



CRIMINAL JUSTICE ACT PLAN

Adopted by District Court August 11, 2017
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
CRIMINAL JUSTICE ACT PLAN

I.	Authority	1
II.	Statement of Policy	1
	A. Objectives	1
	B. Compliance	1
III.	Definitions	2
	A. Representation	2
	B. Appointed Attorney	2
	C. CJA Administrator	2
	D. Panel Attorney District Representative	2
IV.	Determination of Eligibility for CJA Representation	2
	A. Subject Matter Eligibility	2
	1. Mandatory	2
	2. Discretionary	3
	3. Ancillary Matters	4
	B. Financial Eligibility	5
	1. Presentation of Accused for Financial Eligibility Determination	5
	a. Duties of Federal Public Defender's Office	5
	b. Duties of Pretrial Services Office	5
	2. Factual Determination of Financial Eligibility	6
V.	Timely Appointment of Counsel	7
	A. Timing of Appointment	7
	B. Court's Responsibility	8
	C. Pretrial Services Interview	8
	D. Retroactive Appointment of Counsel	8

VI.	Provision of Representational Services.....	8
A.	Federal Public Defender and Private Counsel	8
B.	Administration	8
C.	Apportionment of Cases	9
D.	Number of Counsel.....	9
E.	Capital Cases	9
VII.	Federal Public Defender Organization	9
A.	Establishment	9
B.	Standards	10
C.	Workload.....	10
D.	Professional Conduct.....	10
E.	Private Practice of Law	10
F.	Supervision of Defender Organization	10
G.	Training.....	10
VIII.	CJA Panel Committee.....	11
A.	Establishment of the CJA Panel Committee	11
B.	Duties of the CJA Committee.....	11
1.	Review and Recommend Applicants for Membership.....	11
2.	Recruitment.....	11
3.	Annual Report.....	11
4.	Removal.....	12
5.	Training	12
6.	Mentor Program	12
IX.	Establishment of a CJA Panel of Attorneys.....	13
A.	Composition of Private Attorneys Panel.....	13
1.	CJA General Panel.	13
2.	CJA Panel.	13
3.	Mentee Attorneys.	14

B.	Approval of CJA Panel.....	14
C.	Size of CJA Panel.....	14
D.	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	15
6.	Reappointment of CJA Panel Members	16
7.	Removal from the CJA Panel.....	16
a.	Removal from the CJA Panel.....	16
b.	Automatic disciplinary review	17
c.	Other grounds for removal	17
d.	Opportunity to respond.....	17
e.	Final disposition by the Chief Judge	17
f.	Confidentiality	17
X.	CJA Panel Attorney Appointment in Non-Capital Cases	17
A.	Appointment List	17
B.	Appointment Procedures	18
XI.	Duties of CJA Panel Members	18
A.	Standards and Professional Conduct	18
B.	Training and Continuing Legal Education	19
C.	Facilities and Technology Requirements	19
D.	Continuing Representation	20
E.	Miscellaneous	20
1.	Case budgeting.....	20
2.	No receipt of other payment.....	20
3.	Redetermination of need.....	20

XII.	Compensation of CJA Panel Attorneys	21
A.	Policy of the Court Regarding Compensation	21
B.	Payment Procedures	21
XIII.	Investigative, Expert, and Other Services	21
A.	Financial Eligibility	21
B.	Applications	22
C.	Compliance.....	22
XIV.	Appointment of Counsel and Case Management in CJA Capital Cases	22
A.	Applicable Legal Authority	22
B.	General Applicability and Appointment of Counsel Requirements.....	22
C.	Appointment of Trial Counsel in Federal Death-Eligible Cases	24
1.	General Requirements	24
2.	Qualifications of Learned Counsel	25
3.	Qualifications of Second and Additional Counsel.....	26
D.	Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases.....	26
E.	Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)	27
F.	Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254).....	28
XV.	Effective Date	30

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
CRIMINAL JUSTICE ACT PLAN

I. Authority

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

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at [18 U.S.C. § 3599](#)), and the *Guide to Judiciary Policy, Volume 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, the Court Clerk, the Federal Public Defender organization, attorneys provided by a bar association or legal aid agency, and private attorneys appointed under the CJA must comply with the *Guide to Judiciary Policy, 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, and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel).

