

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

APPENDIX I
TO THE LOCAL RULES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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

April 17, 2017

TABLE OF CONTENTS

	Page
I. <u>Introduction</u>	1
II. <u>Composition of Panel of Private Attorneys</u>	1
A. <u>Panels</u>	1
1. <u>Approval</u>	1
2. <u>CJA Panel</u>	2
A. <u>Size</u>	2
B. <u>Term</u>	2
C. <u>Eligibility</u>	3
D. <u>Training Program</u>	4
3. <u>Appointments</u>	5
4. <u>Appointment in Death Penalty Cases</u>	5
5. <u>Special Appointments</u>	6
6. <u>Removal from the CJA Panel</u>	6
7. <u>Equal Opportunity</u>	7
8. <u>Application</u>	7
B. <u>Panel Selection and Management Committee</u>	7
1. <u>Membership</u>	7
2. <u>Duties</u>	8
III. <u>Selection for Appointment</u>	9
A. <u>Maintenance of List</u>	9
B. <u>Distribution of Appointments</u>	9
C. <u>Method of Selection</u>	9
IV. <u>Compensation - Filing of Vouchers</u>	10
V. <u>Training Panel Procedures</u>	12

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

APPENDIX I
TO THE CRIMINAL JUSTICE ACT PLAN

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

I. INTRODUCTION

Pursuant to the Guidelines for the Administration of the Criminal Justice Act and the District of New Jersey Criminal Justice Act Plan, the United States District Court for the District of New Jersey has established the following "Plan for the Composition, Administration, and Management of the Panel of Private Attorneys Under the Criminal Justice Act."

II. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. PANELS

1. Approval

The Court shall establish one panel of private attorneys (hereinafter referred to as the "CJA Panel") 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 "Panel Selection and Management Committee," established pursuant to paragraph II(B) of this Plan. Any attorney aggrieved by the decision on his or her application may present a written grievance to the Committee for review and decision and that decision can be appealed to the Court.

2. CJA Panel

A. Size

The CJA Panel established by the Court shall consist of one hundred and twenty (120) attorneys, divided by vicinage, with seventy (70) attorneys for the Newark vicinage, twenty (20) attorneys for the Trenton vicinage, and twenty-five (25) attorneys for the Camden vicinage. The division by vicinage shall not prohibit the Court where appropriate from appointing a panel member from one vicinage to serve in another vicinage, nor prohibit the Court on the basis of geographic considerations from allowing a panel member to serve in more than one vicinage. The Court may from time to time, on recommendation of the Panel Selection and Management Committee, redetermine the number of attorneys on the CJA Panel and/or the number of attorneys serving in each vicinage.

B. Term

Each panel member shall serve for a term of three (3) years, except that the initial panel shall serve staggered terms as follows: one-third of the members of the initial panel shall serve for one (1) year, another one-third shall serve for two (2) years, and the remaining one-third shall serve for three (3) years. Any member of the initial panel or subsequent panels whose term expires may be reappointed or replaced, as determined by the Panel Selection and Management Committee.

C. Eligibility

i. General Requirements

Attorneys who serve on the CJA panel must be members in good standing of the bar of this Court, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal and Appellate Procedure, the Federal Rules of Evidence, the Sentencing Guidelines, and the local rules of both the District and Circuit Courts.

ii. Specific Requirements for CJA Panel

All attorneys seeking initial membership on the CJA Panel must meet the following minimum eligibility requirements:

- a.
 1. At least two (2) years in a public defender or prosecutor's office, either state or federal OR at least three (3) years in private practice, during which time the attorney was involved in at least 20 criminal cases in either state or federal court, 5 of which were state or federal felony trials ; AND
 2. attendance at two (2) hours of seminar training on sentencing guideline topics within one year prior to the application; AND
 3. attendance at two (2) hours of seminar training on federal criminal defense topics within two years prior to the application; OR
- b.
 1. at least two (2) years admission to the bar during which time the attorney was involved in at least 5 criminal cases in either state or federal court, 1 of which was a state or federal felony trial; AND

2. participation in the CJA training program established in section 2(D) of this Appendix; AND

3. participation in at least two (2) hours of seminar training on federal sentencing guidelines topics; AND

4. participation in at least four (4) hours of seminar training on topics relating to the defense of federal criminal cases.

D. Training Program

Attorneys seeking membership on the CJA Panel who need experience to meet the eligibility requirements may pursue membership in the CJA Training Program. (**See generally CJA Training Program Procedures - Section V herein**)

The Training Program is intended to improve the diversity of the CJA Panel, and will be open to all interested and qualified attorneys. Many state court practitioners do not qualify for the CJA Panel because they lack federal experience, or those with federal experience may lack trial and other courtroom experience.

