

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**REVISED PLAN OF THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964
(18 U.S.C. § 3006A, AS AMENDED)**

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I. INTRODUCTION

The judges of the United States District Court for the Eastern District of New York (“EDNY”), pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A), as amended (“the Act”), and under the Guidelines for Administering the Criminal Justice Act and Related Statutes, Volume VII, Part A, Guide to Judiciary Policy (“CJA Guidelines”),¹ and the Second Circuit Judicial Council Committee on Criminal Justice Act Representation Policy and Procedure Manual (the “Second Circuit Manual”),² have adopted the following Plan for furnishing representation in federal court to persons financially unable to obtain adequate representation, who are eligible for the same under the Act.

Representation under this Plan shall include the assignment of counsel and the furnishing of investigative, expert, and other services necessary for an adequate defense.

II. PROVISIONS FOR FURNISHING COUNSEL

A. Plan Objective

The objective of this Plan is to attain the goal of equality before the law of all persons. This Plan, therefore, shall be administered so that those accused of a crime, or who are otherwise eligible for representation under the Act, will not be deprived of representation necessary to an effective defense because they are financially unable to pay.

¹The CJA Guidelines are available at http://www.uscourts.gov/uscourts/FederalCourts/AppointmentofCounsel/vol7/vol_07A.pdf.

²The Second Circuit Manual is available at http://www.ca2.uscourts.gov/Docs/CJA/CJA_Manual%20%20FINAL%20VERSION.pdf.

B. Legal Services

This Plan provides for the furnishing of legal services by a Community Defender Organization as provided in 18 U.S.C. § 3006A(g)(2)(B) and for the continued assignment and compensation of private counsel from a list maintained by the Clerk of Court (the “CJA Panel List”) in cases in which there is a demonstrated need. The attorneys whose names appear on the list shall be selected by the Court in accordance with the procedures in this Plan.

C. Community Defender Organization

The Federal Defenders of New York, Inc. (“FDNY”), a non-profit defense counsel service, is authorized by this Plan to serve as a Community Defender Organization and is eligible to furnish attorneys and to receive payments under 18 U.S.C. § 3006A(g)(2)(B).

D. Court’s Discretion

The Court, in its discretion, will determine whether any party shall be entitled to representation, and shall assign the FDNY in the first instance, unless there is a conflict. All other parties entitled to representation shall be assigned an attorney from the CJA Panel List as defined herein. More than one attorney may be appointed in any case determined by the Court to be sufficiently complex. Private attorneys shall be appointed in a substantial proportion of the cases. No party shall have the right to select counsel from the FDNY or from the panel of attorneys.

III. PROVISION OF REPRESENTATION

A. Mandatory Assignment

Representation shall be provided for any financially eligible person who is:

1. charged with a felony or Class A misdemeanor;
2. charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
3. a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
4. charged with a violation of probation or supervised release or faces modification of a condition or term thereof;
5. under arrest, when such representation is required by law;
6. entitled to the assignment of counsel in parole proceedings;
7. subject to a mental condition hearing under 18 U.S.C. §§ 4241-4248;
8. in custody as a material witness;
9. a witness or potential 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 otherwise face a loss of liberty;
10. seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2241, 2254, or 2255;
11. charged with criminal contempt, or with civil contempt and faces a loss of liberty;
12. entitled to the assignment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
13. a target of a federal criminal investigation and has been so notified by the United States Attorney's Office or a law enforcement agent;
14. held for extradition under chapter 209 of Title 18, U.S. Code; or

15. entitled to the assignment of counsel under the Sixth Amendment to the Constitution, or faces loss of liberty in a case, and federal law requires the assignment of counsel.

B. Discretionary Assignment

Whenever the judicial officer determines that the interests of justice so require, representation may be provided for a financially eligible person who is:

1. seeking relief under 28 U.S.C. §§ 2241, 2254, 2255, or 3582, other than to set aside or vacate a death sentence, in which case the assignment of counsel is mandatory; or
2. proposed by the United States Attorney for processing under a pretrial diversion program;

C. Ancillary Matters

Representation may be furnished for financially eligible persons in “ancillary matters appropriate to the proceedings” under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the proceedings, the Court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives:

1. to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding under 21 U.S.C. § 881, 19 U.S.C. § 1602, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under subsection (f) of the Act and § 210.40.30 of the CJA Guidelines; or
2. to effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(e), which property, if recovered by the client, may be considered for reimbursement under subsection (f) of the Act and § 210.40.30 of the CJA Guidelines;
3. to protect a Constitutional right;

4. to contribute in some significant way to the defense of the principal criminal charge;
5. to aid in preparation for the trial or disposition of the principal criminal charge;
6. to enforce the terms of a plea agreement in the principal criminal charge.

