

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN THE MATTER OF
AMENDED AND SUBSTITUTED
CRIMINAL JUSTICE ACT PLAN
FOR THE NORTHERN DISTRICT
OF IOWA

For Providing Representation Pursuant
to the Criminal Justice Act of 1964, as
Amended

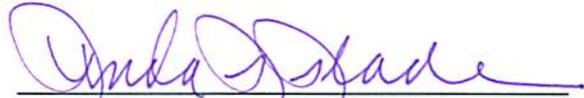
PUBLIC
ADMINISTRATIVE ORDER

No. 15-AO-0010-P
(Superseding 10-AO-05-P)

IT IS HEREBY ORDERED that the Amended and Substituted Criminal Justice Act Plan for the Northern District of Iowa, as set forth in Appendix I is adopted.

This Order supersedes Administrative Order 10-AO-05-P dated December 2, 2010.

DATED this 12th day of November, 2015.



LINDA R. READE, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

Certified original placed in Public Administrative Order Book.

Copies disbursed this 10th day of December, 2015 via email to:

Chief Judge Linda R. Reade
Judge Mark W. Bennett
Judge Edward J. McManus
Chief Magistrate Judge Jon S. Scoles
Magistrate Judge Leonard T. Strand
Robert Phelps, Clerk of District Court
John Zielke, Chief U.S. Probation Officer
Kim Schwartz, Deputy in Charge
United States Attorney's Office

James F. Whalen, Federal Public Defenders Office
Bryan Woodward for posting on the external NDIA web-site




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EIGHTH CIRCUIT JUDICIAL COUNCIL

ORDER

I hereby certify that the Eighth Circuit Judicial Council has approved the amended Criminal Justice Act Plan for the Northern District of Iowa which was adopted by the court on November 12, 2015.


Millie B. Adams
Circuit Executive

St. Louis, Missouri
December 9, 2015

cc: Judicial Council Members
Chief Judge Linda R. Reade
Robert L. Phelps, Clerk of Court
James F. Whalen, Federal Public Defender
Administrative Office

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

JCO 2684

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
AMENDED AND SUBSTITUTED CRIMINAL JUSTICE ACT PLAN**

I. AUTHORITY

Under the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (CJA), and the *Guide to Judiciary Policy*, Volume 7A, *Guidelines for Administering the CJA and Related Statutes (CJA Guidelines)*, the judges of the United States District Court for the Northern District of Iowa 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 federal public defender organization 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 CJA (CJA Panel). The federal

public defender 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 organization.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

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 (*see CJA Guidelines*, § 210.20.10(e));
 - 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. § 4241, *et seq.*;
 - 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 28 U.S.C. § 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 (*see CJA Guidelines*, § 210.20.10(i)); or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel (*see CJA Guidelines*, § 210.20.10(i)).
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 under 28 U.S.C. § 2241, 28 U.S.C. § 2254, or 28 U.S.C. § 2255 (*see CJA Guidelines*, § 210.20.20(a)(2));
 - c. is charged with civil or criminal contempt and faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, 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 18 U.S.C. § 3181, *et seq.*; or
 - g. is a target of a grand jury investigation and has been subpoenaed to appear before the grand jury.

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 must be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States magistrate judge or 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 this Plan or 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), 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 28 U.S.C. § 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 will 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 will consider the recommendation of the federal public defender.

- b. **Appointment of Counsel After Judgment.** Under 18 U.S.C. § 3599[©], 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 that 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 [©], 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. Establishment.

1. The federal public defender organization of the Northern District of Iowa, previously established in this district under the provisions of the CJA, is hereby recognized as the federal public defender organization for this district.
2. The federal public defender organization will be capable of providing legal services throughout the district and will maintain offices in Cedar Rapids and Sioux City, Iowa.

B. Supervision of Federal Public 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 clerk's office 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 Plan.

VI. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The existing, previously established 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 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. 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 Iowa 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.

