

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEBRASKA

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of Title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the District of Nebraska, adopt this plan for furnishing representation in the federal court for any person financially unable to obtain adequate representation in accordance with the CJA. When approved, this plan will supersede the CJA plan now in effect in the District of Nebraska.

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 shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this plan is to particularize the requirements of the CJA, the 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, shall 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 shall be provided by the Federal Public Defender with a then current copy of this plan upon the attorney's first appointment under the CJA or designation as a member of the panel of Private Attorneys under the Criminal Justice Act (CJA panel). The Federal Public Defender shall maintain a current copy of the CJA Guidelines for the use of members of the CJA panel and shall make known to such attorneys its availability.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorneys" includes private attorneys, the federal public defender and staff attorneys of the Federal Public Defender Organization.

IV. PROVISION OF REPRESENTATION

A. Circumstances.

- 1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or with a class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces an unfavorable modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
 - h. is in custody as a material witness;

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- i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
 - k. is entitled to appointment of counsel under the sixth amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a judge or United States magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of title 28, United States Code;
 - 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 a loss of liberty;
 - e. is proposed by the United States attorney for processing under a pretrial diversion program;
 - f. is held for international extradition under chapter 209 of title 18, United States Code;

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- g. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and is represented by counsel under this plan in connection with a related criminal case. In such an event, the court may authorize counsel to represent the person with respect to the forfeiture claim.

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

B. Timely Appointment of Counsel.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:
 - a. Federal Capital Prosecutions. Under 18 U.S.C. §3005, a person charged with a federal capital offense is **entitled** to the appointment of two attorneys, at least one of whom must be learned in the law applicable to capital cases. Under 18 U.S.C. §3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
 - b. Habeas Corpus Proceedings. Under 18 U.S.C. §3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§2254 or 2255 is **entitled** to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.
2. Qualifications. Qualifications for appointed counsel shall be

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determined by the court. In capital cases the following also applies:

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

Under 18 U.S.C. §3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender or, if no such organization exists in the district, of the Administrative Office of the United States Courts.

- b. Appointment of Counsel After Judgment. Under 18 U.S.C. §3599(c), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.
- c. Attorney Qualification Waiver. Under 18 U.S.C. §3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or 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 shall advise the court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment.

1. The Federal Public Defender Organization of the District of Nebraska, 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 shall be capable of providing legal services throughout the district and shall maintain offices in Omaha, Nebraska, and Lincoln, Nebraska.
3. The Federal Public Defender Organization shall also be authorized to provide legal services in the United States District Court for the Northern and Southern Districts of Iowa, pursuant to this plan, to represent a financially eligible defendant when requested by a judge or magistrate judge of the United States District Court for the Northern or Southern District of Iowa.

Prior to undertaking the representation of any individual in Iowa, the Federal Public Defender for the District of Nebraska, shall consult with the Federal Public Defender for the Northern or Southern Districts of Iowa, to determine the availability of a staff attorney from the Iowa Federal Public Defender Organization to represent the individual. Only when the interests of economy and efficiency outweigh the burden of providing representation by the Iowa Federal Public Defender Organization shall the Nebraska Federal Public Defender represent an individual in federal court in Iowa.

- B. Supervision of Defender Organization. The federal public defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the federal public defender shall 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 federal public defender shall 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 panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this plan.
- C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district of Nebraska.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. §2254

- A. The court will appoint the federal public defender with his or her consent, or a qualified attorney recommended by the federal public defender, or the state or county public defender, or the Commission on Public Advocacy, or other attorney who qualifies for appointment under §3599 of title 18, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under §2254 of title 28, United States Code.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed to the CJA shall conform to the highest standards of professional conduct and shall refrain from conduct

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unbecoming a member of the bar. See NEGenR 1.7(b) ("Ethical Standards").

- 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 shall, continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of accused for appointment of counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall 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, in such cases in which the person indicates that he or she is not able, notify the federal public defender who shall 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 (CJA Form 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.
 - 1. The Court recognizes the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. § 3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, all law enforcement and related agencies shall:
 - a. advise any such person of his or her right to counsel as provided in paragraph IX. A. of this plan;
 - b. having due regard for the importance of affording the pretrial service officer adequate time to interview the defendant and

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verify information prior to the bail hearing, make every reasonable effort to insure that such person has consulted with counsel or has had the opportunity to consult with counsel prior to such interview.

- 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 or supervised release, the United States attorney or the probation officer, as appropriate, immediately shall 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.

X. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the federal public defender. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing. Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission. If the court determines that a claim should be reduced, appointed counsel should be provided (a) prior notice of the proposed reduction with a brief statement of the reason(s) for it; and (b) an opportunity to address the matter. Notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.

