

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the Southern District of Alabama, adopt 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 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, of 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 Anti-Drug Abuse Act of 1988 (21 U.S.C. § 848(q)), and the CJA Guidelines in a way that meets the needs of this District.

B. Compliance.

1. The Court, its Clerk, the Community Defender Organization (CDO), and private attorneys appointed under the CJA shall 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. Each private attorney shall be provided by the Clerk of Court 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 Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the CJA Guidelines 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 defender and staff attorneys of the Community Defender Organization.

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 with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency defined in 18 U.S.C. § 5031;
- c. 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);
- d. is under arrest, when such representation is required by law;
- e. 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;
- f. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
- g. is in custody as a material witness;
- h. is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255;
- i. 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 18 U.S.C. § 4109;
- j. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- k. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judge or magistrate judge determines that 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 28 U.S.C. §§ 2241, 2254, or 2255;
- c. is charged with civil or criminal contempt who 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;
- 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 magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualification of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies

a. Federal Capital Prosecution. Pursuant to 18 U.S.C. §3005, a person charged with a federal 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. 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. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, 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 federal capital prosecutions, the court shall consider the recommendation of the federal public defender. In this regard, the court should specifically consider appointing a federal community defender from the Capital Habeas Unit of the Federal Public Defenders' Office located in Montgomery, Alabama.

b. Appointment of Counsel After Judgment. Pursuant to §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 judge 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 immediately advise the court.

V. COMMUNITY DEFENDER ORGANIZATION

A. Establishment. The Southern District Of Alabama Federal Defenders Program, Inc., previously established in this district pursuant to the provisions of the CJA, is hereby recognized as a community defender organization for this district. The community defender organization shall be capable of providing legal services throughout the district and shall maintain an office in Mobile, Alabama.

B. Supervision of Defender Organization. The community defender (Executive Director) shall be responsible for the supervision and management of the community defender organization. Accordingly, the community defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the community defender.

C. CDO Staff Attorneys. The CDO shall furnish to the court a list of the attorneys on its staff who will be subject to appointment as counsel for defendants under this Plan, including a certificate that such attorneys are competent to give adequate representation to parties under the Criminal Justice Act and this Plan. The Court may from time to time make such inquiries and request such information as may be needed to ensure effective and competent representation. Any change in this list of attorneys must be reported promptly to the court by way of a revised listing, similarly certified.

D. Ratio of Appointments. The CDO shall receive approximately 75% of the appointment under the CJA annually throughout the District in cases in which the accused is determined to be financially eligible for representation under the CJA.

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 found at Appendix I of this CJA Plan.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the District.

VII. DUTIES OF APPOINTED COUNSEL

A. 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.

B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct and the American Bar Association's Model Code of Professional Conduct.

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 for representation 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, 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.

1. If it becomes known to any federal law enforcement officer, prosecutorial agency, probation officer or pretrial service officer, or any person acting on their behalf, that a person who is in custody, or who otherwise may be entitled to counsel under Section IV.A.1 of this plan, desires representation by an attorney, but may not be financially able to afford such service, the individual receiving such notice shall promptly notify the community defender. The community defender shall discuss with the person the right to representation and right to appointed counsel. If the appointment of counsel seems likely, the community defender shall assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

2. If it becomes known to any prosecutorial agency, probation officer or pretrial service officer, or any person acting on their behalf, that a person who may be subject to having counsel appointed under Section IV.A.2 of this plan, desires representation by an attorney, but may not be financially able to afford such service, the individual receiving such notice shall promptly notify the duty magistrate judge.

B. Pre-trial Services Interview. Before conducting the interview, the officer shall give the defendant the *Notice to Defendant* form (PS1) and explain its contents. The officer shall specifically explain to the defendant that the defendant has the right to speak with an attorney before answering any questions and if he or she is unable to afford an attorney, an attorney will be appointed.

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 review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

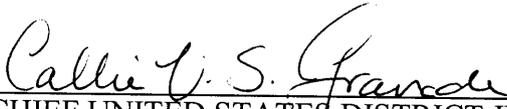
X. EFFECTIVE DATE.

This Plan, as amended, is effective upon approval of the Judges of the District Court and the Judicial Council of the United States Court of Appeals for the Eleventh Circuit.

