

(Post 7/20/12)

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

CRIMINAL JUSTICE ACT PLAN

Adopted July 19, 2012

(supersedes all previous editions and revisions)

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

I. AUTHORITY

Pursuant to the provisions of the Criminal Justice Act of 1964, as amended, (CJA), 18 U.S.C. § 3006A, and the *Guidelines for Administering the CJA and Related Statutes (CJA Guidelines)* Volume 7A of the *Guide to Judiciary Policy*, the Judges of the United States District Court for the Eastern District of Arkansas do hereby adopt this plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, or any element of representation necessary to an adequate defense.
2. The further objective of this plan is to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance

1. The Court, its Clerk, the Federal Public Defender, post conviction relief organizations, and private attorneys appointed under the CJA must comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. The Federal Public Defender and each private attorney will be provided with a then-current copy of this Plan upon the attorney's designation as a member of the CJA Panel.

A copy of the Court's CJA Plan is available on the court's internet site at <http://www.are.uscourts.gov>. The *CJA Guidelines* are available at

III. DEFINITIONS

- A. “Representation” includes counsel and investigative, expert and other services.
- B. “Appointed Attorney” includes private attorneys, the Federal Public Defender and staff attorneys with the Federal Public Defender organization.

IV. PROVISION OF REPRESENTATION

- A. Mandatory Appointments. Representation under this Plan shall be provided for any financially eligible person who:
 - 1. is charged with a felony or a Class A misdemeanor;
 - 2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
 - 3. is charged with a violation of probation or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - 4. is under arrest, when such representation is required by law;
 - 5. is entitled to appointment in parole proceedings (See: *CJA Guidelines*, Vol. 7, § 210.20.10(e));
 - 6. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term or condition of supervised release (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - 7. is subject to a mental condition hearing under 18 U.S.C. §§ 4241-4248;
 - 8. is in custody as a material witness;
 - 9. is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255;

10. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for execution of a penal sentence under 18 U.S.C. § 4109;
11. is entitled to appointment of counsel under the Sixth Amendment of the Constitution;
12. or faces loss of liberty in a case and federal law requires the appointment of counsel. (See: *CJA Guidelines* § 210.20.10(i));

B. Discretionary Appointments. Whenever a Judge or a United States Magistrate Judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

1. is charged with a petty offense (Class B or C misdemeanor, or infraction) for which a sentence of confinement is authorized;
2. is seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. §§ 2241, 2254 or 2255;
3. is charged with civil or criminal contempt and faces a loss of liberty;
4. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face a loss of liberty;
5. is proposed by the United States Attorney for processing under a pretrial diversion program;
6. is held for international extradition proceeding under 18 U.S.C. §§ 3181-3196;

C. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to 18 U.S.C. Sec. 3006A or Section 210.20.30 of the *CJA Guidelines*.

V. APPOINTMENT OF COUNSEL

A. Appointments in General

1. Timely Appointment of Counsel. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States Magistrate Judge or Judge, when they are formally charged or notified of charges if formal charges are sealed, or

when a United States Magistrate Judge or Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

2. Eligibility for Representation.

- a) Fact finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a United States Judge or Magistrate Judge after making appropriate inquiries concerning the person's financial condition. The court may act upon statements made by the defendant (1) under oath in open court, (2) by sworn affidavit, or (3) by other information the court deems reliable.
- b) Disclosure of Changes in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel will advise the court.
- c) Inability to Pay Retained Counsel. If at any stage of the proceedings, including appeal, the Magistrate Judge or District Judge finds that the person is financially unable to pay retained counsel, the Court may appoint counsel and authorize payment, as the interests of justice may dictate. An appointment may be made retroactive to include any appropriate representation provided prior to appointment.
- d) Separate or Additional Counsel. Appointment of separate or additional counsel will be in accordance with § 220.40 of the *CJA Guidelines*.
- e) Standby Counsel. Standby Counsel may be appointed in accordance with § 220.55 of the *CJA Guidelines*. Since the Guidelines are silent on this issue, the court and counsel may wish to consider the American Bar Association Standards for Standby Counsel.

B. Federal Capital Prosecutions and Death Penalty Federal Habeas Corpus Proceedings

1. Number of Counsel.

- a) Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a capital offense is entitled to the appointment of two attorneys, at least one of whom must be learned in the law

applicable to capital cases. Under 18 U.S.C. § 3599, if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case. See *CJA Guidelines*, Section 620.

b) Habeas Corpus Proceedings. Under 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of one or more qualified attorneys. See *CJA Guidelines*, Section 620.

2. Procedures for Appointment in Death Penalty Federal Habeas Corpus Proceedings. The Federal Public Defender's Capital Habeas Unit should ordinarily be appointed as either sole counsel or lead counsel in all federal death penalty habeas corpus proceedings.

3. Qualifications for Appointed Counsel in Capital Cases

a) Appointment of Counsel Prior to Judgment. Under 18 U.S.C. § 3599, at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases. Counsel should consult with the Federal Death Penalty Resource Council of Defender Services, Administrative Office of the United States Courts.

b) Appointment of Counsel After Judgment. Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.

c) Attorney Qualification Waiver. Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

VI. FEDERAL PUBLIC DEFENDER

A. Establishment.

1. The Federal Public Defender Organization for the Eastern District of Arkansas has been established and is hereby recognized as the Federal Public Defender Organization for this District.
2. The Federal Public Defender Organization shall be capable of providing some legal services throughout the district and shall maintain its primary office in Little Rock, Arkansas.