D. Counsel in Potential Capital Cases

1. Capital Case Trial Lawyers

At the initial appearance, when a defendant is charged with a death eligible count, or the United States Attorney's Office believes that a defendant is likely to be charged with a death eligible count in the future, the government shall notify the Clerk of Court, and provide a list of conflicted defense attorneys. The judicial officer shall select an attorney from the "Capital Case Trial Lawyers List," as defined in Article VI, Section A, paragraph 3, below. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.

In any case where the defendant is charged in a superseding accusatory instrument with a death eligible count, and the defendant was previously assigned a Panel attorney who is not among those listed on the Capital Case Trial Lawyers List, the judicial officer assigned to the case may, with the approval of the defendant: 1) continue the previously assigned Panel attorney; 2) replace the previously assigned Panel attorney with an attorney from the Capital Case Trial Lawyers List; or 3) assign an additional attorney from the Capital Case Trial Lawyers List to serve as a second trial counsel.

In making an assignment of Trial Counsel, the judicial officer must consult with the FDNY, give due consideration to the FDNY's recommendation as to which option to take, and as to which attorneys from the Capital Case Trial Lawyers List are best-suited to the particular

circumstances of the case, and, if the judicial officer chooses not to follow FDNY's recommendations, articulate reasons for not doing so. Out of district-counsel who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation in particular circumstances. Out-of-district counsel must apply to appear *pro hac vice* if they are not admitted in this district.

Panel attorneys on the Capital Case Trial Lawyers list 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. They 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. They 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.

If necessary for adequate representation, more than two (2) attorneys, in addition to Learned Counsel, may be appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.

2. Learned Counsel

As soon as possible after the first appearance on the potential death eligible count or upon notification of the imminent superseding death eligible count, the presiding judge, upon application of the defendant, pursuant to 18 U.S.C.

§ 3005, shall assign an additional attorney, different from Trial Counsel, "learned in the law applicable to capital cases," ("Learned Counsel"). See 18 U.S.C. § 3005. Defendants facing

death-eligible charges who have retained counsel are also eligible for the appointment of Learned Counsel, in order to ensure effective representation. In appointing Learned Counsel, the judicial officer must consult with FDNY, give due consideration to FDNY's recommendations for appropriate counsel in the particular circumstances of the case, and, if the judicial officer chooses not to follow FDNY's recommendations, articulate the reasons for not doing so. See id. Learned Counsel form a subset of the Capital Case Trial Lawyers list that is maintained by FDNY, but also may be drawn from out-of-district depending on the particular circumstances of the case, including cultural considerations, the likelihood that death will be authorized, and availability of local learned counsel. Out-of-district counsel must apply to appear *pro hac vice* if they are not admitted in this district. 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.

As soon as practicable after assignment to a potential capital case, Trial Counsel and Learned Counsel should develop a budget with the capital case budgeting attorney at the Office of the Circuit Executive. Reviewing judges should give due weight to the case-budgeting attorney's recommendations in reviewing vouchers and requests for expert services, and must articulate their reasons for departing from those recommendations.

3. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255) and Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254)

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.

- a. A financially eligible person seeking to vacate or set aside a death sentence is entitled to appointment of fully qualified counsel. See [18 U.S.C. § 3599\(a\)\(2\)](#).
- b. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.
- c. When appointing counsel, the court should consider the recommendation of the federal public defender, who will consult with the Federal Capital Habeas § 2255 Project and the National or Regional Habeas Assistance and Training Counsel projects, as appropriate
- d. Out-of-district counsel who possess the requisite expertise may be considered for appointment to achieve high quality representation together with cost and other efficiencies.
- e. Counsel should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
- f. When possible, post-conviction counsel should have distinguished prior experience in capital representations.
- g. 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.
- h. In evaluating the qualifications of proposed post-conviction 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.

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

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.

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

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, preferably no later than the conclusion of the state direct appeal.

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).

6. CJA Capital Fellowship Program

The CJA Committee will administer a fellowship program to provide training opportunities and additional experience for qualified lawyers who will be available to provide quality representation to indigent defendants charged with death eligible offenses. Experienced and respected members of the Eastern District Criminal Justice Act Capital Panel or attorneys from The Federal Death Penalty Resource Counsel Project will be selected to serve as

Supervising Capital Counsel (“SCC”) in accordance with the EDNY Criminal Justice Act Fellowship Program. Two co-directors will administer the program and will be responsible for selecting the SCCs and prospective associate capital counsel, identifying appropriate cases for inclusion in the program, and providing guidance and collecting data relating to the program.

IV. DETERMINATION OF NEED FOR COUNSEL

A. Appearing Before a Judicial Officer in a Criminal Case

A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before the U.S. District Judge or U.S. Magistrate Judge, when formally charged, or when otherwise entitled to counsel under the CJA, whichever occurs earliest.

When practicable and consistent with the agreement between the Federal Public Defender and the United States Pretrial Services Office, unless the defense counsel otherwise consents to a pretrial service interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer. When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to be attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

In every case in which a person is eligible for assignment of counsel pursuant to 18 U.S.C. § 3006A(a), and the person appears without counsel, the judicial officer shall have the duty to advise that person that he or she has a right to be represented by counsel throughout the case and that counsel will be assigned to represent the person, if so desired and he or she is financially unable to obtain counsel. All persons making an initial appearance, who do not have

retained counsel present, shall be assigned counsel regardless of economic circumstances, for that initial appearance.

