender organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

#### D. Professional Conduct

The federal public defender organization must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct, the American Bar Association's Model Code of Professional Conduct, and the Code of Conduct for Federal Public Defender Employees. ~~Model Code of Conduct for Federal Community Defender Employees~~ other standards for professional conduct adopted by the court].

#### E. Private Practice of Law

Neither the federal public defender nor any defender employee may engage in the private practice of law except as authorized by the federal public defender Code of Conduct.

#### F. Supervision of Defender Organization

The federal public defender will be responsible for the supervision and management of the federal public defender organization. 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 CJA Panel Attorney District Representative<sup>1</sup> the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

### VIII. CJA Panel of Private Attorneys

#### A. Establishment of the CJA Panel Committee

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<sup>1</sup> The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the local 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.

1. A CJA Panel Committee (“CJA Committee”) will be established by the court in consultation with the federal public defender. There will be a CJA Panel Committee in Wichita, in Kansas City, and in Topeka. Each CJA Committee will consist of one district court judge, one magistrate judge, the federal public defender, the CJA Panel Attorney District Representative (PADR), and a CJA panel member who practices regularly in the district. ~~and an ex officio staff member employed by the [federal public defender/community defender/clerk] who will act as administrative coordinator.~~ Each committee will be chaired by a magistrate judge or district court judge.

**Defender Services Committee Comment:** ~~The composition of the CJA Panel Committee can be adjusted to reflect the degree of judicial, federal defender, or panel attorney involvement that is desired by each district court. 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/community defender] or their representative, and the district’s PADR are permanent members of the CJA Committee.~~

~~Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members’ terms will be staggered to ensure continuity on the CJA Committee.~~

2. The Chief Judge of the District and the CJA Resource Counsel will serve as ex officio members of the Committees.
3. Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members’ terms will be staggered to ensure continuity on the CJA Committee.
4. The CJA Committee will meet at least twice **once** a year and at any time the court asks the Committee to consider an issue.

B. Duties of the CJA Committee

1. Membership

~~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 and the rejection of the applications of those attorneys deemed unqualified.~~

Consider applications for the vacancies created by the terms expiring each year. Review the qualifications of each applicant and accept those applicants best qualified to fill the vacancies. Designate whether each attorney selected will serve on the General, Emeritus, or Training Panel.

If a Committee is reviewing and considering the application of a lawyer who is a member of that Panel Selection Committee, that lawyer must recuse himself or herself from consideration.

If at any time during the year, the number of vacancies significantly decreases the membership of the panel, the appropriate Committee will request that the CJA Resource Counsel solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select new panel members.

All deliberations of the CJA Committee are confidential unless an exception is granted by the Chair of the Committee, upon good cause.

## 2. Recruitment

Engage in recruitment efforts to establish a diverse panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

## 3. Annual Report

Review the operation and administration of the CJA Panel over the preceding year, and recommend any necessary or appropriate changes to the chief judge concerning the appointment process and panel management. The Committees will endeavor to keep the processes and administration consistent throughout the district. The Committees will also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

a. the size of the CJA Panel;

b. the recruitment of qualified and diverse attorneys as required and set forth in this plan; and

c. recurring issues or difficulties encountered by panel members or their CJA clients.

**Defender Services Committee Comment:** Recruitment efforts to establish a diverse CJA Panel could include the following:

- notifying bar associations comprised of racially and ethnically diverse populations of the availability of 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 panel committee members and panel administrators; and
- contacting current or former members of the panel, or other prominent local attorneys who have disabilities or are minorities or women for recommendations of potential panel members.

#### 4. Removal

Recommend to the chief judge **The Committee may remove** any CJA panel member who:

- a. fails to satisfactorily fulfill the requirements of CJA panel membership during their term of service, including the failure to provide high quality representation to CJA clients and to attend the required amount of Continuing Legal Education, or
- b. has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate.

See also Section IX.C.7

#### 5. Training

Assist the [federal public defender/community defender] office in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

#### 6. Voucher Review

Review and make recommendations on the processing and payment of CJA vouchers in those cases where the court, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel. The judge will, at the time the voucher is submitted to the CJA Committee, provide a statement describing questions or concerns they have with the voucher. Counsel will be notified of the

potential voucher reduction and given the opportunity to provide information or documentation relevant to the voucher and concerns raised by the judge. The CJA Committee will issue a written recommendation to the judge.