III. Definitions

A. Representation

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

B. Appointed Attorney

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

C. CJA Administrator

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

D. Panel Attorney District Representative

"Panel Attorney District Representative" or "PADR" is a member of the District's CJA Panel who is selected by the local Federal Public Defender, with concurrence from the Chief District Judge, to serve as the representative of the District's CJA Panel for the National Defender Services CJA PADR program and local CJA committees.

IV. Determination of Eligibility for CJA Representation

A. Subject Matter Eligibility

1. Mandatory

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

- a. is charged with a felony or with a Class A misdemeanor;

- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in [18 U.S.C. § 5031](#);
- c. is charged with a violation of probation, or faces a modification of a term or condition of probation (unless the modification sought is agreed upon by both parties);
- 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 of any term of supervised release (unless the modification sought is agreed upon by both parties);
- g. is subject to a mental condition hearing under [18 U.S.C. chapter 313](#);
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under [18 U.S.C. § 4109](#);
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

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

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- 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. 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 Federal Public Defender's 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, notify the Court as soon as is practicable to facilitate the timely appointment of other counsel.
- (ii) When practicable, the Federal Public Defender will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a [Financial Affidavit \(Form CJA 23\)](#) and arrange to have the person promptly presented before a magistrate judge or district judge of this Court for determination of financial eligibility and appointment of counsel.

b. Duties of Pretrial Services Office

- (i) When a pretrial services officer (PTSO) meets a defendant upon their arrival to the federal courthouse to face federal criminal charges, the PTSO will provide the defendant with a "Notice to Defendant" describing the role of the PTSO, the reasons for the interview, and the defendant's right to have an attorney present during the interview, among other things (see Appendix A).
- (ii) The PTSO will not conduct the pretrial services 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 services interview without counsel.
- (iii) If a defendant makes a request for an attorney to be present during the pretrial services interview,

PTSOs are designated to make a preliminary determination regarding a defendant's eligibility for the appointment of counsel so that either a federal public defender or CJA Panel attorney may participate in the interview. In the event a PTSO is uncertain regarding a defendant's financial eligibility, or the defendant has been charged with a financial crime, the PTSO may contact the magistrate judge on duty or the magistrate judge assigned to the case for assistance.

- (iv) When a defendant requests that an attorney be present during the pretrial services interview and the appointment of counsel is anticipated based on a preliminary determination of financial eligibility by a PTSO, as described in the previous subsection, the PTSO will provide the Federal Public Defender or CJA Panel attorney notice and a reasonable opportunity to attend any interview of the defendant by the PTSO. If it is not possible for appointed counsel to be present for the interview prior to the anticipated initial appearance before a magistrate judge, arrangements will be made for an interview to take place prior to the bond or detention hearing.
- (v) If a defendant advises the PTSO that he or she has retained counsel, the PTSO will make a reasonable effort to provide retained counsel notice and a reasonable opportunity to attend any interview of the defendant prior to the bond or detention hearing, **unless** the right to counsel is waived or the defendant otherwise consents to a pretrial services interview without counsel.

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. As previously noted, however, when a defendant

requests an attorney for the pretrial services interview, PTSOs are designated to make a preliminary determination regarding a defendant's eligibility for the appointment of counsel so that either a federal public defender or CJA Panel attorney may participate in the interview.

- 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. Requests by retained counsel to be appointed to a case where the attorney was initially retained should be rare and will require specific reasons such as unforeseen circumstances.

V. Timely Appointment of Counsel

A. Timing of Appointment

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

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

B. Court's Responsibility

The Court, in cooperation with the Federal Public Defender and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

C. Pretrial Services Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial services 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, such as representation provided by the Federal Public Defender organization or CJA Panel attorney during a pretrial services interview based on the preliminary determination of a pretrial services officer that a defendant is financially eligible for the appointment of counsel.

VI. Provision of Representational Services

A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the Federal Public Defender organization and for the appointment and compensation of private counsel from a CJA Panel list maintained by the Court 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 Court.

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.

