

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

Re: Revised Plan for Implementing  
the Criminal Justice Act of 1964  
(Criminal Justice Act (CJA) Plan)

Administrative Order

No. 23-AO-043

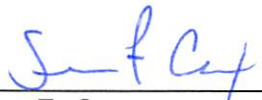
**ADMINISTRATIVE ORDER**

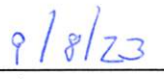
On June 5, 2023, the Judges of the United States District Court for the Eastern District of Michigan approved the attached Revised Plan for Implementing the Criminal Justice Act of 1964 and forwarded it to the Judicial Council of the Sixth Circuit for final approval. The Plan was approved by the Judicial Council and Chief Judge Jeffrey S. Sutton signed the Certificate of Approval on August 30, 2023.

NOW THEREFORE IT IS ORDERED THAT the attached Revised Plan for Implementing the Criminal Justice Act of 1964 is adopted for the Eastern District of Michigan until further order of the Court and supersedes all previous versions of the Plan.

Pursuant to 18 U.S.C. § 3165(c), a copy of this Criminal Justice Plan has been forwarded to the Administrative Office of the United States Courts.

FOR THE COURT:

  
\_\_\_\_\_  
Sean F. Cox  
Chief Judge

  
\_\_\_\_\_  
Date

FILED USDC - CLRK DET  
2023 SEP 8 PM2:01

Approved: August 30, 2023

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# CRIMINAL JUSTICE ACT PLAN UNITED STATES DISTRICT FOR THE EASTERN DISTRICT OF MICHIGAN

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Revised: May 25, 2023

I.	Authority .....	1
II.	Statement of Policy.....	1
III.	Objectives of the CJA Plan .....	1
IV.	Compliance.....	2
V.	Definitions.....	2
	A. Appointed Attorney .....	2
	B. CJA Panel or Panel .....	2
	C. Representation Services.....	2
	D. CJA Administrator.....	2
	E. Panel Attorney District Representative .....	2
	F. Community Defender Organization.....	2
	G. Community Defender .....	3
VI.	Determination of Eligibility for CJA Representation .....	3
	A. Subject Matter Eligibility.....	3
	B. Financial Eligibility .....	5
	1. Presentation of Accused for Financial Eligibility Determination .....	5
	a. Duties of Law Enforcement .....	5
	b. Duties of United States Attorney's Office .....	5
	c. Duties of the Community Defender Organization .....	6
	d. Duties of Pretrial Services Office (Prejudgment) .....	6
	e. Duties of Probation Office (Post Judgment) .....	7
	2. Factual Determination of Financial Eligibility .....	7
VII.	Timely Appointment of Counsel.....	8
	A. Timing of Appointment.....	8
	B. Court's Responsibility .....	9
	C. Pretrial Service Interview .....	9
	D. Retroactive Appointment of Counsel .....	9
VIII.	Provision of Representational Services .....	9
	A. Federal Community Defendant and Private Counsel.....	9
	B. Administration .....	9
	C. Apportionment of Cases .....	9
	D. Number of Counsel.....	9
	E. Capital Cases .....	10
IX.	Community Defender Organization .....	10
	A. Establishment .....	10
	B. Standards .....	10