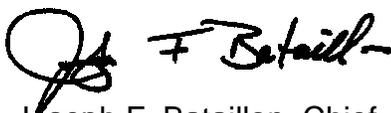
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XI. EFFECTIVE DATE

This plan is an amendment to the Amended Criminal Justice Act Plan, as approved by the Judicial Council of the Eighth Circuit on November 7, 2000, and shall become effective upon its approval by the review panel of the Judicial Council of the Eighth Circuit.

DATED this 4th day of February, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon". The signature is written in a cursive style with a large initial "J" and "B".

Joseph F. Bataillon, Chief Judge
United States District Court

APPENDIX I

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

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA Panel

1. Approval. The Court shall establish a panel of private attorneys (hereafter referred to as the “CJA Panel”) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act (the “Act”). The Court shall approve attorneys for membership on the CJA Panel after receiving recommendations from the Panel Selection Committee, established pursuant to paragraph B of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.
2. Size. The Court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

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

However, when a district judge or magistrate judge presiding over the case, or the chief judge if a judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a

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

4. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
5. Terms. Members of the CJA Panel shall serve indefinitely and continuously at the pleasure of the court. Members of the current CJA Panel shall automatically become members of the CJA Panel established by this Plan.
6. Continuing Legal Education. Members of the CJA Panel shall attend a minimum of eight hours of continuing legal education in federal criminal defense, every two years to remain on the CJA Panel. Attendance at seminars conducted by the Federal Public Defender shall satisfy this requirement in an amount determined by the Federal Public Defender. Proof of compliance with the CLE requirement shall be sent by the CJA Panel Member to the Federal Public Defender.

B. Panel Selection Committee

1. Membership. A Panel Selection Committee shall be established by the court. The Committee shall consist of one district judge, one magistrate judge, one attorney who is a member of the CJA Panel, and the Federal Public Defender. The committee shall select its own chairperson.
2. Duties.
 - a. The Panel Selection Committee shall meet at least once a year to consider applications for vacancies. The committee shall review the qualifications of applications and recommend, for approval by the court, those applicants best qualified to fill the

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vacancies.

At its annual meeting, the committee shall also review the operation and administration of the panel over the preceding year, and recommend to the court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

- b. If, at any time during the course of a year, the number of vacancies due to resignation, removal or death, significantly decreases the size of the panel, the committee shall 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.
 - c. When the committee submits the names of applications for panel membership to the Court for approval, the committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph 1.A.4. of this model plan. At least once each year the Committee shall provide the court with information on the panel of attorneys in each of the categories listed in paragraph 1.A.4. of this model plan.
- C. CJA Training Panel. The Panel Selection Committee may establish a “CJA Training Panel,” consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a second chair capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of the attorney to the CJA Panel.

II. SELECTION FOR APPOINTMENT

- A. Maintenance of List and Distribution of Appointments. The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Federal Public Defender

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shall furnish a copy of the list to each judge and magistrate. The Federal Public Defender shall also maintain a public record of assignments to private counsel, and when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defenders office and private attorneys, according to the formula described in the CJA Plan for the District. The Federal Public Defender will provide an annual report to the Court that will include a summary of efforts made in furtherance of providing equal opportunity for CJA panel membership, regardless of lawyers' race, color, religion, sex, age, national origin, or disability, and statistical data reflecting the diversity of lawyers serving on the CJA panel and receiving case assignments.

- 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 Panel, and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate judge shall notify the Federal Public Defender of the need for counsel and the nature of the case.

The Federal Public Defender shall advise the judge or magistrate as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the panel of private attorneys. If the judge or magistrate judge decides to appoint an attorney from the panel, the Federal Public Defender shall 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 shall provide the name to the appointing judge or magistrate judge.

In the event of an emergency, i.e, weekends, holidays, or other non-working hours of the Clerk of the Court's Office, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Federal Public Defender as to the name of the attorney and the date of the appointment.

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA Form, to the

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office of the Federal Public Defender. The Federal Public Defender shall review the claim forms for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim forms for the consideration and action of the presiding judge or magistrate judge. All such forms shall be maintained by the Federal Public Defender.

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

Millie B. Adams
Circuit Executive

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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 District of Nebraska which was adopted by the court on February 4, 2010.



Millie B. Adams
Circuit Executive

St. Louis, Missouri
February 18, 2010

cc: Judicial Council Members
Chief Judge Joseph F. Bataillon
Denise M. Lucks, Clerk of Court
David R. Stickman, Federal Public Defender
Administrative Office

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

JCO 2200