D. Number of Counsel

In rare circumstances, more than one attorney may be appointed in a case determined by the Court to be extraordinarily complex (*i.e.*, not simply “unusual or complex” under 18 U.S.C. § 3161(h)(7)(B)(ii)), or otherwise difficult.

E. Capital Cases

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

VII. Federal Public Defender Organization

A. Establishment

- i. The Federal Public Defender organization is established in this District under the CJA and is responsible for rendering defense services on appointment throughout this District. The Federal Public Defender shall be permitted to provide representation to persons entitled to representation under the Criminal Justice Act in the Southern District of Illinois and Central District of Illinois when appointed by a district judge or magistrate judge in those Districts and when such representation will not compromise the ability of the Federal Public Defender organization to carry out its duties in this District.
- ii. The Federal Public Defender organizations for the Southern District of Illinois and Central District of Illinois shall be permitted to provide representation to persons entitled to representation under the Criminal Justice Act in the Eastern District of Missouri, to the extent that such organizations are capable of providing such representation, upon the request and appointment of a district judge or magistrate judge in this District.

B. Standards

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

C. Workload

The Federal Public Defender organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

D. Professional Conduct

The Federal Public Defender organization must conform to the highest standards of professional conduct, including but not limited to the American Bar Association’s Model Rules of Professional Conduct, American Bar Association’s Model Code of Professional Conduct, Code of Conduct for Federal Public Defender Employees, and any other standards for professional conduct adopted by the Court.

E. Private Practice of Law

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

F. Supervision of Defender Organization

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

G. Training

The Federal Public Defender will assess the training needs of Federal

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

VIII. CJA Panel Committee

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee (“CJA Committee”) will be established by the Court in consultation with the Federal Public Defender. The CJA Committee will consist of one or more district judges designated by the Chief District Judge, one or more magistrate judges designated by the Chief Magistrate Judge, the Federal Public Defender, the CJA Panel Attorney District Representative (PADR), a criminal defense attorney who practices regularly in the District who may be a CJA Panel member, and an ex officio staff member employed by the Court Clerk who will act as administrative coordinator.
2. The Federal Public Defender or their representative, and the District’s PADR are permanent members of the CJA Committee.
3. Membership of the lawyers on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Member terms for the lawyers will be staggered to ensure continuity on the CJA Committee.
4. The CJA 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 CJA Committee

1. Review and Recommend Applicants for Membership
Examine the qualifications of applicants for membership on the CJA Panel and recommend to the Chief District Judge the approval of those attorneys who are deemed qualified and the rejection of the applications of those attorneys deemed unqualified.
2. Recruitment
Engage in recruitment efforts to establish a diverse panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.
3. Annual Report

Review the operation and administration of the CJA Panel over the preceding year, and recommend any necessary or appropriate changes to the Chief District 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 CJA Panel members or their CJA clients.

4. Removal

Recommend to the Chief District 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.

See also Section IX.D.7

5. Training

Assist the Federal Public Defender's office in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

6. Mentor Program

In order to maintain a robust CJA Panel, a structured training program for attorneys new to federal criminal practice will ensure the continued high quality of representation provided by the CJA Panel. To achieve this goal, a Mentor Program will be established. The CJA Committee will appoint CJA Panel members and other appropriate individuals to serve on a subcommittee tasked with administering the Mentor Program. The subcommittee will establish a one-year curriculum, including legal instruction and experiential learning, that outlines the experiences and education required for attorneys interested in serving on the CJA Panel, however, who do not possess the requisite experience for appointment to the CJA Panel. The subcommittee will also seek attorneys from the Federal Public Defender's office and CJA Panel members to volunteer to serve as Mentors. Additionally, the subcommittee will recruit attorneys to participate in the Mentor Program who reflect the diverse

populations represented throughout the District. The subcommittee will match Mentors with Mentees once an attorney has applied to participate in the Mentor Program. When a Mentee completes the one-year curriculum, Mentors will provide a report to the subcommittee regarding the Mentee's performance (*i.e.*, additional training is needed, or application to the CJA Panel is appropriate). The Mentee will not be compensated for any work done as part of the mentorship, unless the subcommittee determines that: i) some compensation is appropriate based on the work performed by the Mentee (*i.e.*, participation as a second chair in a hearing or trial for which compensation may be up to \$70 per hour), ii) the Non-Appropriated Fund Committee is in agreement with the proposed compensation, and (iii) funds are available.