See also Section XII.B.6

#### 7. Mentoring

Appoint experienced CJA panel members to serve on a subcommittee to create and administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. Experienced members of the criminal defense bar who have practiced extensively in the federal courts will be selected to serve as mentors. The subcommittee will review the mentee applications, make recommendations concerning their participation in the mentoring program, identify appropriate cases for the mentoring program, evaluate the success of the mentoring program, and provide guidance to the mentors.

**Defender Services Committee Comment:** Mentoring programs may include compensation for mentees (1) under the CJA at the prevailing hourly rate when appointed as second counsel in cases determined by the court to be extremely difficult; (2) under the CJA at a reduced associate rate with prior authorization by the court; or (3) using the court's Bar and Bench funds at a rate determined by the court for non-representational services, such as consulting with appointed counsel or attending training sessions. Questions about mentoring programs should be directed to the AO's Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030.

### IX. Establishment of a CJA Panel

#### A. Approval of CJA Panel

1. The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
2. The chair of the CJA Committee will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Committee. Members of the CJA Panel will serve at the pleasure of the court.
3. There will be panels established in each location of Kansas City, Topeka, and Wichita. The General Panel is for attorneys willing to

regularly accept the target number of appointments throughout the year. The Emeritus Panel is for attorneys who are interested in handling fewer CJA cases, or who are interested in a special type of case. The Training Panel is for attorney who have less federal criminal experience; preference will be given to attorneys who have completed the Federal Public Defender's Second Chair Program.

B. Size of CJA Panel

1. The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the panel members, subject to review by the court Committees.
2. 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 CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. The target number of cases is six to eight cases per year.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available from the Court's website and the federal public defender website and the Kansas CJA website. Completed applications will be submitted electronically to the CJA Resource Counsel who will transmit the applications to each member of the Panel Selection Committees.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, sexual orientation, disability, ethnicity, ancestry, age, status as a veteran, marital status, parental status, gender identity, gender expression, or genetic information.

### 3. Eligibility

- a. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and **the Tenth Circuit Court of Appeals.**
- b. **Applicants must maintain a primary, satellite, or shared office in this district or in an adjacent district.**
- c. Applicants must possess **strong litigation skills** and demonstrate proficiency with the federal sentencing guidelines, **federal sentencing procedures, the Bail Reform Act, the** Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.
- d. **Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.**
- e. **Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the CJA Committee's consideration.**

**Defender Services Committee Comment:** ~~These general eligibility requirements may be supplemented or replaced by more detailed and specific standards, depending on the needs of the district. Specific eligibility requirements might include at least two (2) years in a public defender or prosecutor's office, either state or federal; OR at least three (3) years in private practice during which time the attorney was involved in at least 20 criminal cases in either state or federal court, five (5) of which were state or federal felony trials; OR an applicant should have tried at least two (2) federal felony cases from initial appearance or arraignment through sentencing and have other significant litigation experience as determined by the CJA Committee.~~

### 4. **Appointment to CJA Panel**

~~After considering the recommendations of the CJA Committee, the chief judge will appoint or reappoint attorneys to the CJA Panel. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. See [Section XIV of this Plan.](#)~~

## 5. Terms of CJA Panel Members

To establish staggered CJA membership terms, the current CJA Panel will be divided into three groups, equal in number. Initially, members will be assigned to one of the three groups on a random basis. Members of the first group will continue to serve on the CJA Panel for a term of one year, members of the second group will continue to serve on the CJA Panel for a term of two years, and members of the third group will continue to serve on the CJA Panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this plan. **Each term begins on July 1.**

## 6. Reappointment of CJA Panel Members

- a. The federal public defender will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel.
- b. A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term. ~~at least three months prior to the expiration of his or her current term.~~
- c. The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. 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.
- e. **If reappointment is not granted, any existing CJA appointments shall continue until the representation is concluded.**

## 7. Removal from the CJA Panel

- a. **Mandatory removal**

Any member of the CJA Panel who is suspended or disbarred from the practice of law by the state court before whom such member is admitted, or who is suspended or disbarred from this court or any federal court, will be removed from the CJA Panel immediately. Substitute counsel will be appointed for any CJA clients of the suspended or disbarred attorney.