A person shall be furnished representation pursuant to this Plan if he or she is financially unable to obtain adequate representation; that is, if his or her net financial resources and income are insufficient to enable the person to obtain qualified counsel.

In determining whether a person is “financially unable to obtain counsel,” consideration should be given to: 1) the cost of providing the person and his or her dependents with the necessities of life; 2) the cost of defendant’s bail bond, if required to secure his or her release on bond; and 3) the likely cost of retained counsel.

Whenever such a person states that he or she is financially unable to obtain counsel, and applies for the assignment of counsel, it shall be the duty of the judicial officer to inquire and make a determination as to whether such person is financially able to obtain counsel. Any doubts as to a person’s eligibility should be resolved in his or her favor, subject to further review. The determination of eligibility should be made without regard to the financial ability of the person’s family to obtain counsel.

All statements made by such person in such inquiry shall be either (a) by written affirmation sworn to before a judicial officer, Court Clerk, or deputy clerk, or notary public, or (b) under oath in open court before a judicial officer. All statements of financial need shall be sealed other than for viewing by Pretrial Services, defense counsel and the Court. After final termination of the matter, the United States Attorney may, upon good cause shown, seek access to the financial need statement from the last presiding judicial officer.

If, on the basis of such inquiry, the judicial officer finds that such person is financially unable to obtain counsel, the judicial officer shall assign counsel for such person.

B. Redetermination of Need

If, at any stage of the proceedings, a judicial officer finds that a party who had retained his or her own attorney is financially unable to provide for continued representation, the judicial officer may assign counsel from the CJA Panel or the FDNY for the party.

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 Court may take appropriate action, including but not limited to: permitting assigned counsel to continue to represent the defendant with all or part of the cost defrayed by the defendant; terminating the assignment of counsel; or ordering any funds available to the party to be paid as provided in 18 U.S.C. § 3006A(f) as the interests of justice may dictate. Any amount paid by the party will be considered by the Court in determining the total compensation allowed to the attorney.

C. Financial Forms and Affidavits

The Clerk of the Court shall provide defendants with the appropriate forms and affidavits pertaining to financial ability.

As soon as the Clerk receives an affidavit of financial inability to employ counsel, s/he shall promptly arrange for the assignment of counsel. If the Clerk becomes aware that a party wishes to apply for discretionary assignment of counsel, as set forth in Article III, Section B, s/he shall promptly send such party the appropriate CJA forms to be executed and filed.

V. **CJA PANEL COMMITTEE**

A. **Committee Membership**

A CJA Panel Committee (“CJA Committee”), consisting of at least one of each: a district judge, a magistrate judge, and a criminal defense attorney who regularly practices in the EDNY, along with the attorney in charge of the FDNY for the EDNY, and the Clerk of the Court, is hereby established. A judicial officer shall chair the Committee.

B. **Duties of Committee**

1. **Meetings** – The CJA Committee will meet at least two (2) times per year and more often as necessary, to consider and review Panel applications, and appoint to the Panel the best qualified applicants.
2. **Operations Review** – The Committee shall also continually review the operation and administration of the Panel and recommend to the Court any changes deemed necessary regarding the assignment process or Panel management. The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the panel members.
3. **Recruitment** – The Committee shall 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.
4. **Voucher Review** – The Committee shall be responsible for administering a process for Panel attorneys to seek review of vouchers that have been denied or reduced by the presiding judge. For a complete description of this process, see Article XI.
5. **Mentoring** – A subcommittee of the CJA Committee will administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel.

Experienced members of the criminal defense bar who have practiced extensively in the federal courts will be selected to serve as Mentors in accordance with the EDNY Criminal Justice Act Mentoring Program. The subcommittee shall review the applications and qualifications of both Mentor and Mentee applicants, make recommendations as to their participation in the Mentoring Program, identify appropriate cases for the Program, evaluate the success of the Mentor-Mentee relationships, and provide guidance to the Mentors regarding the objectives, protocol, and methods of the Program.

6. Training – The Committee, in conjunction with the FDNY, shall provide training for the Panel attorneys on substantive and procedural matters affecting representation of indigent criminal defendants. This training shall include seminars for the Panel attorneys, and for attorneys who are participants in the EDNY Mentoring Program.
7. Discipline and Removal – The CJA Committee will review complaints against Panel attorneys and determine appropriate measures, including removal from the Panel. For a complete description of this process, see Article VII, Section C.