C.	Workload.....	10
D.	Professional Conduct.....	10
E.	Private Practice of Law .....	10
F.	Supervision of Defender Organization .....	11
G.	Training.....	11
X.	CJA Panel of Private Attorneys .....	11
A.	Establishment of the CJA Panel Committees .....	11
B.	Duties of the Committee .....	12
1.	Determine Membership of the CJA Panel .....	12
2.	Recruitment .....	12
3.	Training .....	12
4.	Annual Report .....	12
5.	Removal .....	13
6.	Voucher Review .....	13
7.	Mentoring .....	13
XI.	Establishment of a CJA Panel.....	14
A.	Approval of CJA Panel.....	14
B.	Size of CJA Panel.....	14
C.	Qualifications and Membership on the CJA Panel.....	15
1.	Application .....	15
2.	Equal Opportunity .....	15
3.	Eligibility .....	15
4.	Appointment to CJA Panel .....	15
5.	Terms of CJA Panel Members .....	16
6.	Reappointment of CJA Panel Members .....	16
7.	Removal from the CJA Panel .....	16
XII.	CJA Panel Attorney Appointment in Non-Capital Cases .....	18
A.	Appointment List.....	18
B.	Appointment Procedures .....	18
XIII.	Duties of CJA Panel Members .....	19
A.	Standards and Professional Conduct .....	19
B.	Training and Continuing Legal Education .....	20
C.	Facilities and Technology Requirements .....	20
D.	Continuing Representation .....	21
E.	Miscellaneous .....	21
XIV.	Compensation of CJA Panel Attorneys .....	21

A.	Policy of the Court Regarding Compensation .....	21
B.	Payment Procedures .....	22
XV.	Investigative, Expert, and Other Services .....	23
A.	Financial Eligibility .....	23
B.	Applications .....	23
C.	Compliance .....	23
XVI.	Appointment of Counsel and Case Management in CJA Capital Cases .....	24
A.	Applicable Legal Authority .....	24
B.	General Applicability and Appointment of Counsel Requirements .....	24
C.	Appointment of Trial Counsel in Federal Death-Eligible Cases .....	26
1.	General Requirements .....	26
2.	Qualifications of Learned Counsel .....	27
3.	Qualifications of Second and Additional Counsel .....	28
D.	Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases .....	28
E.	Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255) .....	29
XVII.	Miscellany .....	30
A.	Private Counsel Appointed Under CJA .....	30
B.	Payment for Representation by Private Counsel .....	30
C.	Interim Payments .....	31
D.	Transcripts .....	31
XVIII.	Effective Date .....	32

United States District Court  
For the Eastern District of Michigan  
Criminal Justice Act 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 Eastern District of Michigan adopt this Plan, as approved by the Sixth 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. This Plan provides for the furnishing of representation and other services by the Federal Community Defenders of the Eastern District of Michigan (FCDEDM), and private attorneys compensated under the CJA and related statutes.
- B. This Plan must be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

III. Objectives of the CJA Plan

- A. 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 with no penalty due to their economic status;
  - 3. To provide cost-effective services, that also protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced;
  - 4. To recruit a diverse CJA panel and ensure that all qualified attorneys are encouraged to participate in representation in CJA cases; and
  - 5. 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.

**IV. Compliance**

- A. The Court, its Clerk, the FCDEDM, and private attorneys 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.
- B. The Court will ensure that a current copy of the CJA Plan is made available on the Court's website and provided to the CJA counsel upon the attorney's designation as a member of one of the CJA panels for the Eastern District of Michigan (collectively, CJA Panel).

**V. Definitions**

**A. 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 and the Community Defender Organization and its staff attorneys.

**B. CJA Panel or Panel**

"CJA Panel" or "Panel" refers to the panels identified in the section of this Plan that, collectively, constitute the CJA panel, unless otherwise indicated.

**C. Representation Services**

"Representation services" includes services rendered by appointed counsel, investigators, experts, interpreters, and other service providers, including litigation support vendors.

**D. CJA Administrator**

"CJA Administrator" is a person designated by the Community Defender to administer the CJA Panel.

**E. Panel Attorney District Representative**

The Panel Attorney District Representative ("PADR") is a member of the CJA Panel who is selected by the Panel Selection Committee with approval from the Chief Judge to serve as a district representative on the circuit's CJA Panel for the Defender Services, CJA PADR program and local CJA committees.

**F. Community Defender Organization**

The "Community Defender Organization" is the Federal Community Defender of the Eastern District of Michigan.

G. Community Defender

Includes the Executive Director of the FCDEDM, and/or their designee.

