

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF AMENDMENTS TO  
THE CRIMINAL JUSTICE ACT PLAN

Administrative Order No. 25-MS-050

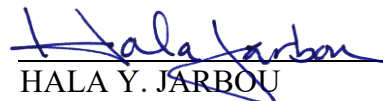
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In accordance with a revised Criminal Justice Act Plan adopted by this Court on March 14, 2025, and approved by the Sixth Circuit Judicial Council and Chief Judge Jeffrey S. Sutton on June 6, 2025, the current Criminal Justice Act Plan is hereby amended and replaced with the attached CJA Plan.

IT IS SO ORDERED.

FOR THE COURT:

Dated: June 11, 2025



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HALA Y. JARBOU  
CHIEF UNITED STATES DISTRICT JUDGE

# **United States District Court for the Western District of Michigan**

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United States District Court  
For the Western 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 Western District of Michigan adopt this Plan, as approved by the Circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation consistent with the CJA.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. To attain the goal of equal justice under the law for all persons;
2. To provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. To particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at [18 U.S.C. § 3599](#)), and *Guide*, Vol. 7A, in a way that meets the needs of this district.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

B. Compliance

1. The Court, its Clerk, the Federal Public Defender Office (FPDO) and private attorneys appointed under the CJA must comply with *Guide*, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.
2. The Court will ensure that a current copy of the CJA Plan is made available on the Court's website. The Federal Public Defender will provide private attorneys with a 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 also maintain a current copy of the *Guide*, Volume 7A for the use of members of the CJA Panel and shall make its availability known to such attorneys. Failure to familiarize him or herself with this Plan shall not excuse an attorney from complying with its provisions.

### III. Definitions

#### A. Representation

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

#### B. Appointed Attorney

"Appointed attorney" includes private attorneys, the Federal Public Defender, and staff attorneys of the FPDO.

#### C. CJA Panel Administrator

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

### IV. Determination of Eligibility for CJA Representation

#### A. Subject Matter Eligibility

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



- I. Faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

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

- a. Is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- 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, 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. 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 the United States Attorney's Office and Law Enforcement Agencies
  - (i) The United States Attorney's Office and federal law enforcement agencies recognize their obligation to continue to comply with all applicable laws, standards, and procedures related to the appointment of counsel.

- (ii) Employees of the United States Attorney's Office and federal 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.
- (iii) At or before the initial appearance of a person accused of a crime, upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a complaint or petition to modify or revoke probation or supervised release, the accused shall be provided a copy of the charging document by the United States Marshal prior to the initial appearance or, if not so received, by the United States Attorney's Office at the initial appearance. When the accused is directed by summons to appear to answer to an indictment, information, or complaint, the United States Attorney's Office will provide a copy of the charging document along with the cover letter notifying him or her of the date to appear.

b. Duties of the Federal Public Defender Office

- (i) In cases in which the Federal Public Defender may be appointed, the office will:
  - immediately investigate and determine whether an actual or potential conflict exists; and
  - in the event of an actual or potential conflict facilitate the timely appointment of other counsel.
- (ii) When practicable, the FPDO will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of

counsel seems likely, assist in the completion of a [financial affidavit \(Form CJA 23\)](#).

c. Duties of the United States Probation and Pretrial Services Office

- (i) The United States Probation and Pretrial Services Office 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, and, whenever such person indicates that he or she is not able, shall assist in the completion of a financial affidavit (CJA Form 23) and notify and provide the completed form to the Court.
- (ii) 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.
- (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.
- (iv) When the accused is directed by summons to appear to answer to a petition to modify or revoke probation or supervised release, the United States Probation and Pretrial Services Office will provide a copy of the petition along with the cover letter notifying him or her of the date to appear.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under [18 U.S.C. § 3006A\(a\)](#) and related statutes, the Court must advise the person that he or

she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.

- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the Court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the Court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
- d. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.
- e. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.
- f. Relevant information bearing on the person's financial eligibility should be reflected on a [financial eligibility affidavit \(Form CJA 23\)](#).
- g. If, at any time after the appointment of counsel, a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in [18 U.S.C. § 3006A\(f\)](#).

- h. If, at any stage of the proceedings, a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed consistent with the general provisions of this Plan.

## V. Timely Appointment of Counsel

### A. Timing of Appointment

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

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

### B. Retroactive Appointment of Counsel

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

## VI. Provision of Representational Services

### A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the FPDO and for the appointment and compensation of private counsel from a CJA Panel list maintained by the Federal Public Defender in cases authorized under the CJA and related statutes.

### B. Administration

Administration of the CJA Panel, as provided in this Plan, is delegated and assigned to the Federal Public Defender.

C. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

D. Number of Counsel

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

E. Capital Cases

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

VII. Standards and Professional Conduct

A. Attorneys appointed under the CJA 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))).

B. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the rules of professional conduct for each state in which an attorney is licensed to practice law. Additionally, attorneys employed by any federal public defender organization must conform to the Code of

Conduct for Federal Public Defender Employees, and attorneys appointed in a capital proceeding must comply with the American Bar Association's Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases.

- C. Attorneys appointed under the CJA must notify the Federal Public Defender within 10 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 attorney by any state or federal court. This is in addition to the attorney's obligations under Local General Rule 2.3 of the Local Rules of Practice and Procedure for the Western District of Michigan.
- D. This section shall apply to all attorneys who render services under the CJA, including attorneys from the FPDO, attorneys from other defender organizations, and private counsel appointed to render services.

#### VIII. Federal Public Defender Office

##### A. Establishment

The FPDO for the Western District of Michigan, previously established in this district pursuant to the provisions of the CJA, is responsible for rendering defense services on appointments throughout the district.

##### B. Workload

The FPDO will continually monitor the workloads of its staff to ensure high quality representation for all clients.

##### C. Private Practice of Law

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

##### D. Supervision of FPDO



The Federal Public Defender shall be responsible for the supervision and management of the FPDO. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that office, and these cases may be subsequently reassigned to staff attorneys or CJA Panel attorneys at the discretion of the Federal Public Defender. Not later than January 31 of each year, the FPDO shall provide the Court with a list of all defendants assigned to that office during the preceding calendar year, along with such related information which will assist the Court in reviewing the distribution of case assignments between the FPDO and the CJA Panel.

E. Mentoring

The Federal Public Defender will provide mentors for new attorneys joining the FPDO as well as attorneys joining the CJA Panel. In addition, the FPDO, working together with experienced CJA Panel attorneys, will recruit attorneys interested in serving on the panel and mentor them so they can qualify for consideration for appointment to the CJA Panel. Efforts will be made to recruit a diverse and qualified Panel.

F. Training

The Federal Public Defender will assess the training needs of FPDO staff and panel attorneys and provide training opportunities and other educational resources. This assessment will include the input of the CJA Panel Administrator, the CJA Panel Representative, and members of the panel.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

1. The Court shall establish a Panel of private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the Panel after receiving recommendations from the judges who serve on the Court's Criminal Law Committee and the Federal Public Defender. Members of the CJA Panel shall serve at the pleasure of the Court.

B. Size

1. The size of the CJA Panel will periodically be adjusted to meet the needs of the district.
2. The CJA Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that 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.

C. Qualifications and Membership on the CJA Panel

1. Application
  - a. Application forms for membership on the CJA Panel shall be made available, upon request, by the FPDO. Completed applications shall be submitted to the Federal Public Defender who will transmit the applications to the Court.
2. Equal Opportunity
  - a. All qualified attorneys shall be encouraged to apply for membership without regard to race, color, religion, sex, age, national origin, or disabling condition.
3. Eligibility
  - a. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and the Sixth Circuit Court of Appeals;
  - b. have criminal trial experience; and
  - c. have demonstrated experience in knowledge of federal criminal law, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Federal Sentencing Guidelines.