APPENDICES:

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

Adopted this 27th day of January, 2004.



CHIEF UNITED STATES DISTRICT JUDGE



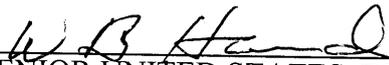
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT JUDGE



SENIOR UNITED STATES DISTRICT JUDGE



SENIOR UNITED STATES DISTRICT JUDGE

APPROVED BY THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT ON

15 April, 2004.



CHIEF JUDGE
UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

APPENDIX I.

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to paragraph B. of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.

2. Size. The Court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

3. Eligibility.

a. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Sentencing Guidelines, the Criminal Justice Act and the Guidelines for the Administration of the CJA (Vol. VII, Guide to Judiciary Policies and Procedures).

b. All CJA panel attorneys must attend annually either the seminar conducted by the Community Defenders Office or an equivalent seminar on federal criminal practice consisting of a minimum of six hours. Furthermore, prior to December 1st of each year, the CJA panel attorney should provide to the CJA Panel Selection Committee certification that the seminar requirement has been met.

4. Admission of Pro Hac Vice Attorney. In exceptional circumstances, if the judge or magistrate judge 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 defendant. The attorney, who may or may not maintain an office in this District, must possess such qualities as would qualify him or her for admission to the CJA Panel as set forth in this Plan.

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

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

B. PANEL SELECTION COMMITTEE

1. Membership. A panel selection committee shall be established by the Court. The panel selection committee shall consist of a District Judge and a Magistrate Judge both appointed by the Chief District Judge in this District, the federal defender, and a member of the criminal defense bar of this district in good standing appointed by a majority vote of the remaining committee members.

2. Duties. The Committee shall select its own chairperson who will be responsible for scheduling meetings of the Committee at least once a year and shall be responsible for conducting the business meetings of the Committee. The Panel Selection Committee shall be responsible for developing and maintaining a panel of attorneys available for appointment to cases in this District. The Committee shall also review the operation and administration of the panel and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management.

3. Applicant Consideration. Completed applications shall be submitted to the Clerk of the Court who will refer these applications to the members of the Panel Selection Committee. At its meetings, the Committee shall review the existing panel membership, applications for membership, and shall make additions or deletions to the panel membership as may be appropriate. The Committee will condition panel membership upon a continued demonstrated proficiency, ability, and interest in representation of the legally indigent. In determining the membership of the panel, the Committee shall also consider comments and recommendations of the judges and magistrate judges of this court.

4. Training Panel. The Panel Selection Committee shall establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA panel. Training panel members shall not be eligible to receive appointments independently, and will not receive compensation for their services in assisting the Community Defender or CJA panel members. Prior service on the CJA training panel is not a requirement for membership on the CJA panel, nor will service on the training panel guarantee admission of an attorney to the CJA panel. To be considered for the CJA panel, an attorney on the CJA Training Panel must assist in at least two cases from arraignment through final disposition. If the cases in which the attorney participates do not go to trial, then the attorney should also assist in one trial. The trainee should also attend the annual seminar conducted by the Community Defender's Office or an equivalent seminar on federal criminal practice consisting of a minimum of six hours. The Community Defender shall supervise the CJA panel trainee and assign cases for purposes of meeting these requirements.

5. Notification of amendments to CJA Panel. After each meeting of the Panel Selection Committee or at any time after the membership of the CJA panel or training panel has been amended, the Committee shall distribute a copy or amended copy of the panel of attorneys to each judge and magistrate judge of this District. A copy of this list shall also be made available to the CDO, the U. S. Attorney's Office, U. S. Probation, U. S. Pretrial Services, and the U. S. Marshals Service. A copy of the current list of the panel of attorneys shall be kept on file with the Clerk of Court.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST OF 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 and telephone numbers, as well as a statement of qualifications and experience. The Clerk shall furnish a copy of this list to each judge and magistrate judge. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Community Defender Organization and CJA panel attorneys, according to the formula described in the CJA Plan for the District.

B. METHOD OF SELECTION

Appointments from the list of panel attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant. The Clerk of Court shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Community Defender Organization and the panel of private attorneys.

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

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of Court. The Clerk of Court shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge or magistrate judge.