VI. 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, or is at risk of being placed 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;

m. Is seeking to set aside or vacate a prior sentence under 28 U.S.C. § 2254 or § 2255 and an evidentiary hearing is warranted.

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;

b. is seeking relief under 28 U.S.C. § 2241, § 2254, or § 2255 other than to set aside or vacate a death sentence;

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, 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. has been advised by the United States attorney or a law enforcement officer that they are the target of a grand jury investigation;

f. is proposed by the United States attorney for processing under a pretrial diversion program; or

g. 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:

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. to effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

**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 counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate Court personnel, who in turn will notify the Community 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 arrest or the scheduling of an initial appearance of a defendant, and where the defendant has not retained or waived counsel, the United States attorney or their delegate must promptly notify, telephonically or electronically, appropriate Court personnel, who in turn will notify the Community 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, either in the letter, telephonically or electronically, the recipient of the target letter of the availability of the Community Defender to provide representation, and provide its contact information.
- (iii) Employees of the United States Attorney's Office should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

c. Duties of the Community Defender Organization

- (i) In cases in which the Community 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 facilitate the timely assignment of the case to an attorney on the CJA Panel.
- (ii) When practicable, when a person indicates that they are not financially able to retain counsel, the Community Defender will meet with the person and arrange for them to complete a financial affidavit (CJA 23) for presentation to a magistrate judge or district judge for determination of financial eligibility and appointment of counsel.

d. Duties of Pretrial Services Office (Prejudgment)

- (i) Unless it will result in undue delay, fact-finding solely concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in Court. Pretrial Services officers are designated by the Court to obtain or verify the facts upon which such determination is made. The officer must ensure that the person thoroughly completes and executes a financial affidavit (Form CJA 23). Prior to the completion of the financial affidavit, the person should be advised of their right to have counsel assist them in the completion of the affidavit. If the person

requests counsel, the pretrial services officer should contact the Community Defender.

- (ii) 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.
- (iii) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

e. Duties of Probation Office (Post Judgment)

- (i) Unless it will result in undue delay, fact-finding solely concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in Court. Probation officers are designated by the Court to obtain or verify the facts upon which such determination is made in post-judgment appearances. The officer must ensure that the person thoroughly completes and executes a financial affidavit (Form CJA 23). Prior to the completion of the financial affidavit, the person should be advised of their right to have counsel assist them in the completion of the affidavit. If the person requests counsel, the probation office should contact the Community Defender.

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 they have a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if they are financially unable to obtain counsel.
- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the Court may be designated

to obtain or verify the facts relevant to the financial eligibility determination (e.g., Pretrial Services or Probation officers).

- 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 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.

## VII. Timely Appointment of Counsel

### A. Timing of Appointment

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

- 1. after the accused is taken into custody;
- 2. when the accused appears before a magistrate or district court judge;
- 3. when the accused is formally charged or notified of charges if formal charges are sealed;

4. when a person receives a target letter; or
5. 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 Community 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.

**D. Retroactive Appointment of Counsel**

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

**VIII. Provision of Representational Services**

**A. Federal Community Defendant and Private Counsel**

This plan provides for representation by the Community Defender Organization and for the appointment and compensation of private counsel from a CJA Panel list maintained by the Community 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 Community Defender's Office.

**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 extended and complex or otherwise appropriate. Participation by second counsel in a mentoring program administered under this Plan may be a factor in determining if appointment of a second attorney is "otherwise appropriate."

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 XVI of this Plan.

IX. Community Defender Organization

A. Establishment

The Federal Community Defender of the Eastern District of Michigan is established in this District under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

The Community 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 Community Defender Organization will continually monitor the workload of its staff to ensure high quality representation for all clients.

D. Professional Conduct

The Community Defender Organization will conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct/American Bar Association's Model Code of Professional Conduct/Code of Conduct for Federal Public Defender Employees/Model Code of Conduct for Federal Community Defender Employees/Michigan Rules of Professional Conduct/other standards for professional conduct adopted by the Court.