4. Terms

- a. Lawyers selected for the CJA Panel will serve a three-year term. Any member selected with no previous panel experience shall serve a one-year probationary period.

5. Reappointment of CJA Panel Members

- a. The CJA Panel Administrator 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 Federal Public Defender and the CJA Panel Administrator will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. Factors to be considered for reappointment will include how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as provided in this Plan.

6. Removal of a Lawyer from the CJA Panel

- a. Automatic Removal
  - i. Any member of the CJA Panel whose license is revoked or suspended by an Attorney Discipline Board of any state or for any other reason is no longer a member in good standing of the state bar and the Bar of this Court, shall be removed automatically from the CJA Panel. Upon reinstatement to membership in good standing of

his or her state bar and the Bar of this Court, an attorney who desires to be reinstated to the CJA Panel shall proceed as on original application.

b. Other Removal; Reinstatement

In the event that a District Judge or United States Magistrate Judge considers that an attorney should be removed from the CJA Panel for reasons other than bar membership status including, but not limited to, formal accusation of a crime, conviction of a crime not resulting in action by the Attorney Discipline Board, indications of lack of professional competence or lack of adherence to ethical standards, indications of mental or emotional instability affecting professional responsibilities, and indications of a lack of desire to accept or handle case assignments, referral of the matter shall be made to the Court's Criminal Law Committee. Upon consideration of the Committee's report, the Court may remove the attorney from the CJA Panel, either permanently or for a period of time. Prior to making its determinations, the Court may, within its sole discretion, give the attorney written notice of its intended action and may also afford the attorney an opportunity to be heard before a hearing panel designated by the Chief Judge, which panel shall then submit a report to the Court. Any attorney removed under this provision who desires to be reinstated to the CJA Panel shall proceed as on original application.

In the event that a district judge or magistrate judge identifies a problem with a CJA Panel attorney not serious enough to warrant removal, the Judge may refer the matter to the Federal Public Defender for appropriate action.

X. CJA Panel Appointment in Non-Capital Cases

A. Maintenance of List

1. The Federal Public Defender is responsible for overseeing the appointment of cases to CJA Panel attorneys. The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience. The Federal Public Defender shall furnish a copy of this list to each district judge and magistrate judge.
2. The Federal Public Defender shall also maintain a record of assignments to private counsel, and when appropriate, statistical data reflecting the proration of appointments between attorneys from the FPDO and private attorneys, according to the formula described in this Plan.

B. Method of Appointment

1. Appointments from the CJA Panel should generally be made on a rotational basis. The Federal Public Defender may appoint counsel outside the normal rotation 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 effective and quality representation for each CJA defendant.
2. Upon determination of a need for the appointment of counsel, the district judge or magistrate judge shall advise the Federal Public Defender as to the need for counsel and the nature of the case.
3. The Federal Public Defender, through the CJA Panel Administrator, shall then determine whether to continue the representation personally, reassign the case to a staff attorney, or assign the case to a CJA Panel attorney. Under exceptional circumstances, the Federal Public Defender may assign a case to a private attorney who is not on the CJA Panel list.

4. In exceptional circumstances, if the Court determines that the appointment of an attorney who is not a member of the CJA Panel or the FPDO, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, an attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent a 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 should possess such qualities as would qualify him or her for admission to this district's CJA Panel in the ordinary course of panel selection.
5. CJA Panel attorneys are expected to be available to represent defendant(s) at the same stage of the proceedings as is the FPDO.

## XI. Duties of CJA Panel Members

### A. 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.
2. Attorneys on the CJA Panel will familiarize themselves with the Electronically Stored Information (ESI) protocol found on the fd.org website and entitled "Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases."
3. CJA Panel attorneys are expected to attend at least one training program by the FPDO per year or attend a training program offered by other entities, including, but not limited to, those offered by Defender Services at fd.org.
4. Failure to comply with these training requirements may be grounds for removal from the CJA Panel.

### B. Facilities and Technology Requirements

1. CJA panel attorneys must have the facilities, resources, and technological capabilities 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.