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 panel member may be initiated by the CJA Committee, a judge, another panel member, a defendant, or a member of the federal public defender office. 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 CJA Committee, which will determine whether further investigation is necessary.

(ii) Notice

When conducting an investigation, considering the removal of an attorney, the CJA Committee will notify the panel member of the specific allegations.

(iii) Response

A panel member subject to investigation-removal consideration 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 panel member from any pending case, or from the 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, consideration, the CJA Committee may recommend dismissing the complaint, or recommend appropriate remedial action and will determine whether the disciplined attorney should file motions to withdraw in any open CJA representations, 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 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.~~

(vii) Confidentiality

Unless otherwise directed by the court chair of the committee, any information acquired concerning any possible disciplinary action, including any complaint and any related proceeding, will be confidential.

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

(ix) These provisions do not apply to a CJA Panel Attorney who seeks reappointment to the panel.

d. Notification

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

## X. CJA Panel Attorney Appointment in Non-Capital Cases

### A. Appointment List

The federal public defender will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

### B. Appointment Procedures

1. ~~The federal public defender is responsible for overseeing the appointment of cases to panel attorneys. The federal public defender will maintain a public record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the federal public defender office and panel attorneys. , according to the formula described in the CJA Plan for the district.~~
2. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis, ~~subject to the discretion of the CJA Resource Counsel and/or court to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. In a complex or otherwise difficult case, the [federal public defender/community defender/court] may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.~~
3. Under special circumstances the court may appoint a member of the bar of the court who is not a member of the CJA Panel. Such special circumstances may include cases in which the court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. ~~Appointments made under this section will be reported to the CJA Committee.~~
4. ~~Unless otherwise impracticable, CJA panel attorney(s) must be available to represent defendant(s) at the same stage of the proceedings as is the federal public defender.~~

## XI. Duties of CJA Panel Members

### A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. ~~See Polk County v. Dodson, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980)))~~. CURRENT SAYS:
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the **Kansas Rules of Professional Conduct**, the American Bar Association’s Model Rules of Professional Conduct, and the American Bar Association’s Model Code of Professional Conduct.
3. **CJA panel members must notify within 30 10 days the chair of the CJA Committee when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.**

### B. Training and Continuing Legal Education

1. **Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.**
2. Attorneys on the CJA Panel shall participate, annually, in at least six hours of continuing legal education provided by the federal public defender or equivalent training in federal criminal defense. **The federal public defender will provide at least sixteen hours of continuing legal education each year.** Attorneys shall notify the **CJA Resource Counsel** if federal criminal training, other than through the federal public defender office is attended.
3. **Attorneys on the CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.**

4. Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

C. **Facilities and Technology Requirements**

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

D. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (as governed by the Tenth 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.

~~**Defender Services Committee Comment:** While the Defender Services Committee recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that trial counsel may not have the requisite skills to proceed as appellate counsel. There should be significant deference to the position of trial counsel regarding whether, in each matter, continuity is in the best interests of the client and consistent with counsel's professional skills and obligations. ([Good Practices for Panel Attorney Programs in the U.S. Court of Appeals, Vera Institute of Justice, January 2006.](#))~~

E. Miscellaneous

1. **Case budgeting**

In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost, the court may require development of a case budget consistent with [Guide, Vol. 7A, Ch. 2, §§ 230.26.10–20](#). **Court has ordered case budgeting. See Standing Order \_\_\_\_\_**

2. No receipt of other payment

Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration

for representation under the CJA, unless such payment is approved by order of the court.

3. Redetermination of need

If at any time after appointment, counsel has reason to believe that a party is financially able to obtain counsel, or make partial payment for counsel, and the source of counsel's information is not protected as a privileged confidential communication, counsel will advise the Court.

## XII. Compensation of CJA Panel Attorneys

### A. Policy of the Court Regarding Compensation

Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in court and time reasonably expended out of court, and reimbursed for expenses reasonably incurred.

