

Guide to Judiciary Policy

Vol. 7: Defender Services

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§ 410 Overview

§ 410.10 Statutory Authority

- (a) Subsection (g) of the Criminal Justice Act (CJA) ([18 U.S.C. § 3006A\(g\)](#)), as amended, is intended to provide an option for the establishment of a public defender organization or community defender organization. A district, or part of a district in which at least 200 persons annually require the appointment of counsel, may establish a defender organization. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility.
- (b) If an eligible court desires to provide for representation by a public defender organization or a community defender organization as provided

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under [18 U.S.C. § 3006A\(g\)](#), then [18 U.S.C. § 3006A\(a\)](#) of the CJA applies. The CJA directs each district court to place in operation its own plan for furnishing representation under the terms of the CJA, after the approval of the plan by the judicial council of the circuit court of appeals and under rules and regulations established by the Judicial Conference of the United States.

- (c) It is intended that all provisions of the CJA be administered efficiently and economically. [18 U.S.C. § 3006A\(g\)](#) is intended to provide an option in the plan for the establishment of a public defender organization or community defender organization. Only one such organization should be approved for any district or part of a district in the absence of a clearly demonstrated showing of the need and feasibility of more than one such organization. It is the sense of the Judicial Conference that competitive organizations in the area should be avoided. The statute prohibits the authorization of more than one federal public defender organization within a single judicial district.

§ 410.20 Judicial Conference Policy

§ 410.20.10 Recommended Amendments to the Criminal Justice Act

The Judicial Conference has recommended that the CJA be amended to:

- (a) Eliminate the requirement that a district receive at least 200 CJA appointments annually in order to qualify for the establishment of a federal public defender organization or a community defender organization; and
- (b) Require that a federal public defender organization or community defender organization be established in all judicial districts, or combination of districts, where:
- such an organization would be cost effective;
 - more than a specified number of appointments is made each year; or
 - the interests of effective representation otherwise require establishment of such an office.

See: [JCUS-MAR 93](#), p. 23; [JCUS-SEP 95](#), p. 25.

§ 410.20.20 Establishment of Federal Defender Organizations

- (a) A federal public or community defender organization should be established in every district that has 200 or more appointments each year.

- (b) If a district does not have a sufficient number of cases, then a defender organization adjacent to the district should be considered for co-designation to provide representation in that district.

See: [JCUS-SEP 2018](#), p. 39.

§ 420 Types of Defender Organizations

§ 420.10 Federal Public Defender Organizations

§ 420.10.10 Appointment of the Federal Public Defender

The federal public defender is appointed by the circuit court of appeals for a term of four years, unless sooner removed. Upon the expiration of the term a federal public defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of the office until a successor is appointed, or until one year after the expiration of such defender's term, whichever is earlier.

§ 420.10.20 Appointment of Federal Public Defender Organization Staff

- (a) The federal public defender organization consists of one or more full-time salaried attorneys. The federal public defender may appoint:
 - full-time attorneys in such number as may be approved by the court of appeals of the circuit; and
 - other personnel as approved by the Director of the Administrative Office of the United States Courts (AO).
- (b) The federal public defender and staff are subject to the provisions of [5 U.S.C. § 2104](#) and [§ 2105](#).

§ 420.10.25 Setting the Number of Assistant Federal Public Defenders in a District

Circuit court judges should give due weight to Defender Services Office recommendations and Judicial Conference-approved Judicial Resources Committee staffing formulas when approving the number of assistant federal defenders in a district.

See: JCUS-MAR 19, p. ____.

§ 420.10.30 Compensation of Federal Public Defender and Staff

- (a) The circuit court of appeals determines the compensation of the federal public defender, which may not exceed the compensation received by the U.S. attorney for the same district. In determining the rate of

compensation of the federal public defender, the court of appeals will take into account the:

- size of the office;
 - number of employees required; and
 - responsibilities of the public defender and staff as compared with the same requirements and responsibilities of the U.S. attorney and staff.
- (b) The federal public defender determines the compensation of assistant defenders and other personnel, which may not exceed the compensation paid to attorneys and other personnel of similar qualifications, experience, and responsibilities in the office of U.S. attorney for the same district.

§ 420.10.40 Appointment of a Committee to Assess the Qualifications of Federal Public Defender Candidates and of the Federal Public Defender for Reappointment

- (a) In view of the intent of Congress to insulate the federal public defender from the involvement of the district court before which the defender principally practices, the recruitment and screening of candidates for the office of federal public defender and the evaluation of federal public defender performance prior to reappointment should be a function of the court of appeals rather than the district court.
- (b) In carrying out this responsibility, the chief judge of the court of appeals should appoint a committee to assess the performance and potential for future performance of the federal public defender candidates or incumbent federal public defender. The committee should consist of persons knowledgeable in federal criminal defense issues, but should not include probation, pretrial services, law enforcement, or prosecutorial personnel.

§ 420.10.50 Committee Selection of the Federal Public Defender

- (a) In recruiting and selecting candidates for the office of federal public defender, the committee should seek attorneys with the following qualifications:
- (1) a member in good standing in the bar of the state in which the candidate is admitted to practice;
 - (2) a minimum of five years criminal practice experience, preferably with significant federal criminal trial experience, which demonstrates an ability to provide zealous representation of consistently high quality to criminal defendants;

- (3) the ability to effectively administer the office;
 - (4) a reputation for integrity; and
 - (5) a commitment to the representation of those unable to afford counsel.
- (b) The committee should solicit the views of those in a position to evaluate the performance of the candidates, including, but not limited to judges and U.S. magistrate judges of courts in which the candidate has practiced.
- (c) A national vacancy notification effort consistent with equal employment opportunity standards should be undertaken in connection with the recruitment of candidates for vacant federal public defender positions. The AO Defender Services Office should be contacted for advice and financial support in this regard.
- (d) The committee should screen applications and submit the names of three to five candidates ranked in order of preference to the district court for comment and recommendation. Pursuant to the provision of the CJA requiring the court of appeals to consider the recommendation of the district court or courts to be served, the recommendations of the district court must be included in the committee's report to the court of appeals, along with the committee's response to the district court's comments and recommendations, where appropriate.
- (e) When a candidate is selected, the AO Defender Services Office should be notified promptly of the nominee so that it may initiate any background investigation requested by the court of appeals.