E. Private Practice of Law

No employee of the Community Defender Organization may engage in the private practice of law except as authorized by the Community Defender Code of Conduct.

**F. Supervision of Defender Organization**

The Community Defender will be responsible for the supervision and management of the Community Defender Organization. Accordingly, the Community Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Community Defender.

**G. Training**

The Community Defender will assess the training needs of Community Defender staff and in coordination with the CJA Panel Attorney District Representative, the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

**X. CJA Panel of Private Attorneys**

**A. Establishment of the CJA Panel Committees**

1. A CJA Panel Selection Committee ("Committee") will be jointly established by the Court and the Community Defender. The Committee will consist of the Community Defender, another attorney at the Community Defender Organization designated by the Community Defender, the PADR, at least one and as many as six criminal defense attorneys who practice regularly in the district who must be CJA Panel Members, and the CJA Administrator who will be an ex officio member and will act as the administrative coordinator. The Community Defender will chair the Committee.
2. The Committee will be drawn from a cross-section of attorneys who make up the CJA Panel and must be both racially and geographically diverse.
3. The Community Defender and the District's PADR are permanent members of the CJA Selection Committee. Membership on the 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 Committee may establish such subcommittees as needed to meet the responsibilities imposed by this Plan without undue hardship on Committee members. Such subcommittees may include Panel members not on the Committee, lawyers not on the Panel and

non-lawyers, but must include at least one Committee member who will serve as chair of the subcommittee. Subcommittee memberships are subject to Committee approval.

5. The CJA Panel Selection Committee will meet at least twice a year and at any time the Court asks the Committee to consider an issue.

**B. Duties of the Committee**

1. **Determine Membership of the CJA Panel**

The Committee shall examine the qualifications of applicants for membership on the CJA Panel and recommend to the Chief Judge the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified. If the Chief Judge accepts or rejects the decision of the Committee, the report will be returned to the Committee along with any comments the Chief Judge deems appropriate for further action of the committee.

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. The Committee will develop and maintain a diversity recruitment plan that may include outreach to minority and other bar associations and private firms, along with special training events.

3. **Training**

Assist the Community Defender Organization in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients. The Committee may develop training opportunities for continued Panel membership, including programs addressing professional conduct and respectful behavior towards others in addition to those addressing substantive and procedural areas of federal criminal practice.

4. **Annual Report**

Reasonably in advance of the annual meeting of the Committee, the Chair and CJA Administrator will report to the Committee such information as will assist the Committee in conducting its business, including the nature and extent of participation in Panel activities by members of the Panel whose term is expiring, information regarding lawyers seeking membership on the Panel, changes in the volume or complexity of criminal cases brought in the District and a summary of the activities of any subcommittee established by the Committee.

The Chief Judge may share the report with other members of the Court.

At its annual meeting, prior to determining the membership of the Panel for the upcoming year, the Committee will 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:

- 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.

5. Removal

Recommend to the Chief Judge the removal of 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, or
- b. has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate.

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 for review, 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 Committee will issue a written recommendation to the judge.

7. Mentoring

Consistent with the Judicial Conference of the United States, the Eastern District of Michigan recognizes the importance that the CJA Panel must reflect the rich diversity of the Eastern District. Accordingly, a diverse and inclusive staff in the FCDEDM and the membership of the CJA Panel is important. This goal is advanced by providing a program to develop the skills and knowledge

necessary to provide representation to those served by the CJA that meets the standards of practice under this Plan. To that end, the Committee will 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 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. The mentees will be compensated for their work done on behalf of the CJA clients.

**XI. 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 and will continue as presently constituted by pending action by the CJA Committee under this Plan.
2. The CJA panel will be organized into three lists: 1) those attorneys willing to accept appointments in the Southern Division of the District; 2) those attorneys willing to accept appointments at the Flint courthouse of the Northern Division of the District; and 3) those attorneys willing to accept appointments at the Bay City courthouse of the Northern Division of this District.
3. Attorneys may apply to be on more than one list. Acceptance on one list does not ensure acceptance on any other list. Approval and placement on lists will be based on the needs of the District.