VI. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. Composition of the CJA Panel

The Court shall establish a panel of private attorneys (“the CJA Panel”) who are eligible and willing to be appointed to provide representation under the Act. The CJA Committee

established under Article V, Section A above shall approve attorneys for membership on the CJA Panel. The CJA Panel shall consist of six lists:

1. The Combined List – The first list shall include attorneys to whom assignments as counsel shall be made in cases heard at the courthouses in both Brooklyn and Central Islip, Suffolk County (the “Combined List”).
2. The Brooklyn List – The second list shall include attorneys to whom assignments as counsel shall be made in cases heard at the courthouse in Brooklyn.
3. The Long Island List – The third list shall include attorneys to whom assignments as counsel shall be made in cases heard at the courthouse in Central Islip, Suffolk County (the “Long Island List”).
4. Capital Case Trial Lawyers List – The fourth list shall consist of those attorneys eligible for assignment as the trial lawyer in death eligible cases. This list is distinct from the list of attorneys who may be appointed as Learned Counsel in capital cases. See Article III, Section D.
5. Terrorism List – The fifth list shall consist of those attorneys eligible for assignment in terrorism cases.
6. Habeas List – The sixth list shall consist of those attorneys willing and able to represent defendants in non-trial matters, particularly habeas corpus cases where the Court has determined that counsel should be assigned. Attorneys eligible for this list should have distinguished prior experience in the area of federal post-conviction proceedings.

An attorney may serve on more than one list.

B. Maintenance of List and Distribution of Assignments

The Clerk of the Court shall maintain a current list of all attorneys on the CJA Panel, with current office addresses, telephone numbers, and email addresses. The Clerk shall furnish a copy of this list to each judicial officer. The Clerk shall also maintain a public record of assignments to Panel and FDNY attorneys according to Article VII, Section A.

C. Size of Panel

The CJA Panel shall be large enough to provide sufficient experienced attorneys to handle the caseload under the Act, but small enough to provide Panel attorneys with adequate assignments to maintain a high level of proficiency in Federal criminal defense work. The size of the CJA Panel shall be set by the CJA Committee on an annual basis.

D. Eligibility

All applicants must demonstrate a commitment to provide the highest quality representation consistent with the best practices of the legal profession to those individuals eligible for their services. Attorneys who serve on the CJA Panel must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct. Attorneys who serve on the CJA Panel must be members in good standing of the bar of this Court, have demonstrated experience in and current knowledge of the Federal Rules of Criminal Procedure, the Bail Reform Act, the Federal Rules of Evidence, the U.S. Sentencing Guidelines, the Bail Act, and the Recommendations for Electronically Stored Information in Discovery Production in Federal Criminal Cases. They shall have substantial federal trial experience or the equivalent. Experience with, and knowledge of, federal sentencing law and practice is a necessary qualification for membership on the CJA Panel.

Attorneys applying for appointment or reappointment to the Panel are expected:

1. to be current with the continuing legal education and registration requirements of the State Bar;
2. to have participated in and completed legal education programs in, and to demonstrate proficiency in, federal criminal practice, including the areas of Federal Criminal Procedure, the Federal Rules of Evidence, the U.S. Sentencing Guidelines, the Bail Reform Act, and the Recommendations for Electronically Stored Information in Discovery Production in Federal Criminal Cases within the past year;
3. to comply with the requirements of electronic filing and eVoucher; and
4. to know and abide by procedures related to requests for investigative, expert, and other services.

The legal representation provided by Panel attorneys shall be of the highest quality.

Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

E. Terms

Attorneys appointed to the CJA Panel shall serve a term of three years. CJA Panel Membership is a privilege, not a right, which may be terminated at any time, at the sole discretion of either the Board of Judges or the CJA Committee. After a three-year term expires, a Panel attorney may be invited to serve additional terms or may apply to serve additional terms. Completion of a term does not create a right to selection for service of another term.

F. Reappointment

The CJA Committee may inquire annually as to the continued availability and willingness of each Panel member to accept appointments.

A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment for an additional three-year term at least three months prior to the expiration of

his or her current term. Applications for reappointment will be reviewed on an annual basis along with all other applications for appointment to the Panel.

G. Application

Application forms for membership on the CJA Panel shall be made available through the Court's website at www.nyed.uscourts.gov or on request to the Clerk of the Court. The application forms shall indicate to which list or lists the applicant is applying, and shall require information regarding the applicant's educational background, professional qualifications, previous experience, prior service as a member of an assigned counsel panel, all prior adverse disciplinary findings by any bar or court disciplinary group, and such other factors as the CJA Committee deems relevant. Completed applications shall be submitted to the Clerk, who will transmit them to the Chair of the CJA Committee. Applications and reappointment applications will be reviewed at regular intervals as scheduled by the CJA Committee. 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 disability for which a reasonable accommodation can be made pursuant to federal law.