IX. Establishment of a CJA Panel of Attorneys

A. Composition of Private Attorneys Panel

1. CJA General Panel.

All attorneys who are admitted to practice before this Court under Local Rule 12.01 shall be members of the CJA General Panel of Attorneys. Each member of the CJA General Panel is eligible to be appointed to provide representation under the Criminal Justice Act if such an appointment is in the interests of justice, judicial economy, continuity of representation, or some other circumstance warranting his or her appointment. Any member of the CJA General Panel with special interest in being appointed pursuant to the Criminal Justice Act may apply for membership on the CJA Panel by completion of an application form available from the Court's website.

2. CJA Panel.

The CJA Panel is comprised of attorneys selected and appointed by the Court upon recommendation of the Panel Selection Committee. Members of the CJA Panel must be attorneys in good standing in the Bar of the Eastern District of Missouri who have, prior to their recommendation for selection, demonstrated competence and proficiency in handling federal criminal cases or who have shown a familiarity with the federal criminal judicial system (*i.e.*, familiarity and knowledge regarding the federal sentencing guidelines and other federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence). Members of the CJA Panel, if called upon by the Court, must accept at least two appointments under the CJA each year; and must be willing to participate in the offering of continuing criminal law

education for interested members of the bar of this Court. Participation in the Mentor Program shall not be required for membership on the CJA Panel, if an attorney meets the aforementioned requirements. The Court has authority to remove a member of the CJA Panel who fails to fulfill any of the duties specified in this paragraph.

3. Mentee Attorneys.

The Mentee attorneys for the Mentor Program will include attorneys who apply and are accepted to participate in the Mentor Program. The application is available on the Court's website. Attorneys interested in acting as Mentees must be attorneys in good standing in the Bar of the Eastern District of Missouri who have, prior to their application, demonstrated substantial experience and ability in matters involving criminal law but who do not have the requisite experience in the federal criminal judicial system that is required for membership in the CJA Panel. After successfully completing the Mentor Program, a Mentee attorney may submit a written application to be a member of the CJA Panel. Completion of the Mentor Program, however, does not automatically entitle an attorney to membership on the CJA Panel.

B. Approval of CJA Panel

1. The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
2. The Chief Judge will approve attorneys for membership on the CJA Panel after receiving recommendations from the chair of the CJA Committee.

C. Size of CJA Panel

1. The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the CJA Panel members, subject to review and approval by the Court.
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.

D. Qualifications and Membership on the CJA Panel

1. Application

Application forms for new membership on the CJA Panel are available on the Court's website. New applications for membership on the CJA Panel must be made no later than one month prior to the annual meeting of the CJA Committee at which all new applicants and renewal applicants will be reviewed. This meeting is typically held in September. Applicants must consent to be interviewed by members of the CJA Committee or its designees prior to admission to the CJA Panel. All deadlines will be published by the Court well in advance of any deadline. Renewal applications will be reviewed at the same annual meeting as new applications.

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 Eighth Circuit Court of Appeals. A description of the qualifications for admission to the CJA Panel are set forth in Section IX.A.2.

b. Applicants must maintain a primary, satellite, or shared office in this District or an adjoining District.

4. Appointment to CJA Panel

a. Nothing in this Plan creates a property interest in being on or remaining on the CJA Panel.

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

5. Terms of CJA Panel Members

To establish staggered CJA membership terms, the current CJA Panel will be divided into three groups, equal in number. Initially,

members will be assigned to one of the three groups on a random basis. Members of the first group will continue to serve on the CJA Panel for a term of one year, members of the second group will continue to serve on the CJA Panel for a term of two years, and members of the third group will continue to serve on the CJA Panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this Plan.

6. Reappointment of CJA Panel Members

- a. The Court 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. Applicants for reappointment must consent to be interviewed by members of the CJA Committee or its designees prior to readmission to the panel. All deadlines will be published by the Court well in advance of any deadline. The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- c. The CJA Committee also will consider how many cases the CJA Panel member has accepted and declined during the review period, whether the member has participated in training opportunities sponsored by the Court and the Federal Public Defender, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA Panel members as set forth in this Plan.