The Training Program will provide an opportunity to acquire the required experience by pairing them with mentors by assigning them to a case(s) with an experienced member of the CJA Panel. The case(s) must be of sufficient complexity to warrant the services of two attorneys. The mentee will work on the case(s) under the supervision of the lead CJA Panel Attorney, and will bill for services at a reduced hourly rate as established by the Court. The mentee will not bill for duplicative or non-essential services for time spent solely on training.

The process for participation in and satisfactory completion of the program are set forth in the Training Program Procedures adopted by the Court. The Procedures also

explains compensation procedures and the role and responsibilities of the Mentor Attorney. In order to be considered for the program, applicants must submit a completed Training Program Application, which is available on the Court's website.

Acceptance and participation in the Training Program will not guarantee the admission of an attorney to the CJA Panel.

3. Appointments

Counsel furnishing representation under the Plan shall be selected from the panel of attorneys designated or approved by the Court or from the defender organization furnishing representation pursuant to the provisions in part III below.

4. Appointment in Death Penalty Cases

Pursuant to Title 18 U.S.C. § 3005, a defendant who is facing the possibility of the death penalty is entitled to the appointment of two attorneys, at least one of whom is learned in the law of capital punishment. In such a case, the Court is not limited to the CJA Panel list for its selection of the attorney learned in the law of capital cases, but may appoint counsel who satisfies the following minimum criteria:

- i. unless appointment is made pursuant to § 5, below, an attorney must have been admitted to practice in the United States District Court for the District of New Jersey for not less than five (5) years; AND
- ii. must have had not less than three (3) years experience in the actual trial of felony prosecutions in the District of New Jersey within the five (5) years prior to the application; AND
- iii. must have attended a seminar on the topic of the death penalty within one (1) year of the application; AND

- iv. must have had actual trial experience in state or federal court of a first degree murder case, capital or otherwise.

5. Special Appointments

When the District Judge presiding over the case, or the Chief Judge if a District Judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel pro hac vice and appointed to represent the defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not be admitted to practice and/or maintain an office in the district, should possess such qualities as would qualify him or her for admission to the CJA Panel in the ordinary course of panel selection.

6. Removal from the CJA Panel

i. Removal from the CJA Panel shall be automatic upon proof made to the Chief Judge that a panel attorney has been convicted of any crime in either state or federal court carrying a possible maximum penalty of more than one (1) year imprisonment.

ii. The Panel Selection and Management Committee may determine from time to time that, by reason of information received by the Committee, a panel member should be recommended for removal from the CJA Panel. In such instance, the panel member being considered for removal shall be asked to meet with the Panel Selection and Management Committee and shall be permitted to present information in his/her own behalf in response to the information received by the Committee. A decision shall be rendered by the Panel Selection and Management Committee after it is satisfied that all relevant information has been received and shall be

communicated in writing to the panel member, with reasons stated for the decision. The decision of the Committee can be appealed to the Court.

There is no presumption that because a client has alleged the ineffectiveness of his/her attorney in a collateral attack on his/her conviction, that said attorney must be removed from the CJA Panel.

7. Equal Opportunity

All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.

8. Application

Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the chairperson of the Panel Selection and Management Committee.

B. PANEL SELECTION AND MANAGEMENT COMMITTEE

1. Membership

A Panel Selection and Management Committee shall be established by the Court. The Committee shall consist of one District Judge from each vicinage, one Magistrate Judge from each vicinage, the Federal Public Defender or his/her designee, and four private attorneys. The President of the Association of the Federal Bar and the President of the Association of Criminal Defense Attorneys - New Jersey shall each designate two of the private attorneys to serve on the panel.

Except for the Federal Public Defender, each Committee member shall serve for a term of three years. At the conclusion of the first three year term, the member may be reappointed or replaced, but no member may serve more than two successive three year terms.

2. Duties

a. The Panel Selection and Management Committee shall meet at least once a year to consider applications for vacancies on the CJA Panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

Once a year, the Committee shall review the operation and administration of the CJA Panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the CJA Panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated and shall be immediately eligible for reappointment.

c. Training. The Panel Selection and Management Committee through the Office of the Federal Public Defender, in conjunction with the Association of the Federal Bar and the Association of Criminal Defense Attorneys - New Jersey, will arrange annual training programs for new and experienced panel members. Members of the panel will be expected to attend such training programs.

III. SELECTION FOR APPOINTMENT

A. Maintenance of List

The Clerk of the Court shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers. Each attorney's most recent application form, outlining their qualifications and experience, shall be kept on file by the Clerk. The Clerk shall furnish a copy of the list to each District Judge and Magistrate Judge. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender's Office and private attorneys.