### B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the District of Kansas eVoucher system. Counsel are encouraged to submit interim vouchers, as allowed by the Court's Standing Order 14-2.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case. Any voucher later than 180 days after final disposition of the case must be accompanied by a Statement of Exceptional Circumstances, setting forth the reasons for the late submission.
3. CJA Resource Counsel will review the claim for mathematical and technical accuracy and for conformity with Guide, Vol. 7A. CJA Resource Counsel will review the claim for reasonableness and will forward the claim for consideration and action by the presiding judge.
4. Absent extraordinary circumstances, the Court should act on CJA compensation claims within 30 days of submission. The court will exert its best effort to avoid delays in reviewing vouchers and in submitting them for further processing. Vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances. See Guide to Judiciary Policy, Vol. 7A, §230.33.

5. Except in cases involving mathematical corrections or claims that are not in conformity with the Act, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.
6. ~~The Court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the CJA Committee for review and recommendation before final action on the claim is taken. See Section VIII of this Plan.~~
7. ~~Notwithstanding the procedure described above, The notice to counsel may be made through the CJA Resource Counsel.~~ , in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the Court and CJA panel member, the claim for compensation need not be referred to the CJA Committee for review and recommendation.

### XIII. Investigative, Expert, and Other Services

#### A. Financial Eligibility

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request such services in an *ex parte* application to the Court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the Court must authorize counsel to obtain the services.

#### B. Pro Se Requests for Service Providers

Persons who are proceeding pro se may request investigative, expert, and other services available under 18 U.S.C. § 3006(e). These requests are reviewed by the Court in the same manner as requests made by CJA panel attorneys, although the Court shall first make a determination when appointment of counsel would be necessary, that the case is one in which the interests of justice would have required the furnishing of representation.

**Defender Services Committee Comment:** ~~A court may choose to have applications for investigative, expert, and other services considered by a non-presiding judge to help ensure appointed counsel's ability to obtain the necessary resources in a manner that does not unreasonably compromise or interfere with the exercise of sound independent professional judgment.~~

**B. Applications**

Requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the Court (using the Court's 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 [Guide, Vol. 7A, Ch. 3](#).

**XIV. Appointment of Counsel and Case Management in CJA Capital Cases**

**A. Applicable Legal Authority**

The appointment and compensation of counsel in capital cases and the authorization and payment of persons providing investigative, expert, and other services are governed by [18 U.S.C. §§ 3005, 3006A, and 3599](#), and [Guide, Vol. 7A, Ch. 6](#) ~~[and insert local rule if any]~~.

#### B. Number of Counsel

Under 18 U.S.C. §3005, a person 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. Under 18 U.S.C. § 3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant.

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.

#### C. Qualifications

1. Appointment of Counsel Prior to Judgment. Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the Court in which the case will be prosecuted for not less than five years, and must have had not less than three years' experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorney appointed must be knowledgeable in the law applicable to capital cases.

Under 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the Court shall consider the recommendation of the federal public defender.

2. Appointment of Counsel after Judgment. Under 18 U.S.C. § 3599(c), at least one of the attorney appointed must have been admitted to practice in the Court of Appeals for not less than five years, and must have had not less than three years experience in the handling of appeals fin felony cases in the Court.

3. Attorney Qualification Waiver. Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

#### D. Representation in State Death Penalty Habeas Corpus Proceedings Under 28 U.S.C. § 2254

The Court will appoint the federal public defender (with her consent) or a qualified attorney recommended by the federal public defender, or other attorney who qualifies for appointment under 18 U.S.C. § 3599 to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 U.S.C. § 2254. In appropriate cases, preference ought to be given to transferring these cases to one of the Capital Habeas Units established within the District.

## B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions set forth in this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See [18 U.S.C. § 3599\(e\)](#).
3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects

(for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.

5. The [federal public defender/community defender] should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.
6. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. See [18 U.S.C. § 3006A\(a\)\(3\)](#).
7. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.
8. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.
9. All attorneys appointed in federal capital cases should comply with the [American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases](#) (Guidelines 1.1 and 10.2 et seq.), and the [2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases](#).
10. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
11. Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other

service providers in federal capital cases should be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at [ods\\_lpb@ao.uscourts.gov](mailto:ods_lpb@ao.uscourts.gov).