§ 420.10.60 Reappointment of the Federal Public Defender

- (a) The committee should assess the following before deciding whether the reappointment of an incumbent federal public defender is warranted:
 - quality of representation;
 - level of commitment and service to clients; and
 - administrative efficiency of the federal defender office.

In this process, it should solicit the views of those in a position to evaluate the performance of the federal public defender and the quality of the services provided by the federal public defender organization, including, but not limited to, judges and U.S. magistrate judges of courts served by the organization.

- (b) The federal public defender should be given an opportunity to respond to adverse comments, including adverse comments that would not influence the decision to reappoint, so that the defender may benefit from constructive criticism. The committee will not disclose the identity of any person who requests confidentiality, but will provide the defender with a general description of the source and nature of the comments.
- (c) The committee's report and assessment, including any recommendations from the district court to be served, should be considered by the court of appeals in determining whether to appoint or reappoint a particular individual as the federal public defender.

§ 420.20 Community Defender Organizations

- (a) A community defender organization must be a nonprofit defense counsel service. The organization's stated purposes must include implementation of the aims and purposes of the CJA. Its bylaws must demonstrate that it is an organization with a professional and fiscal responsibility capable of providing adequate representation under the CJA. The bylaws must be provided in the plan for the district authorizing a community defender organization. It may operate either on the fee system or through grants to be approved by the Judicial Conference.
- (b) If a community defender organization that has been approved under the plan for the district court applies for any grant, it must do so on a form prepared by the Director of the AO for the use of the Judicial Conference in considering applications for such grants. The receipt and use of grant funds are subject to the conditions in [Appx. 4A \(Community Defender Organization: Grant and Conditions\)](#). Community defender organizations must agree to and accept these conditions before grant payments are issued.
- (c) A Model Code of Conduct for Federal Community Defender Employees is provided in [Appx. 4B](#). Unless a variance from one or more of the Model Code's provisions is sought from, and approved by, the AO Defender Services Office, the community defender organization's board of directors must adopt the Model Code of Conduct as provided in Appx. 4B and make it applicable to all of the community defender organization's employees. **See:** Clause 22 of [Appx. 4A \(Community Defender Organization: Grant and Conditions\)](#).

§ 430 Transcripts, Investigative, Expert, and Other Services

§ 430.10 Payment of Transcripts

- (a) All defender organizations have general authorization to procure transcripts, provided that total expenditures for transcripts do not exceed the funding available in the budget object code (BOC) for transcripts.
- (b) The limitations in [Guide, Vol. 7A, § 310.20](#) are inapplicable to the cost of transcripts and do not apply to federal public or community defender organizations.
- (c) The general authorization provided above includes supplemental funds provided for the transcripts or funds transferred to the transcripts BOC from other BOCs.
- (d) Once the federal public or community defender has obligated all funds in the transcripts BOC, it will be necessary to transfer funds from other BOCs, or to seek supplemental funds to cover additional expenditures.

§ 430.20 Payment of Investigative, Expert, and Other Services

- (a) All defender organizations have general authorization to procure investigative, expert and other services as contemplated under [18 U.S.C. § 3006A\(e\)](#), as amended, provided that total expenditures for the BOCs that comprise investigative, expert and other services do not exceed the funding available in those BOCs.
- (b) The limitations in [Guide, Vol. 7A, § 310.20](#) do not apply to federal public or community defender organizations.
- (c) The general authorization provided above includes supplemental funds provided in the investigative, expert and other services BOCs, or funds transferred to those BOCs.
- (d) Once the federal public or community defender has obligated all funds in any of the investigative, expert and other services BOCs, it will be necessary to transfer funds from other BOCs or to seek supplemental funds to cover additional expenditures.

§ 440 Assignment of Cases

To ensure the effective supervision and management of the organization, federal public defenders and community defenders should be responsible for the assignment of cases within their own offices. Accordingly, appointments by the court or U.S. magistrate

judge should be made in the name of the organization (i.e., the federal public defender or community defender), rather than in the name of an individual staff attorney within the organization.

§ 450 Apportionment of Cases Between Defender Organizations and the Panel

- (a) Recognizing that federal defender organizations consistently furnish high-quality representation to CJA defendants and provide a cost-effective alternative to representation by CJA panel attorneys, the Judicial Conference has recommended that courts take steps to increase the number of cases assigned to federal defender organizations. ([JCUS-MAR 93](#), pp. 13-14).
- (b) In districts currently served by a defender organization these steps should include:
 - (1) approval of additional assistant federal defender staff in appropriate circumstances; and
 - (2) review and adjustment of district appointment procedures.

§ 460 Participation as *Amicus Curiae*

Under governing court rules, federal public defenders and community defenders may participate as *amicus curiae*:

- (a) in federal court at the invitation of the court;
- (b) in death penalty habeas corpus cases; or
- (c) on behalf of a client as an ancillary matter appropriate to the proceedings.