B. Supervision of Defender Organization.

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

VII. PANEL ATTORNEYS

A. Panel Selection Committee

1. Membership.

A Panel Selection Committee was established by the Court. The Committee consists of one District Judge, one Magistrate Judge, the CJA Panel Representative, the Clerk of the Court and the Federal Public Defender. The Committee will be chaired by the District Judge. The CJA Panel Representative shall be appointed by the Chief District Judge or his/her designee and shall serve in that position for five years.

2. Duties.

- a) The Panel Selection Committee will meet at least once a year to consider applications for any vacancies created during the past year. The Committee will also review the operation and administration of the panel over the preceding year and recommend to the court any changes deemed necessary or appropriate.
- b) When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee.

B. QUALIFICATIONS

Any member in good standing of the bar of this Court, who has demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines, shall be deemed qualified to serve on the CJA panel. However, the Panel Selection Committee, with the approval of the Court, may establish additional qualifications, including relevant training and experience. 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.

C. COMPOSITION OF PANEL

1. The Court shall establish one panel (hereinafter CJA Panel) to serve for a term of three years. Members of the panel shall serve at the pleasure of the Court.
2. The panel shall consist of attorneys who are eligible, willing, and competent to provide adequate representation under the CJA.
3. The Court will fix, periodically, the size of the CJA Panel. The panel shall be adequate in number to supply the needs of the district at any given time.
4. Qualified attorneys may by order of the Court be added to the roster at any time. Upon recommendation of the Panel Selection Committee or on the Court's own motion, a judge may at any time add or delete panel members.

D. APPOINTMENT ALTERNATIVES

1. Counsel furnishing representation under this Plan shall be selected from
 - a) the Federal Public Defender's Office;
 - b) the CJA panel; or
 - c) when the judicial officer presiding over 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 CJA defendant.

2. The Federal Public Defender will be appointed in all cases except:
 - a) when the Federal Public Defender already represents a defendant in a multiple defendant case;
 - b) where there is an actual conflict of interest;
 - c) where there is a potential conflict of interest or other circumstance which the Federal Public Defender certifies to the appointing District or Magistrate Judge could in his/her judgment prejudice representation of the defendant.
3. The Court anticipates that approximately 25 percent of the CJA appointments will go to members of the private bar.

E. METHOD OF SELECTION

1. Maintenance of List and Distribution of Appointments.

The Clerk of the Court shall maintain a current list of all attorneys included on the CJA panel with current office addresses, telephone numbers and e-mail addresses. A copy of this list shall be furnished to each District Judge, Magistrate Judge and the Federal Public Defender. Updates to the list will be made from time to time as the Court deems necessary and appropriate.

2. Method of Selection.

- a) Appointments will 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 or availability, and time and geographical considerations.
- b) Appointing officers are to avoid favoritism and monopoly, or the appearance thereof, in making appointments under this Plan.
- c) The Court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

F. DUTIES OF APPOINTED COUNSEL

1. Standards.

The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

2. Professional Conduct.

Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Code of Professional Conduct.

3. No Receipt of Other Payment.

Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

4. Duration of Appointment in District Court.

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeal, including ancillary matters appropriate to the proceeding. Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals or review by certiorari (as governed by the Circuit CJA plan provisions concerning representation on appeal) is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Accused for Appointment of Counsel.

Federal law enforcement and prosecutorial agencies, probation officers and pretrial service officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise might be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is unable, notify the Federal Public Defender who shall discuss with the person the right to representation and the right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a judge of this court for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview.

Consistent with a resolution of the Judicial Conference during its March 1988 proceedings, the accused will be asked to execute a form approved by the court advising the accused of certain rights including the right to speak with a lawyer

before answering any questions in the pretrial interview. Prior to beginning the interview, the pretrial services officer will have the accused execute the PS 1 form. If the accused indicates a desire to have counsel present during the interview, the officer will proceed no further until arrangements have been made to have counsel present.

C. Notice of Indictment or Criminal Information.

Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation or supervised release, the United States Attorney or the probation officer, as appropriate, must immediately mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on the defendant's bond papers or to the jail in which defendant is detained.

IX. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this plan.

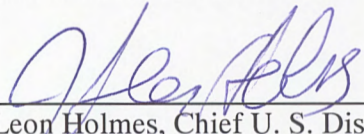
B. Claims for Compensation and Expenses.

1. Claims for compensation and expenses of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the CJA Clerk designated by the Clerk of the Court. Claims should be made in accordance with Chapter 2 of the *CJA Guidelines*. The Clerk's office will forward the claim form for the consideration of the appropriate judicial officer. The court will exert its best effort to avoid delays in reviewing payment vouchers and submitting them for further processing.
2. Claims for compensation of experts should be made in accordance with Chapter 3 of the *CJA Guidelines*. Those claims must be submitted to counsel for approval. Counsel will forward the documentation to the CJA Clerk.
3. Travel by either experts or counsel other than by private automobile must be authorized by the court in advance of said travel and cannot be reimbursed if prescribed procedures are not followed.

X. EFFECTIVE DATE

This Plan supersedes all prior Criminal Justice Act Plans of this court and will become effective when approved by the Judicial Council of the Eighth Circuit.

Adopted by the United States District Court for the Eastern District of Arkansas this 10th day of July 2012.



J. Leon Holmes, Chief U. S. District Judge