VII. SELECTION FOR ASSIGNMENT TO A CASE

A. Duty Assignment Procedure

On an annual basis, the Clerk of Court shall prepare, from the list of Panel attorneys, a roster of assigned duty days, including weekends. Assignments from the list of Panel attorneys should be made on a rotating basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, the attorney's experience, and geographical considerations. This procedure is intended to result in a balanced distribution of assignments and

compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

When a judicial officer decides to assign an attorney from the Panel, the Clerk's Office shall notify the Panel attorney who is on duty on that date and shall provide the name to the appointing judicial officer. In the event of a conflict or where additional attorneys are required in a multiple defendant case, a Panel attorney or attorneys, who are available for assignment, may be assigned. The Clerk shall select such substitute CJA Panel attorneys from the roster of attorneys assigned duty days in that same week, or, if necessary, attorneys assigned duty days in that same month.

During weekends, holidays, or other non-working hours, or at any other time necessary, the presiding judicial officer may appoint any attorney from the appropriate CJA Panel list. When Panel attorneys are assigned directly by the Court, the assigning judicial officer shall notify the Clerk of Court of the name of the Panel attorney assigned and the date of the assignment.

B. Replacement/Coverage

A Panel attorney who is unable to serve on his or her assigned duty day shall arrange for a replacement attorney from the existing CJA Panel list to cover the assigned date. That replacement attorney shall continue to serve as counsel to the defendants assigned to him or her on that date, unless otherwise ordered by the Court. Absent an order from the Court, attorneys who are not currently EDNY Panel attorneys may not appear as replacement counsel. The Magistrate Clericals shall be informed whenever a Panel attorney agrees to switch duty dates with another Panel attorney.

C. Disciplinary Action

1. Complaints – Complaints concerning the conduct of a Panel attorney may be initiated by the CJA Committee, a judicial officer, opposing counsel, co-counsel, another Panel attorney, a member of the FDNY, or a defendant. All complaints concerning the conduct of a Panel attorney, whether arising from an appointed or a retained case, shall be forwarded to the Chair of the CJA Committee. If the Chair of the CJA Committee determines that the complaint alleges facts, which if true, would warrant possible suspension or removal of the Panel attorney, the CJA Committee shall make such inquiry as it deems appropriate and necessary. In any instance where, after investigation, the CJA Committee determines that a Panel attorney’s conduct warrants additional discipline beyond removal from the Panel, the Chair of the CJA Committee shall refer the matter to the Committee on Grievances to determine if additional disciplinary measures should be taken.

When a confidential complaint concerning the conduct of a Panel attorney is referred in the first instance to the Committee on Grievances pursuant to Local Rule 1.5(d)(3), the Chair of the CJA Committee shall be notified promptly of the complaint. The Chair of the Committee on Grievances and the Chair of the CJA Committee will confer and determine, depending on the circumstances, the appropriate remedial action to be taken.

2. Notice – If the CJA Committee decides to conduct such an inquiry, the Panel attorney against whom the complaint has been lodged must be notified of the specific allegations against him or her. The Panel attorney may respond in writing and shall, if so directed, appear before a

subcommittee, composed of judicial officers on the CJA Committee, and the FDNY attorney-in-charge, who shall not have a vote.

3. Protective Action – Prior to the disposition of any complaint, the CJA Committee may recommend temporary removal of the Panel attorney from any pending case, or from the Panel, and may take such other protective action that is in the best interest of the client or the administration of the Plan.
4. Remedial Action – After inquiry, the subcommittee may recommend that the attorney: 1) be removed from the Panel; 2) be limited to participating in particular types or categories of cases; or 3) be required to undertake other remedial action, including directing the attorney to complete specific CLE requirements before receiving further panel appointments, limiting the attorney’s participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner.
5. Procedure for Removal of Panel Attorneys – A Panel attorney may be removed from the Panel prior to the expiration of his or her term whenever the CJA Committee determines that the attorney has failed to fulfill the obligations of Panel membership or has engaged in other conduct that renders it inappropriate for that attorney to be continued as a Panel attorney, or if it is determined that the attorney has a medical, mental health, drug, or alcohol abuse issue that impairs his or her ability to represent his or her clients. Any Panel attorney who is suspended, disbarred, arrested, or indicted, or who has been notified that they are the subject or target of a criminal investigation, or the subject of a disciplinary proceeding or investigation, or is found in contempt, sanctioned,

reprimanded, or has any action taken against him or her by any licensing authority, grievance committee, administrative body, state or federal court shall immediately notify the Clerk of Court and the presiding judicial officers before whom the attorney is appearing of the circumstances so that appropriate inquiry may be made. The Clerk of Court shall immediately notify the Chair of the CJA Committee of the notification after it is received from counsel.

6. Automatic Removal of Panel Attorneys – Any member of the CJA Panel who is suspended or disbarred from the practice of law by the State of New York, or who is suspended or disbarred from this Court, will be removed from the CJA Panel immediately.
7. Confidentiality – Unless otherwise directed by the subcommittee, any information concerning any possible disciplinary action, including any complaint and any proceeding concerning it, shall be confidential.
8. Re-application – An attorney removed from the Panel before the completion of his or her term may not reapply before the expiration of one year following the removal.
9. No Property Interest - None of these procedures create a property interest in being on or remaining on the CJA Panel.