VIII. 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.** A pretrial services officer must conduct an initial interview of a defendant to assist the court in deciding whether a defendant will be released or kept in custody pending trial. The pretrial services officer must advise the defendant of the right to speak with a lawyer before answering questions and must further advise the defendant that, if the defendant cannot afford a lawyer, one will be appointed. The pretrial services officer will only ask those questions necessary to complete the initial pretrial report and will not ask questions concerning the substantive offense or the alleged relevant conduct. This interview may be conducted prior to the appointment of counsel, but the interview must be immediately terminated if the defendant requests to speak with a lawyer at any time during the interview. Relevant information bearing on the defendant's financial eligibility must be reflected on a financial eligibility affidavit (Form CJA 23) which should be filled out by the defendant with the assistance of counsel. After completion, the form must be presented to a United States magistrate judge or judge of this court. Other officers or employees of the court (i.e., clerk, deputy clerk or pretrial services officer) may be designated by the court to verify the facts contained within the affidavit upon which such determination is to be made. Employees of law enforcement agencies or United States attorney's offices must not participate in the completion of the Form CJA 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.
- 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 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.

IX. 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.

- B. Claims.** Claims for compensation of private attorneys providing representation under the CJA must be submitted via the evoucher system. The clerk's office will review the claim form for conformity with the Guidelines for Administering the CJA and Related Statutes (Volume VII, *Guide to Judiciary Policy*) and for mathematical and technical accuracy and, if correct, will forward the claim form for the consideration and action of the judge or United States magistrate judge.
- C. Supersession.** This Plan supersedes all prior CJA Plans of this court.

X. EFFECTIVE DATE

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

APPENDIX I

PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA Panels

1. **Approval.** The court will establish two panels of private attorneys (hereinafter referred to as the “Cedar Rapids CJA Panel” and the “Sioux City CJA Panel,” respectively, and “CJA Panels,” collectively) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The court will approve attorneys for membership on the Cedar Rapids CJA Panel and the Sioux City CJA Panel after receiving recommendations from the “Panel Selection Committees,” established under paragraph B of this Plan. Members of the CJA Panels will serve at the pleasure of the court.
2. **Size.** The Cedar Rapids CJA Panel and the Sioux City CJA Panel will be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that members of the CJA Panels 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 Cedar Rapids CJA Panel and attorneys who serve on the Sioux City CJA Panel must be members in good standing of the federal bar of this district and must have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines.

Subsection (b) of the Criminal Justice 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 a United States magistrate judge or judge determines that the appointment of an attorney, who is not a member of the district's CJA Panels, 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 either the Cedar Rapids CJA Panel or Sioux City 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 Cedar Rapids CJA Panel or Sioux City CJA Panel in the ordinary course of panel selection.

4. ***Equal Opportunity.*** All qualified attorneys will be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, sexual orientation, age, national origin, or disabling condition.
5. ***Application.*** Application forms for membership on the CJA Panels will be made available, upon request, by the federal public defender organization. Completed applications will be submitted to the federal public defender organization who will transmit the applications to the chairperson of the Panel Selection Committee.
6. ***Continuing Legal Education.*** The federal public defender will regularly schedule and conduct meetings and programs for attorneys on the CJA Panels. Such meetings and programs will be held at least two times during a calendar year. They will be designed to ensure that attorneys on the CJA Panels are kept current on recent developments in federal criminal law and to present speakers and topics of interest to attorneys who act as appointed counsel under the Criminal Justice Act. Attorneys on the CJA Panels must attend a minimum of six hours of these meetings and programs each calendar year in order to remain a member of the Cedar Rapids CJA Panel or the Sioux City CJA Panel. Attendance at not less than six hours of

other continuing legal education in the area of federal criminal law may, at the discretion of the federal public defender, be substituted for attendance at these meetings and programs.

In addition, all members of the CJA panels are encouraged to contact the federal public defender's office for assistance with questions of federal law and procedure. New members of the CJA panel who have relatively little experience in handling federal criminal cases should contact the federal public defender's office to ask about opportunities to serve as second chair in trials. Lawyers who serve as second chair in these circumstances are not eligible to receive compensation for these services.

7. *Acceptance of Appointments.* By serving on one of the CJA Panels, an attorney agrees to accept at least three appointments in the district during each calendar year.

B. Panel Selection Committee

1. *Membership.* A Panel Selection Committee in Cedar Rapids and a Panel Selection Committee in Sioux City will be established by the court. The Committees will consist of one district judge, one United States magistrate judge, the clerk of court (or his or her designee), the Chief United States probation officer (or his or her designee), one attorney who is a member of the Cedar Rapids CJA Panel or one attorney who is a member of the Sioux City CJA Panel, and the federal public defender. The Committees will be chaired by the federal public defender.