7. Removal from the CJA Panel

Nothing in this Plan creates a property interest in being on or remaining on the CJA Panel. See [Section IX.D.4.a. of this Plan](#)

a. Removal from the CJA Panel

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 CJA Panel member by any state or federal court.

c. Other grounds for removal

In the event the CJA Committee learns that a member of the CJA Panel has failed to meet his or her obligations under this Plan, the CJA Committee will review the alleged misconduct.

d. Opportunity to respond

Prior to making a recommendation to the Chief Judge regarding the appropriate action concerning the review of a CJA Panel member's performance under [Section IX.D.7.b.](#) or [Section IX.D.7.c.](#), the CJA Committee will provide the Panel member notice and an opportunity to respond, in whatever form the Committee deems appropriate under the circumstances.

e. Final disposition by the Chief Judge

After a CJA Panel member has been given an opportunity to respond to an allegation of misconduct as described in [Section IX.D.7.b.](#) or [Section IX.D.7.c.](#), the CJA Committee will consider the information submitted and then forward a recommendation regarding how the alleged misconduct should be addressed to the Chief Judge for consideration and final disposition.

f. 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.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The Court will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers.

B. Appointment Procedures

1. The Court is responsible for overseeing the appointment of Panel attorneys to represent financially eligible defendants. The Court will maintain a record of Panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Public Defender's office 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 Court may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
3. Under special circumstances the Court may appoint a member of the bar of the Court who is not a member of the CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Committee via the Clerks Office's regular record keeping of appointments.
4. Unless otherwise impracticable, CJA panel attorney(s) must be available to represent defendant(s) at the same stage of the proceedings as is the Federal Public Defender.

XI. Duties of CJA Panel Members

A. Standards and Professional Conduct

1. CJA Panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See [Polk County v. Dodson, 454 U.S. 312, 318 \(1981\)](#) ("Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program." (quoting ABA Standards for Criminal Justice

section 4-3.9 (2d ed. 1980))).

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, and any other standards for professional conduct adopted by the Court.
3. CJA Panel members must notify the chair of the CJA Committee within 30 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 CJA 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 expected to attend trainings sponsored by the Federal Public Defender.
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 a minimum of twelve hours of continuing legal education training relevant to federal criminal practice every three years to remain on the CJA Panel. CJA Panel members are expected to attend the annual CJA panel seminar, and are encouraged to attend the periodic training sponsored by the Federal Public Defender. As noted in [Section IX.D.6.c.](#), when reviewing applications for reappointment to the CJA Panel, the CJA Committee will consider whether the member has participated in these training opportunities.
5. 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 the procedure identified by the Court for compensation.
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 Eighth Circuit's CJA plan, see [Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964](#)) 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 the [Guide to Judiciary Policy, Vol. 7A, Ch. 2, §§ 230.26.10–20](#). Panel attorneys are encouraged to communicate with the Eighth Circuit's Case Budgeting Attorney when more than ordinary expenses are anticipated. Upon request, the Court Clerk will assist Panel attorneys in contacting the Case Budgeting Attorney.

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 will advise the Court.

XII. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

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

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the electronic or other procedure directed by the Court. As previously noted, Panel attorneys are encouraged to communicate with the Eighth Circuit's Case Budgeting Attorney when more than ordinary expenses are anticipated. Upon request, the Court Clerk will assist Panel attorneys in contacting the Case Budgeting Attorney.
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 to Judiciary Policy, 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. 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.

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 electronic or other system designated by the Court) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

C. Compliance

Counsel must comply with Judicial Conference policies set forth in the [Guide to Judiciary Policy, 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](#), this Plan, and the [Guide to Judiciary Policy, 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 available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See [18 U.S.C. § 3599\(e\)](#).

3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the Court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the Court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.
5. The Federal Public Defender should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.
6. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. See [18 U.S.C. § 3006A\(a\)\(3\)](#).
7. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.
8. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into

account their current caseloads and the extraordinary demands of federal capital cases.