VIII. DUTIES OF ASSIGNED COUNSEL

A. Non-delegable Duties

A Panel attorney assigned by a judicial officer shall, unless excused by order of court, continue to act for the party throughout the proceedings in this Court. An assigned Panel attorney shall not delegate any substantive tasks in connection with the representation of a defendant to any person without the written consent of the defendant and the Court.

B. Appeals

Assigned counsel shall, upon imposition of sentence, advise the defendant of any right of appeal and of the right to counsel on appeal. If requested by the defendant, or upon the Court's direction, counsel must file a timely Notice of Appeal. When an appeal is taken, assigned trial court counsel shall continue to represent the appellant unless or until he or she has been notified that his or her services are no longer required.

C. Requests to be Relieved

If at any stage of the proceedings, a Panel attorney assigned by a judicial officer in any proceeding wishes to be relieved, he or she shall inform the judicial officer before whom the case is pending, and shall file an application to be relieved.

The judicial officer may, in the interests of justice, substitute one assigned counsel for another.

D. Other Funds or Fees

Counsel assigned pursuant to this Plan shall at no time seek nor accept any fee or other thing of value from, or on behalf of, the person represented, for representing the person to whom he or she was assigned. Nor shall counsel assigned pursuant to this Plan agree to be privately retained by the person to whom he or she was assigned or by persons acting on that person's

behalf, without advising and securing the approval of the Court. Violation of this section is a ground for removal from the Panel.

E. Limited Appointment for Extraordinary Reasons

Retained counsel will not be assigned by the presiding judicial officer except for extraordinary reasons and upon notice to the Chief Judge.

If the judicial officer finds that, due to extraordinary circumstances, a defendant cannot be effectively represented by the FDNY or an attorney from the CJA Panel, the judicial officer may, upon a finding of financial need, assign counsel to represent the defendant for this particular case, stating briefly the reason therefor. An attorney so assigned may seek reimbursement from the CJA Fund pursuant to this Plan.

F. 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, Volume 7A, Chapter 2, §§ 230.26.10-20. The judicial officer should consult with the case budgeting attorney for the Circuit Executive as to appropriate budgeting, and may require the assigned attorneys to plan and budget the case under the guidance of the case budgeting attorney.

Reviewing judges should give due weight to the case-budgeting attorney's recommendations in reviewing vouchers and requests for expert services, and must articulate their reasons for departing from those recommendations.

IX. COMPENSATION OF COUNSEL

A. Timely Submission of Vouchers

Attorneys shall use their best efforts to submit vouchers for payment of fees and expenses and payment for investigative, expert, and other services authorized pursuant to Article X in a timely fashion within forty-five (45) days of the conclusion of the attorney's representation before the district court. Vouchers shall be submitted to the presiding judge using the Court's Case Management/Electronic Case Filing System. If vouchers are submitted more than forty-five (45) days after the representation before the district court concludes, the attorney's submission shall include a letter providing good cause as to why the voucher was not submitted in a timely fashion.

In the event that the attorney's representation lasts longer than one (1) year (such as in a complex case involving a cooperating or material witness), the attorney should consult with the presiding judge and the Second Circuit CJA Case-Budgeting Attorney as to the appropriateness of submitting interim vouchers. Similarly, if the attorney's representation does not result in an indictment, but the representation continues, the attorney should follow this procedure and consult with the appointing judge and the Second Circuit CJA Case-Budgeting Attorney as to the submission of interim vouchers.

B. Payments to Counsel Assigned under Plan

Payment of fees and expenses to counsel under this Plan and payment for investigative, expert, and other services authorized pursuant to Article X shall be made in accordance with the policies set by the Judicial Conference ("Judicial Conference policy") and with the fiscal policies of the Administrative Office of the United States Courts. The Clerk shall screen each claim for compensation and reimbursement of expenses under the CJA for accuracy and compliance with

the Second Circuit Manual. The court will exert its best efforts to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Schedule of Maximum Fees for Counsel and Other Services

The following fees are hereby prescribed for the EDNY:

1. Maximum Hourly Rate for Counsel

The maximum hourly rate of attorneys shall not exceed the amount provided by statute and Judicial Conference policy. The current rates are set forth in Schedule A of the CJA Plan and available on the Court's website at www.nyed.uscourts.gov/criminal-justice-act-info. In addition, such attorney or the organization furnishing the attorney shall be reimbursed for expenses reasonably incurred, including the cost of any necessary transcripts authorized by the judicial officer.

2. Maximum Case Amounts for Counsel

The maximum payment for counsel per case shall not exceed the amount provided by statute and Judicial Conference policy. There shall be no formal or informal non-statutory budgeting caps in capital cases, whether trial, appellate, or habeas.

Any request for compensation in excess of the amount provided by statute and Judicial Conference policy shall be accompanied by a written affirmation of counsel detailing, in both narrative and statistical form, the services provided. Counsel claiming such excess payment shall submit a detailed memorandum justifying counsel's claim that the representation was in an extended or complex case and that the excess payment is necessary to provide fair compensation.