**B. Size of CJA Panel**

1. The size of the CJA Panel will be determined by the CJA Selection Committee based on the caseload and activity of the panel members, subject to review by the Chief Judge.
2. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work 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.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available at <https://mie.fd.org>.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

3. Eligibility

a. Applicants for the CJA Panel must be members in good standing of the federal bar of this District and the Sixth Circuit Court of Appeals.

b. Applicants must maintain a primary, satellite, or shared office in this 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 Selection Committee's consideration.

4. Appointment to CJA Panel

After considering the recommendations of the CJA Selection 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.

5. Terms of CJA Panel Members

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.

6. Reappointment of CJA Panel Members

- a. The Community 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 Selection Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. The CJA Selection Committee will also 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 sustained complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.

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.

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.

Panel members are required to notify the Community Defender in writing within 7 days of the occurrence of any of these events. The Community Defender will notify the Committee upon receipt of such notice.

c. Discretionary Removal

The Committee and Chief Judge may remove a member based on performance or conduct inconsistent with the goals of this Plan and the professional standards expected of members. The Committee may conduct such inquiry as is necessary to fairly resolve such matter, including hearing from the Panel member in question or other person with information bearing on the issue. Membership on the panel is a privilege, not a right. This section does not create any due process rights regarding the Committee's actions.

d. Notification

The Court will be immediately notified when any member of the CJA panel is removed or suspended.

e. 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 Community Defender Organization. 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, the CJA Committee will notify the panel member of the specific allegations.

(iii) Response

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

(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, the CJA Committee may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the panel, limiting the attorney's participation to particular types or categories of cases, directing the attorney to complete specific CLE requirements before receiving further panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another 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, 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.

**XII. CJA Panel Attorney Appointment in Non-Capital Cases**

**A. Appointment List**

The Community Defender Organization 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 Community Defender is responsible for overseeing the appointment of cases to panel attorneys. The Community Defender will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Community Defender Organization and panel attorneys.
2. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Community Defender 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. The Community Defender or the Panel Administrator should ordinarily be consulted before such an appointment. 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 Community Defender Organization.

### XIII. 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))). Panel members should meet the expectations of the current edition of the ABA Standards and the Michigan Rules of Professional Conduct.

2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct/ American Bar Association's Model Code of Professional Conduct/ other standards for professional conduct adopted by the Court.
3. CJA panel members must notify the Chair of the CJA Committee within 7 days when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the 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 are required to attend trainings sponsored by the Community Defender Organization.
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. CJA panel members must attend 8 continuing legal education hours relevant to federal criminal practice annually.
5. Attorneys on the CJA Panel will register with <https://mie.fd.org> so that they have access to the most current CJA resources.
6. 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 (unless provided otherwise by the Sixth 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.

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.

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 communication, counsel must advise the Court.

XIV. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in Court and time

reasonably expended out of Court, and reimbursed for expenses reasonably incurred.

2. Voucher cuts should be limited to:
  - a. Mathematical errors;
  - b. Instances in which work billed was not compensable;
  - c. Instances in which work billed was not undertaken or completed; and
  - d. Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

See: JCUS-SEP 2018, p. 42.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The Court or its designee will review the claim for mathematical and technical accuracy and for conformity with Guide, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.
4. Absent extraordinary circumstances, the Court should act on CJA compensation claims within 30 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
5. Except in cases involving mathematical corrections, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to respond.
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.
7. Notwithstanding the procedure described above, the District Judge may, in the first instance, contact appointed counsel with questions

or concerns about 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.

XV. 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. 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.

Requests for authorization of funds for investigative, expert, and other services in excess of the current limit, must be submitted in an *ex parte* motion to the Court (using the Court's CM/ECF system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy. Refer to the Court's website for a current list of financial limitations for expert services.