B. Distribution of Appointments

CJA Panel attorneys are to be appointed in multi-defendant and conflict cases, or where the Federal Defender Office is otherwise unavailable and where it is appropriate to provide federal court experience to CJA Panel attorneys and satisfy the Ratio of Appointments requirement as outlined in section VI(A)(4) of the District of New Jersey Criminal Justice Act Plan.

C. Method of Selection

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

Upon the determination of a need for the appointment of counsel, the District Judge or Magistrate Judge shall notify the Clerk of

Court of the need for counsel and the nature of the case. Where, based on the status of the distribution of cases (See Ratio of Appointment, CJA Plan, section VI(A)(4)), the Clerk of the Court determines that the appointment of an attorney from the CJA Panel is appropriate, the Clerk shall determine the name of the next panel member on the list who is available for appointment, and shall provide the name to the appointing District Judge or Magistrate Judge.

In the event of an emergency, i.e., weekend, holidays, or other non-working hours of the Clerk of the Court's office, the presiding District Judge or Magistrate Judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing District Judge or Magistrate Judge shall notify the Clerk of the Court as to the name of the attorney appointed and the date of the appointment.

IV. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted in the Court's electronic voucher system. The Clerk of the Court shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), and, if correct, shall forward the claim for consideration by and action of the presiding District Judge or Magistrate Judge. It is acknowledged that in some cases reduction of the amount of compensation sought will be necessary or appropriate. In those cases, the procedure set forth in the balance of this section shall be followed.

In any case where the judicial officer intends to reduce the amount of payment requested in a trial level voucher, CJA counsel shall be notified of the amount of the intended reduction and the reasons for same, and may request an opportunity for review by the judicial officer. However, notice need not be given where the reduction is

based on mathematical or technical errors. After review of any submission by appointed counsel, including his/her response to the judicial officer's reasons for the reduction, and the completion of any other steps deemed appropriate by the judicial officer, the judicial officer shall take action on the voucher consistent with the Plan, the Criminal Justice Act and the interests of justice.

The Third Circuit shall consider all vouchers submitted by appellate counsel.

Notice to CJA Panel Attorneys Regarding Availability of Investigative, Expert, and Other Services, Attorneys appointed to provide representation under the Criminal Justice Act, 18 U.S.C. § 3006A, may seek investigative, expert, and other services necessary for adequate representation, such services to be paid for out of funds appropriated for the administration of the Criminal Justice Act.

In addition to investigators, psychiatrists, psychologists and reporters, services other than counsel may include but are not necessarily limited to interpreters, neurologists, and laboratory experts in areas such as ballistics, fingerprinting, and handwriting.

Requests for authority to obtain subsection (e) services should be made to the presiding District Judge or Magistrate Judge (see cautionary note below). In order to prevent the possibility that an open hearing concerning a request for subsection (e) services will cause a defendant to reveal his or her defenses, these requests should be made by ex parte application. Guidelines promulgated by the Judicial Conference of the United States (Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures) provide that the applications shall be heard in camera, and not be revealed without the consent of the defendant. The Guidelines further state that such applications shall be placed under seal until the final disposition of the case in the trial court, subject to final order of the Court.

CAUTIONARY NOTE: Counsel should be aware of the limitations that apply to the obtaining of such services. PRIOR AUTHORIZATION MUST BE SECURED from the presiding judicial officer for all subsection (e) services where the cost of such services (exclusive of reimbursement for expenses) will exceed \$800. Failure to obtain prior authorization will result in the disallowance of any amount claimed for compensation in excess of \$800, unless the presiding judicial officer finds that, in the interest of justice, timely procurement of necessary services could not await prior authorization.

Compensation to a service provider in excess of \$2,500 can only be paid if the presiding District Judge or Magistrate Judge certifies that payment in excess of \$2,500 (excluding reimbursement for expenses) was necessary to provide for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Circuit.

Compensation for subsection (e) services should be claimed directly by the service provider in the Court's electronic voucher system.

Further information about the availability of subsection (e) services and the procedures and limitations involved may be obtained from the Clerk of the Court. In addition, counsel should review both the Criminal Justice Act and the CJA Guidelines. A copy of the Guidelines is located in the office of the Clerk of the Court and on the Court's website.

V. Training Panel Procedures

1. Introduction

The United States District Court (hereinafter "Court") will establish a Training Panel pilot program to effectuate the training program described in the District

Criminal Justice Act (CJA) Plan, Appendix I, Section II (A)(2)(D). The objective of the program will be to increase diversity and insure the availability of qualified applicants to the CJA Panel by providing attorneys who do not have the required experience for membership on the CJA Panel with an opportunity to gain the experience necessary to provide high quality representation in federal criminal cases to individuals who cannot afford to retain counsel. The CJA Panel attorney in each Training Panel case shall be referred to as the "lead attorney" or "mentor". The training panel attorney (hereinafter referred to as TPA) may also be referred to as "mentee". The training panel attorneys will not exceed 8 attorneys, with 4 attorneys from the Newark vicinage, 2 attorneys from the Trenton vicinage and 2 attorneys from the Camden vicinage.

