

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**



CRIMINAL JUSTICE ACT PLAN

APPROVED BY THE COURT: OCTOBER 13, 1998

APPROVED BY THE JUDICIAL
COUNCIL OF THE NINTH CIRCUIT: FEBRUARY 19, 1999

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I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (“CJA”), section 3006A of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (“CJA Guidelines”), the United States District Court of the Central District of California adopts this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crimes, or otherwise eligible for services pursuant to the CJA, will not be deprived because they are financially unable to pay for adequate representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act 1988 (codified in part at section 848(q) of title 21, United States Code), and the CJA Guidelines in a way that meets the needs of the district.

B. Compliance.

1. The Court, the Clerk of Court, the Office of the Federal Public Defender, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States or its Committee on Defender Services and with this Plan.
2. The Clerk of Court shall provide each private attorney with a current copy of this Plan upon the attorney’s first appointment under the CJA or designation as a member of the panel of attorneys under the Criminal Justice Act (“CJA Panel”). The Clerk shall maintain a current copy of the CJA Guidelines along with other Court adopted policies, guidelines, and procedures related to the CJA for the use of members of the CJA Panel and shall make known to such attorneys its availability.

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 of the Office of the Federal Public Defender.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

- 1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
 - c. is charged with 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);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
 - j. is entitled to appointment 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 section 4109 of title 18, United States Code;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a district or magistrate judge determines the interests of justice so require, representation may be provided for any financially eligible person who:
 - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence, under sections 2241, 2254, or 2255 of title 28, United States Code;
 - c. is charged with civil or criminal contempt and faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. is proposed by the United States attorney for processing under a pretrial diversion program; or
 - f. is held for international extradition under chapter 209 of title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a district or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, or when a district or magistrate judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number.
 - a. 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 shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
 - b. Capital Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), 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.

2. Qualifications. Qualifications for appointed counsel shall be determined by the Court. In capital prosecutions, the following also applies:

a. Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. § 848(q)(5), 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. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. § 3005, in appointing counsel in capital prosecutions, the court shall consider the recommendation of the federal public defender or, if no such organization exists in the district, of the Administrative Office of the United States Courts.

b. Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), 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. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), 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.

D. Eligibility for Representation.

1. Fact Finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a district or magistrate judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change 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 shall advise the Court.

V. OFFICE OF THE FEDERAL PUBLIC DEFENDER

A. Establishment.

1. The Office of the Federal Public Defender of the Central District of California, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Office of the Federal Public Defender for this district.
2. The Office of the Federal Public Defender shall be responsible for providing legal services throughout the district.

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

VI. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is contained in General Order 98-6.

- C. Appointment. Private attorneys from the CJA Panel shall be appointed in the cases in which the Federal Public Defender has a conflict of interest or is otherwise unable to accept appointment. In exceptional circumstances (such as the interest of justice, judicial economy, or continuity of representation) an attorney, who is not a member of the CJA panel may be admitted to the CJA Panel *pro hac vice* and appointed to represent the financially eligible person. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be rare.

VII. REPRESENTATION IN CAPITAL HABEAS CORPUS PROCEEDINGS

- A. Appointment of Counsel. The Court shall appoint the Federal Public Defender as counsel of record in cases where there is no conflict of interest up to a fixed number each year consistent with funding and staffing levels of the Office of the Federal Public Defender related to these types of cases.
- B. Death Penalty Attorney Panel. The existing, previously established panel of death penalty attorneys (“Death Penalty Attorney Panel”) appointed by the Chief Judge of the District is hereby recognized. Upon filing a petition for writ of habeas corpus or a request for appointment of counsel, the Death Penalty Committee shall appoint the Office of the Federal Public Defender. If the Office of the Federal Public Defender has already been assigned the maximum number of cases as determined by the Defender Services Committee of the United States Judicial Conference, the Death Penalty Committee shall appoint counsel from the Death Penalty Attorney Panel.
- C. Death Penalty Committee. The Death Penalty Committee is responsible for, among other things, the recruitment and screening of lawyers qualified to provide representation in capital habeas corpus cases.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered to a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct. Each attorney shall be familiar with and comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and the decisions of any court

applicable thereto. These statutes, rules and decisions are the standards of professional conduct. The Model Code of Professional Conduct of the American Bar Association may be considered as guidance.

- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration from any source for representation or expenses under the appointment, unless such payment is approved by order of the Court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall 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 substitution of retained counsel has been approved by the Court; 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.

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. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the Clerk of the Court. That office shall forward the claim form to the Criminal Justice Act Supervising Attorney for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

X. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Ninth Circuit.