Subsequent to the entry of an order authorizing funds for investigative, expert, and other services, an authorization must be submitted to the Court with a copy of the signed order attached. The authorization is perfunctory as the funds have been approved, it is required for the issuance of the voucher that will be used to remit the claim for payment of services.

Claims in excess of the compensation maximum require advanced approval from this Court and the Chief Judge of the circuit (or designee).

*See the Investigative, Expert and Other Services Instructions on this Court's CJA eVoucher website.*

C. Compliance

Counsel must comply with Judicial Conference policies set forth in Guide, Vol. 7A, Ch. 3.

**XVI. 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.

**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 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 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 critical 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>1</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 capital-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 Community Defender who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.
- e. To effectuate the intent of 18 U.S.C. § 3005 that the Community Defender recommendation be provided to the Court, the judge should ensure the 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

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<sup>1</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.

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 their qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- 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" includes 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 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 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.

## XVII. Miscellany

### A. Private Counsel Appointed Under CJA

For representation of a person before the district judge or the United States magistrate judge, or both, the compensation to be paid to a private attorney appointed under this plan shall not exceed the CJA maximum compensation rate for each attorney in a case in which one or more felonies are charged, and for each attorney in a case in which only misdemeanors (including petty offenses as set forth in subsection (a)(2)(A) of the Act) are charged. For any other representation required or authorized by the Act compensation is limited to the applicable CJA maximum compensation rate for each attorney in each proceeding. This includes, but is not limited to, representation of persons charged with a violation of probation, a person charged with a violation of supervised release or a person who faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release, or persons entitled to appointment of counsel in parole proceedings under chapter 311 of title 18, U.S.C., material witnesses in custody, and persons seeking relief under section 2241, 2254 or 2255 of title 28, U.S.C.

Payment in excess of any maximum amount provided in the previous paragraph may be made for extended or complex representation whenever the presiding district judge, or the United States magistrate judge, if the representation was furnished exclusively before the magistrate judge, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the Court of Appeals for the Sixth Circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated).

### B. Payment for Representation by Private Counsel (Hourly Rates)

Any private attorney appointed under this plan shall, at the conclusion of the representation, or any segment thereof, be compensated at a rate not exceeding the applicable CJA hourly rate for time expended in and out of

Court. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the Court.

C. Interim Payments

Counsel who has been appointed to represent a defendant under the CJA may file a motion seeking interim payments to alleviate financial hardships in extended and complex cases.

Motions for interim payments must be filed under seal in the Court's operating system, currently CM/ECF. Orders for interim payments approved by the district judge must be sent to the Chief Judge of the Circuit Court or his/her designee for approval. Subsequent to Circuit approval, the order will be filed under seal in the Court's operating system, currently CM/ECF.

Circuit approval is required for interim payments where compensation will exceed the current case compensation maximum. The signed circuit court order must be received before an interim claim may be submitted and processed for payment. All interim claims for payment must have a copy of the approved budget attached and be submitted using the electronic payment system.

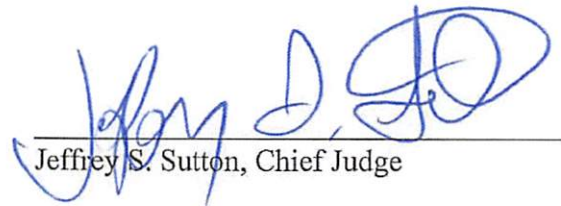
D. Transcripts

Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain a transcript of a proceeding for adequate representation may request authorization to obtain such transcript using the appropriate forms in the electronic payment system. *(Instructions are available on the Court's CJA eVoucher website.)*

## CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, et seq., the Judicial Council of the Sixth Circuit of the United States did receive and approve via mail ballot dated August 22, 2023, the foregoing revised Criminal Justice Act Plan for the Eastern District of Michigan. The revised plan shall become effective upon the date of this approval.

This 30th day of August 2023.



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Jeffrey S. Sutton, Chief Judge