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

1. General Requirements

- a. 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](#).
- b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capitally-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
- c. At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel” as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. See [18 U.S.C. § 3005](#).
- d. When appointing counsel, the judge must consider the recommendation of the [federal public defender/community defender], who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. [In those districts without a federal defender organization, the judge must, as required by 18 U.S.C. § 3005, consider the recommendation of the AO, Defender Services Office.] See [18 U.S.C. § 3005](#).
- e. To effectuate the intent of 18 U.S.C. § 3005 that the [federal public defender/community defender]’s recommendation be

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

provided to the court, the judge should ensure the [federal public/ community) defender has been notified of the need to appoint capital-qualified counsel.

- f. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the [federal public defender/community defender] in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- g. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation together with cost and other efficiencies.
- h. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

## 2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- b. Learned counsel must meet the minimum experience standards set forth in [18 U.S.C. §§ 3005](#) and [3599](#).
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.
- d. "Distinguished prior experience" contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this

standard requires appointing counsel from outside the district where the matter arises.

- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

3. Qualifications of Second and Additional Counsel

- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.
- b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.
- c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

D. Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases

- 1. When appointing appellate counsel, the judge must consider the recommendation of the [federal public defender/community defender], who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
- 2. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.

3. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
  4. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.
  5. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
  6. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by [18 U.S.C. § 3599\(c\) or \(d\)](#).
  7. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
  8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.
- E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases ([28 U.S.C. § 2255](#))
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
  2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
  3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.
  4. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the [federal public/

community] defender, who will consult with the Federal Capital Habeas § 2255 Project.

5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.
6. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
8. In evaluating the qualifications of proposed post-conviction counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
9. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

F. Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings ([28 U.S.C. § 2254](#))

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the [federal public defender/community defender] who will consult with the National or Regional Habeas Assistance and Training Counsel projects.

[To be used in districts where the FDO has a Capital Habeas Unit (CHU) that specializes in the representation of death-sentenced individuals in post-conviction proceedings, ADD: The defender's recommendation may be to appoint this district's CHU, a CHU from

another district, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.]

4. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.
5. In order for federal counsel to avail themselves of the full statute of limitations period to prepare a petition, the court should appoint counsel and provide appropriate litigation resources at the earliest possible time permissible by law.
6. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the defendant, capital § 2254 counsel must represent the defendant throughout every subsequent stage of available judicial proceedings and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. See [18 U.S.C. § 3599\(e\)](#).
7. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
8. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
9. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
10. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

## XV. Effective Date

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

ENTER FOR THE COURT ON (month) (day), (year).

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CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE TENTH CIRCUIT ON (month)  
(day), (year).

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CHIEF JUDGE, COURT OF APPEALS

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## Criminal Justice Act Plan for the District of Kansas

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

United States District Court  
For the District of Kansas  
Criminal Justice Act Plan

I. Authority

Under the Criminal Justice Act of 1964 as amended (CJA), [section 3006A of title 18, United States Code](#), and the *Guidelines for Administering the CJA and Related Statutes (CJA Guidelines)*, Volume 7A of the *Guide to Judiciary Policy*, the judges of the United States District Court for the District of Kansas, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. Statement of Policy

A. Objectives.

1. The 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 under the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk, the federal public defender organization, and private attorneys appointed under the CJA must comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney will be provided by the clerk of court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk and the Federal Public Defender Organization (FDO) will maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and will make known to such attorneys its availability.

III. Definitions

A. Representation

“Representation” includes counsel and investigative, expert, and other services.

B. Appointed Attorney

“Appointed attorney” includes private attorneys, the federal public defender and staff attorneys of the federal public defender.

IV. Provision of Representation

A. Circumstance.

1. Mandatory. Representation **shall** be provided for any financially eligible person who:
  - a. is charged with a felony or with a Class A misdemeanor;
  - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in [section 5031 of title 18, United States Code](#);
  - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - d. is under arrest, when such representation is required by law;
  - e. is entitled to appointment of counsel in parole proceedings (**See:** Guide, Vol 7A, § 210.20.10(a)(5));
  - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
  - g. is subject to a mental condition hearing under [chapter 313 of title 18, United States Code](#);
  - h. is in custody as a material witness;
  - i. is seeking to set aside or vacate a death sentence under [section 2254](#) or [2255 of title 28, United States Code](#);
  - j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under [section 4109 of title 18, United States Code](#);
  - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution (**see:** Guide, Vol 7A, § 210.20.10(a)(9)); or
  - l. faces loss of liberty in a case and federal law requires the appointment of counsel (**see:** § 210.20.10(a)(9)).