2. *Duties.*

- a. The Panel Selection Committees will meet annually to consider applications for vacancies on the CJA Panels. The Committees will review the qualifications of applicants and recommend, for approval by the court, those applicants best qualified to fill the vacancies.

At their meetings, the Committees will also discuss the status of current members of the CJA Panels, consider whether any members should be removed from the CJA Panels due to

performance issues or for disciplinary reasons, review the operation and administration of the CJA Panels over the preceding year, and recommend to the court any changes deemed necessary or appropriate by the Committees on the appointment process and panel management. The Committees will also inquire annually as to the continued availability and willingness of each panel member to accept appointments. In addition, the Committees will annually furnish information to the court regarding recruitment efforts undertaken by the Committees in furtherance of the Equal Opportunity statement in paragraph I.A.4 of this Plan.

- b. **Removal from a CJA Panel.** Membership on a CJA Panel is not a right. A Panel Selection Committee may determine from time to time that, by reason of information received by the Committee, it should remove a member from the CJA Panel or take other remedial action. Grounds for removal from the CJA Panel include, but are not limited to, refusing to accept appointments on a consistent basis, providing inadequate representation, or engaging in improper or unethical conduct. When a Committee receives information that presents a potential reason to remove a panel member, the Committee will address the issue during one of its biannual meetings, or it may instead call a special meeting.

Before disposing of the issue, the Committee may recommend temporary removal of the panel member from any pending cases, or from the CJA Panel, and it may take any other protective action that is in the best interest of a defendant or the administration of the Criminal Justice Act.

The panel member against whom an allegation is made will receive written notice of the allegation, will be given the opportunity to attend the Committee meeting at which the issue will be addressed, and will be permitted to present information, orally or in writing, in his or her own behalf in response to the allegation. A majority vote of the Committee—taken by written, secret ballot—will decide the issue. If the request to remove the panel member has been initiated by a member of the Committee because of that

member's own assessment of the panel member's deficiencies in representing defendants, that member of the Committee will not vote on the removal question. The Committee's decision will be communicated in writing to the panel member, with reasons stated for the decision.

A panel member who has been removed from a CJA Panel may file an application to be placed back on the CJA Panel no earlier than one year from the date of removal. In the application for reinstatement, the attorney must note the earlier removal and explain why he or she should be permitted to return to the CJA Panel.

None of these procedures should be deemed to create a proprietary interest in being on or remaining on the CJA Panel. *See Roth v. King*, 449 F.3d 1272, 1283-86 (D.C. Cir. 2006).

- c. 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 Cedar Rapids CJA Panel or the Sioux City CJA 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 recommendation to the court for approval.

II. SELECTION FOR APPOINTMENT

A. Maintenance of List and Distribution of Appointments

The federal public defender will maintain a current list of all attorneys included on each of the CJA Panels, with current office addresses, e-mail addresses, and telephone numbers, as well as a statement of qualifications and experience. The federal public defender will furnish a copy of these lists to each judge and United States magistrate judge in this district. The clerk's office will maintain a public record of assignments to private counsel and the amount of compensation received by private counsel on each matter. The federal public defender will maintain the statistical data reflecting the

proration of assignments between attorneys for the Federal Public Defender Organization and private attorneys.

B. Method of Selection

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

Upon the determination of a need for the appointment of counsel, the judge or United States magistrate judge will notify the federal public defender of the need for counsel and the nature of the case.

The federal public defender will advise the judge or United States magistrate judge as to the status of distribution of cases, where appropriate, as between the federal public defender and the CJA Panels of private attorneys. If the United States magistrate judge or judge decides to appoint an attorney from the Cedar Rapids CJA Panel or the Sioux City CJA Panel, the clerk's office 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, and will provide the name to the appointing judge or United States magistrate judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the federal public defender organization, the presiding judge or United States magistrate judge may appoint any attorney from the list. In all cases where panel members are appointed out of sequence, the appointing judge or United States magistrate judge will notify the clerk's office 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 via the evoucher system. The clerk's office will review the claim form for conformity with the Guidelines for Administering the CJA and Related Statutes (Volume VII, *Guide to Judiciary*

Policy) and for mathematical and technical accuracy and, if correct, will forward the claim form for the consideration and action of the judge or United States magistrate judge.