Reasonable out-of-pocket expenses may be claimed if itemized and suitably documented. Expenses for investigative, expert and other services under Article X shall not be considered out-of-pocket expenses.

When warranted, the presiding judicial officer may require counsel claiming more than the amount provided by statute and Judicial Conference policy to submit a memorandum justifying the compensation claimed.

3. Waiver of Limits on Counsel Fees

Payment in excess of any maximum provided above for counsel fees or for other services may be made for extended or complex representation whenever the judicial officer certifies that the amount sought is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Second Circuit or such active Circuit Judge to whom the Chief Judge has delegated approval authority.

D. Reimbursement for Travel Expenses

1. Travel from Office to Court, Jail, and U.S. Attorney's Office

a. Reimbursable Travel Expenses

CJA counsel is permitted to bill for travel time and expenses from his or her home or office – whichever distance is shorter – to the detention facility, the Court, or the U.S. Attorney's Office. Counsel may also bill for travel expenses on the return trip to home or office – whichever distance is shorter. See The Guide to Judiciary Policy, Volume 7, Part A, Chapter 2, §§ 230.60, 230.63.40, for information about travel expenses for CJA attorneys.

b. Non-reimbursable Travel Expenses

CJA counsel with homes or offices located in New Jersey or out-of-state ordinarily may not bill for travel time or expenses to and from his or her home or office to the detention facility, the Court, or the U.S. Attorney's Office.

c. Other Travel

CJA counsel seeking reimbursement for other travel time and expenses must first obtain authorization from the presiding judicial officer. Applications made in support of such a request shall be supported by a written affirmation, and must include justification for the travel, the estimated number of hours required, and the estimated travel costs.

d. Travel Time Hourly Rate

The presumptive hourly rates applicable to counsel as set forth in the current Second Circuit Manual shall apply to any travel time. Counsel shall also submit a properly prepared CJA Form 20 or 30 for the judicial officer's approval.

2. Travel Vouchers

CJA vouchers seeking reimbursement for travel expenses must specify where the travel is to and from. Vouchers that fail to contain this information will be returned to the requesting attorney.

X. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

A. Prior Authorization

Counsel for a party who is financially unable to obtain investigative, expert, social worker, or other services deemed necessary for an adequate defense may request such services *ex parte* before a judicial officer having jurisdiction over the case, regardless of whether counsel is appointed under the CJA. Such application shall be heard *in camera* and shall not be revealed without the consent of the defendant. On finding that the services are necessary and that the person is financially unable to afford them, the judicial officer shall authorize counsel to obtain them. An order setting forth the type, purpose, and limitations of such services will be issued by

the Court, *ex parte*.

The judicial officer may establish a limit on the amount that may be expended or committed for such services within the maximum prescribed by 18 U.S.C. § 3006A(e)(3) and (e)(5) and Judicial Conference policy. In no instance shall the amount expended exceed the amount authorized by statute and Judicial Conference policy per individual or corporation providing the services unless payment in excess of that limit is certified by the judicial officer as necessary to provide fair compensation for services of an unusual character or duration and the amount of the excess payment is approved by the Chief Judge of the Circuit or such active Circuit Judge to whom the Chief Judge has delegated such approval authority. The current rates are set forth in Schedule B of the CJA Plan and available on the Court's website at www.nyed.uscourts.gov/criminal-justice-act-info.

B. Without Prior Authorization

Counsel assigned pursuant to this Plan may obtain, subject to later review, investigative, expert, social worker, or other services without prior judicial authorization, if they are necessary for an adequate defense. The total aggregated cost of services that are obtained without prior authorization may not exceed the maximum amount authorized by statute and Judicial Conference policy per individual or corporation providing the services (exclusive of reasonable expenses). These maximum rates are also set forth in Schedule B of the CJA Plan and available on the Court's website at www.nyed.uscourts.gov/criminal-justice-act-info. However, in the interests of justice and upon finding that timely procurement of necessary services could not await prior authorization, a judicial officer may approve payment for such services after they have been obtained, even if the cost of the services exceeds the maximum amount authorized by statute and Judicial Conference policy.

C. Capital and Homicide Cases

In cases where the defendant is charged with a capital crime or a homicide, requests for investigative services or other expert services will be deemed necessary for an adequate defense and approved in accordance with the procedures set forth in the CJA Plan.

D. Necessity of Written Affirmation

Applications made by or on behalf of the party in support of requests under Sections A, B, and C of this Article shall be supported by a written affirmation, and must include: 1) the name, address, telephone number, curriculum vitae, and taxpayer identification number or social security number of the particular expert, investigator, or other service provider expected to work on the case; 2) the hourly rate sought; 3) the estimated number of hours to complete the work; 4) justification for the use of the expert, investigator or other service provider; and 5) a properly prepared CJA Form 21 or 31 for the judicial officer's approval. The presumptive hourly rates applicable to various service providers are set forth in the current Second Circuit Manual which may be found at http://www.ca2.uscourts.gov/clerk/attorneys/cja_manual.html.