2. Discretionary. Whenever a judge or United States magistrate judge determines that the interests of justice so require, representation **may** be provided for any financially eligible person who:
  - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
  - b. is seeking relief, other than to set aside or vacate a death sentence under [sections 2241, 2254, or 2255 of title 28, United States Code](#) (**See:** Guide, Vol 7A, § 210.20.20(a)(2));
  - c. is charged with civil or criminal contempt who faces loss of liberty;
  - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
  - e. is proposed by the United States attorney for processing under a pretrial diversion program;
  - f. is held for international extradition under [chapter 209 of title 18, United States Code](#).

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings under subsection (c) of the CJA.

B. Timely Appointment of Counsel.

Counsel shall 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 judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:
  - a. Federal Capital Prosecutions. Under [18 U.S.C. § 3005](#), a person 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. Under [18 U.S.C. § 3599\(a\)\(1\)\(B\)](#), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

- b. 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.
2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases the following also applies:
    - a. Appointment of Counsel Prior to Judgment. Under [18 U.S.C. § 3599\(b\)](#), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Under [18 U.S.C. § 3005](#), at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Under [18 U.S.C. § 3005](#), in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender.
    - b. Appointment of Counsel after Judgment. Under [18 U.S.C. § 3599\(c\)](#), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.
    - c. Attorney Qualification Waiver. Under [18 U.S.C. § 3599\(d\)](#), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under [18 U.S.C. § 3599\(b\) or \(c\)](#), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.
- D. Eligibility for Representation.
    1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or United States magistrate judge after making appropriate inquiries concerning the person's financial condition.
    2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the

source of the attorney's information is not protected as a privileged communication, counsel will advise the court.

V. Federal Public Defender Organization

A. Recognition

The Federal Public Defender Organization of the District of Kansas, previously established in this district under the provisions of the CJA, is hereby recognized as the federal public defender organization for this district. The federal public defender will be capable of providing legal services throughout the district, and shall maintain offices in Kansas City, Topeka, and Wichita.

B. Supervision of Defender Organization. The federal public defender will be responsible for the supervision and management of the federal public defender organization. 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.

C. Management of CJA Panel. The CJA Coordinator - will be responsible for the systematic distribution of cases to and for the management of the CJA Panel subject to the provisions of the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act, found at Appendix I of this CJA Plan.

VI. Private Attorneys

A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.

C. Ratio of Appointments. 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 approximately 25% of the appointments under the CJA annually throughout the district.

VII. Representation in State Death Penalty Habeas Corpus Proceedings Under 28 U.S.C. § 2254

The court will appoint the federal public defender (with her consent) or a qualified attorney recommended by the federal public defender, or other attorney who qualifies for appointment under [section 3599 of title 18, United States Code](#) to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code.

VIII. Duties of Appointed Counsel

- A. Standards. The services to be rendered a person represented by appointed counsel will be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the provisions of the Kansas Rules of Professional Conduct.
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

IX. Duties of Law Enforcement and Related Agencies

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, notify the federal public defender who will discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit ([Form CJA 23](#)) and] arrange to have the person promptly presented before a United States magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

- B. Pretrial Services Interview. In recognition of the importance of the right to counsel prior to a defendant's interview with a pretrial services officer, the defendant shall be advised prior to any such interview that he or she has a right to counsel.
- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney or the probation officer, as appropriate, must immediately mail, email, or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. Miscellaneous

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, must be used, where applicable, in all proceedings under this Plan. These forms are available on the District Court's and FDO's website.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form, to the FDO CJA Administrator. The Administrator will review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, will forward the claim form for the consideration of the appropriate judge or United States magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. Effective Date

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

Appendix or Appendices:

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

ENTERED FOR THE COURT ON July 18, 2014.

s/ J. Thomas Marten  
J. Thomas Marten  
CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE TENTH CIRCUIT COURT OF APPEALS ON July 18, 2014.