C. Continuing Representation

Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the Circuit CJA Plan provisions concerning representation on appeal), is closed, until substitute counsel has filed a notice of appearance, until an order is entered allowing or requiring the person represented to proceed *pro se*, or until the appointment is terminated by court order. The Circuit CJA Plan is currently available on the Sixth Circuit Court of Appeals website.

D. 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, §§ 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. If, at any time after appointment, appointed 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.

## XII. 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 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.

### 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 Federal Public Defender or their 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 be heard.
6. The Court, when contemplating reduction of a CJA voucher for other than mathematical reasons, may refer the voucher to the Federal Public Defender for review and recommendation before final action on the claim is taken. **See:** [Section VIII of this Plan](#).
7. Notwithstanding the procedure described above, the Court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the court and the CJA Panel member, the claim for compensation need not be referred to the Federal Public Defender for review and recommendation.

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

#### A. Financial Eligibility

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

#### B. Applications

Requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the

court (using the Court's eVoucher system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

C. Compliance

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

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

A. Applicable Legal Authority

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

B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions of this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available

post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. **See:** [18 U.S.C. § 3599\(e\)](#).

3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the Court will utilize the expert services available through the Administrative Office of the U.S. Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”), which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the Court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.
5. The Federal Public Defender 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. In appointing counsel in capital cases, judges should consider and give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
7. 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\(a\)\(3\)](#).

8. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.
9. 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.
10. 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](#).
11. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
12. There should be no formal or informal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter
13. All capital cases should be budgeted with the assistance of case-budgeting attorneys and/or resource counsel where appropriate.
14. 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's Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or by email at [dso\\_lpd@ao.uscourts.gov](mailto:dso_lpd@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 capitally qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
- c. At the outset of every capital case, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel” as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. **See:** [18 U.S.C. § 3005](#).
- d. When appointing counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. **See:** [18 U.S.C. § 3005](#).
- e. In appointing counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.

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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.

- f. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender's recommendation be provided to the Court, the judge should ensure that the Federal Public Defender has been notified of the need to appoint capital qualified counsel.
- g. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant and be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.
- h. 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.
- i. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

## 2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission *pro hac vice* based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- b. Learned counsel must meet the minimum experience standards in [18 U.S.C. §§ 3005](#) and [3599](#).
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior

experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.

- d. “Distinguished prior experience” contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.
- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.
- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

### 3. Qualifications of Second and Additional Counsel

- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as provided above.
- b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.
- c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.

- d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.
- D. Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases
  - 1. When appointing appellate counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
  - 2. In appointing appellate counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
  - 3. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
  - 4. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
  - 5. 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.
  - 6. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
  - 7. 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 \(d\)](#).
  - 8. 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.



9. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.
- E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases ([28 U.S.C. § 2255](#))
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. **See:** [18 U.S.C. § 3599\(a\)\(2\)](#).
  2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
  3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.
  4. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project.
  5. In appointing post-conviction counsel, judges should give due weight to the recommendations made by federal defenders and resource counsel and articulate reasons for not doing so.
  6. 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.
  7. Local or circuit restrictions prohibiting capital habeas units (CHUs) from engaging in cross-district or cross-circuit

representation should not be imposed without good cause. Every district should have access to a CHU.

8. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
9. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
10. 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.
11. 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.

XV. Effective Date

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

ENTERED FOR THE COURT ON MARCH 14, 2025.

  
\_\_\_\_\_  
CHIEF JUDGE, DISTRICT COURT

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

\_\_\_\_\_  
CHIEF JUDGE, COURT OF APPEALS

## **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 May 27, 2025, the foregoing revised Criminal Justice Act Plan for the Western District of Michigan. The revised plan shall become effective upon the date of this approval.

This 6th day of June 2025.

A handwritten signature in blue ink, reading "Jeffrey S. Sutton", is positioned above a horizontal line.

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Jeffrey S. Sutton, Chief Judge