E. Associates

Upon approval of the presiding judicial officer, the use of associates is authorized under the Guide to Judiciary Policy, but the associate shall be considered as an extension of, and not a substitute for, the Panel attorney. It is the intent of the Plan that the assigned Panel attorney, not the associate, represent the client. Thus, associates may not appear in Court without the assigned Panel attorney being present as well.

Prior approval of the use of associates must be obtained from the presiding judicial officer to allow the court to consider the qualifications of the associate, including educational background and experience, and to rule upon the necessity of the associate's participation. In the

absence of prior judicial approval, reimbursement under the CJA shall, except for good cause shown, be denied by the presiding judicial officer.

Associates who are members of the CJA Panel may be billed at the rates set forth in the then current Second Circuit Manual (which may be found at www.ca2.uscourts.gov/clerk/attorneys/cja_manual.html), regardless of the nature of the case, including capital cases.

Associates who are not members of the CJA Panel will not be reimbursed at the full attorney rate.

Associate time spent in meetings or in court will not be compensated absent some compelling justification for the associate to participate in these events. Only assigned Panel attorneys may bill for meetings, conferences or court appearances.

CJA Panel attorneys should be fiscally responsible in using associates. Statements made by or on behalf of the party in support of requests for the use of associates shall also be made or supported by a written affirmation.

F. 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 may authorize counsel to obtain the services.

XI. REVIEW PROCESS

Reductions to amounts claimed in vouchers should be limited to mathematical errors, instances in which work billed was not compensable, was not undertaken or completed, and

instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.

Where a request by CJA counsel seeking authorization under Article X of the CJA Plan has been denied or reduced in amount, or where a voucher seeking payment for services rendered by CJA counsel or other parties, e.g., investigators, experts, social workers, mitigation specialists, or other professionals, or for costs, has been denied or reduced, CJA counsel may seek review of the denial or reduction by a Judicial Review Panel. The Judicial Review Panel shall be composed of three judicial officers who are members of the CJA Committee. Absent a conflict, the Judicial Review Panel will include the Chair of the CJA Committee and one judicial officer from each of the Brooklyn and Central Islip courthouses.

However, before seeking such review, CJA counsel must first seek reconsideration from the judge who rendered the decision. The request for reconsideration shall include written affirmation from CJA counsel explaining why he or she contends that the services rendered and/or hours spent were justified and should be compensated. To the extent that the request for reconsideration concerns services performed by an investigator or other expert, the affirmation shall comply with the requirements of Article X, Section D.

If reconsideration is denied, in whole or in part, and CJA counsel wishes to seek further review of the denial, he or she must submit a written request to the CJA Committee Review Panel, setting forth the application that was denied or reduced, the judge's decision and reasoning, both initially and on reconsideration, if provided, and all relevant documentation. The CJA Committee Review Panel will determine whether the judge's decision warrants further review by the Judicial Review Panel.

In cases involving a pre-trial request that is time-sensitive, the CJA Committee Review Panel shall advise CJA counsel within one (1) week whether the denial will be forwarded to the Judicial Review Panel for its consideration, and the Judicial Review Panel will endeavor to complete its review expeditiously following receipt of the submission or any additional documentation or information requested by the Judicial Review Panel. In cases involving vouchers for past services or costs, the CJA Committee Review Panel will advise CJA counsel within two (2) weeks of the submission of the appeal whether the denial will be forwarded to the Judicial Review Panel. The Judicial Review Panel will endeavor to complete its review expeditiously following receipt of the submission or any additional documentation or information requested by the Judicial Review Panel.

XII. FORMS

Where standard forms or procedures for standardized electronic submission of forms have been approved by the Judicial Conference of the United States or an appropriate committee, such forms and procedures shall be used by the Court, the Clerk of Court and counsel. The Clerk of Court shall notify counsel through their registered e-mail addresses when a change in forms or procedures has become necessary.

XIII. ECF

All CJA Panel attorneys are required to register for and use the Court's Case Management/Electronic Case Filing System under their own credentials.

XIV. RULES AND REPORTS

The Chief Judge, on behalf of the Court, may promulgate such rules as the Board of Judges of this Court adopts in furtherance of this Plan. The Chief Judge shall similarly make such reports on the implementation of the Act to the Judicial Conference of the United States or a committee thereof as are required or requested.

XV. AMENDMENTS

Amendments to this Plan may be made from time to time by the Board of Judges of this Court, subject to the approval of the Judicial Council of the Second Circuit.

XVI. EFFECTIVE DATE

This Plan, as amended this 19th day of February, 2020, supersedes all prior CJA Plans of this Court, and shall take effect when the amendment is approved by the Judicial Council of the Second Circuit.

This CJA Plan as amended was approved by the Judicial Council of the Second Circuit on February 19, 2020.