## Appendix I: Plan for the Composition, Administration and Management of the CJA Panel

### I. Composition of Panel of Private Attorneys

#### A. CJA Panel

1. *Approval.* The court will establish 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 Criminal Justice Act. The Panel Selection Committees will approve attorneys for membership on the panel as established under paragraph B of this Plan. Members of the CJA Panel will serve at the pleasure of the court.
2. *Size.* The Panel Selection Committees will fix, periodically, the size of the CJA Panel. The 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 a high quality of representation.
3. *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, and the United States Sentencing Guidelines.

[Subsection \(b\) of the Act](#) provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify the attorney for admission to the district’s CJA Panel in the ordinary course of panel selection.

4. *Equal Opportunity.* All qualified attorneys are be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, sexual orientation, or disabling condition.
5. *Terms.* The initial CJA Panel established under this Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, and members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.
6. *Application.* Application forms for membership on the CJA Panel will be made available on the website of the District of Kansas, <http://www.ksd.uscourts.gov/> and the Federal Public Defender Organization (“FDO”), <http://www.kansasfpd.org/>. Completed applications must be submitted electronically to the CJA Coordinator, who will transmit the applications to the chairperson of the appropriate Panel Selection Committee.
7. *Continuing Legal Education.* All members of the CJA panel shall participate in at least six hours of continuing legal education provided by the Federal Public Defender or equivalent training in federal criminal defense. In order to enable panel counsel sufficient opportunity to attend, the Federal Public Defender shall present at least sixteen hours of continuing legal education per year.

B. Panel Selection Committees

1. *Membership.* Panel Selection Committees will be established by the court. Five panels shall be established, which shall sit in Wichita, Topeka, Kansas City, Ft. Riley, and Ft. Leavenworth. The panel committees will consist of one or more district judge, one or more magistrate judge, one member of the CJA panel, and the Federal Public Defender or her designee. The Committees will be chaired by a magistrate or district judge.
2. *Duties.*
  - a. The Panel Selection Committees will meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committees will review the qualifications of applicants and accept those applicants best qualified to fill the vacancies. If a Committee is reviewing and considering the application of a lawyer who is a member of that Panel

Selection Committee, that lawyer must recuse himself or herself from the consideration.

At its annual meeting, each Committee will also review the operation and administration of the panel over the preceding year, and make any changes deemed necessary or appropriate by the Committee on the appointment process and panel management, including the removal of counsel from the CJA panel when the Committee deems appropriate. The Committees will endeavor to keep process and administration consistent throughout the District. The Committees will also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

- b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the appropriate Committee will solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for approval.
- c. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition. When a Committee approves applicants for panel membership, the Committee will furnish information to the court on recruitment efforts undertaken by the Committee in furtherance of this goal Model Plan.

## II. Selection for Appointment

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

The CJA Coordinator will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience. The CJA Coordinator will also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the CJA Coordinator and private attorneys, according to the formula described in the CJA Plan for the district.

### B. Method of Selection

Appointments from the list of private attorneys should be made on a rotational basis, subject to the discretion of the CJA Coordinator and/or the court to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA

Panel. This procedure should also facilitate the quality representation of each CJA defendant by ensuring that panel members receive enough appointments to remain proficient.

Upon the determination of a need for the appointment of counsel in an exceptional case, the CJA Coordinator will select an attorney based on the considerations listed in II B. In determining the counsel to be appointed in such a case, the CJA Coordinator will consider the specialized experience and training of the panel members in light of the nature of the case.

The CJA Coordinator will advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the federal public defender and the panel of private attorneys. If an attorney from the panel is to be appointed, the JA Coordinator will determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed by the presiding judge or magistrate judge, the appointing judge or magistrate judge will notify the CJA Coordinator as to the name of the attorney appointed and the date of the appointment.

### III. Compensation – Filing Of Vouchers

Claims for compensation must be submitted, on the appropriate CJA form, to the CJA Coordinator . The claim form will be reviewed for mathematical and technical accuracy, and for conformity with the Criminal Justice Act and these rules and, if correct, the CJA Coordinator will forward the claim form for the consideration and action of the presiding judge or magistrate judge.