2. Administration of the Criminal Justice Act (CJA) Training Program:

The CJA Training Program will be administered by the District Court CJA Committee. A subgroup of that committee, consisting of the CJA Committee Chair, the District CJA Panel Representative, and the Federal Public Defender for the District of New Jersey or its designee, shall be known as the CJA Training Panel Selection and Management Committee (hereinafter referred to as the Management Committee). At the discretion of the Chair, the Management Committee may be expanded to include another federal judicial officer. The Management Committee shall be responsible for the selection of program participants and mentors. The Management Committee will also be responsible for collecting feedback from mentors, including confidential assessments and recommendations.

3. Assignment of Training Panel Attorneys:

Assignment of TPA to a particular case will be the responsibility of the District or Magistrate Judge to whom the case is assigned. Appointments should be limited to cases that appear to involve complex factual and legal issues and/or significant discovery. A case that would likely warrant the authorization of a paralegal or associate counsel to assist the panel attorney of record is an example of a case suitable for the program.

4. Service as a Mentor:

At the request of the CJA Training Panel Committee, a panel member may serve as a mentor to a Training Panel attorney. All CJA Panel members are expected to agree to reasonable mentoring requests unless a compelling reason excuses participation at a particular time or in a particular case. No CJA Panel attorney may be assigned more than one mentee at a time. The mentor is the primary attorney, and is, therefore, responsible for representation.

5. Second Chair Attorney Duties and Responsibilities:

A. Appear and argue on the record as counsel for the defendant, with the Mentor, as counsel of record, present.

B. Confer, on behalf of the defendant and under the direction of the Mentor, as counsel of record, with: the government; Chambers; U.S. Pretrial Services Agency; U.S. Probation Office; federal, state and local law enforcement agents and agencies; U.S. Bureau of Prison personnel; defendant's family, friends and potential witnesses; interpreters; and other members of the defense team, such as investigators or paralegals.

C. Perform traditional paralegal assignments, such as: organizing and review of discovery material; legal research; organizing of exhibits; obtaining discovery or reproducing discovery, etc.

D. Write and file submissions, pleadings, memoranda and motions, under the direction, review and co-authorship of the Mentor.

E. With the consent of the defendant, and under the direction of the Mentor, participate in hearings, trials and evidentiary proceedings. Examination of witnesses or any addresses or statements to a jury will be done only under the direction of the Mentor and with the Mentor present during the examination, the address, or statement.

6. Completion Requirements:

Completion of the training program will ordinarily require 12 to 18 months. During that time, a second chair attorney should participate in at least three cases, though participation in a particularly lengthy case may also satisfy the completion requirements. Second chair attorneys must attend the orientation program and at least two CLE programs dealing exclusively with federal criminal practice.

Neither participation in nor completion of the training program by the second chair attorney will guarantee appointment to the CJA Panel.

7. Compensation and Expenses of Training Panel Attorney:

In their capacity as a TPA, mentees will provide services essential to the defense of the case. The services of the Second Chair, therefore, qualify as "other services necessary for adequate representation" of the defendant, and may be compensated upon ex parte application as provided in the CJA, Title 18 U.S.C. §3006A (e)(3). Such reimbursement shall be limited as follows:

- (a) reimbursement rate may not exceed \$75 per hour;
- (b) reimbursement of the TPA may not exceed the maximum for reimbursement maximums provided for "other services" in 18 U.S.C. §3006A (e)(3), unless otherwise approved by the district court;
- (c) reimbursement will not be approved for services that duplicate the work of the CJA panel member appointed to the case;
- (d) the reimbursement request shall be submitted on a CJA 21 and may not be submitted to the Court unless first approved by the CJA panel member appointed to the case; and
- (e) the mentor and mentee will bill only for services rendered and will not bill for time spent principally on training and teaching.

APPENDIX:

Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.

THE FOREGOING PLAN IS ADOPTED BY THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

For the Court:



JEROME B. SIMANDLE, CHIEF JUDGE
DISTRICT OF NEW JERSEY

DATED: April 17, 2017

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CRIMINAL JUSTICE ACT PLAN

The Foregoing Amended Plan is Approved by the Judicial Council of the Third Circuit
this 6th Day of April, 2017



D. Brooks Smith
Chief Judge, Third Circuit Court of Appeals