9. All attorneys appointed in federal capital cases should comply with the [American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases](#) (Guidelines 1.1 and 10.2 et seq.), and the [2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases](#).
10. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
11. Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases

1. General Requirements
 - a. The Judicial Conference adopted detailed recommendations on the appointment and compensation of counsel in federal death penalty cases in 1998. See [JCUS-SEP 98](#), p. 68. 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"), which is available on the judiciary's website.
 - b. 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](#).
 - c. 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.
 - d. 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](#).

- e. 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](#).
- 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 the Federal Public Defender has been notified of the need to appoint capitally-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 set forth in [18 U.S.C. §§ 3005](#) and [3599](#).
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that,

in combination with co-counsel, will assure high quality representation.

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

3. Qualifications of Second and Additional Counsel

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

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

- 1. When appointing appellate counsel, the judge must consider the recommendation of the Federal Public Defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
- 2. Counsel appointed to represent a death-sentenced federal

appellant should include at least one attorney who did not represent the appellant at trial.

3. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
4. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.
5. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
6. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by [18 U.S.C. § 3599\(c\) or \(d\)](#).
7. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases ([28 U.S.C. § 2255](#))

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the Court should consider appointing at least two attorneys.
3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.
4. When appointing counsel in a capital § 2255 matter, the Court should consider the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project. The

Federal Public Defender's recommendation may be to appoint the Western District of Missouri's Capital Habeas Unit, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.

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

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

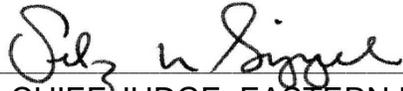
1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the Court should consider appointing at least two attorneys.
3. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the Federal Public Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects. The Federal Public Defender's recommendation may be to appoint the Western District of Missouri's Capital Habeas Unit, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.

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

XV. Effective Date

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

ENTER FOR THE COURT ON 11th day of August, 2017.



CHIEF JUDGE, EASTERN DISTRICT of MISSOURI

APPROVED BY THE JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT on the 5th day of September, 2017 (see attached Eighth Circuit Judicial Council Order).

EDMO May 2017

P R E T R I A L S E R V I C E S**NOTICE TO DEFENDANT**

Defendant: _____ Pretrial Services Officer: _____
Print Name (First, Middle, Last) Print Name

A pretrial services officer would like to ask you some questions. The pretrial services officer is not your lawyer and works for the judge. Your answers to the questions will be used by the judge to decide whether you should be released or kept in jail pending any further proceedings. **The questions are not about the charges pending against you, and you should not talk about the charges at this time.** You are under no obligation to provide any information and you have the right to choose which, if any, questions you want to answer.

You have the right to speak with a lawyer before answering any questions. You also have the right to have a lawyer present with you if you choose to answer any questions. If you cannot afford a lawyer, one will be appointed to represent you. Asking for a lawyer will not hurt your chance for pretrial release.

The questions the pretrial services officer would like to ask are about your residence, family history, employment history, financial information, physical and mental health, as well as your criminal history. The information will be made available to the judge, to your attorney, and to the prosecuting attorney.

Any information you provide should be truthful. Providing false information is a separate crime and could be used to deny your release before trial or increase your sentence if you're convicted.

If you are found guilty, either after trial or after pleading guilty, your answers to the interview questions will be available to a U.S. Probation officer for the purpose of preparing a presentence report and may affect your sentence in this or another case.

This form has been read to me, and I understand what it means. _____ (Defendant's Initials)

_____ I want a lawyer during this interview.

_____ I do not want a lawyer during this interview.

DATE: _____

Defendant's signature

Pretrial Services Officer signature

United States Courts
Judicial Council of the Eighth Circuit
Thomas F. Eagleton United States Courthouse
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St. Louis, Missouri 63102-1116

Millie B. Adams
Circuit Executive

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EIGHTH CIRCUIT JUDICIAL COUNCIL

O R D E R

I hereby certify that the Eighth Circuit Judicial Council has approved the amended Criminal Justice Act Plan for the Eastern District of Missouri which was adopted by the court on August 11, 2017.



Millie B. Adams
Circuit Executive

St. Louis, Missouri
September 5, 2017

cc: Judicial Council Members
Chief Judge Rodney W. Sippel
Gregory J. Linhares, Clerk of Court
Lee T. Lawless, Federal Public Defender
Administrative Office

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

JCO 2933