

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

IN RE: AMENDMENTS TO THE
CRIMINAL JUSTICE ACT PLAN

ADMINISTRATIVE ORDER
No. 17-MS-129

In accordance with a revised Criminal Justice Act Plan adopted by this Court on June 14, 2017, and approved by the Sixth Circuit Judicial Council, and Chief Judge R. Guy Cole, Jr. on October 18, 2017, the current Criminal Justice Act Plan is hereby amended and replaced with the attached CJA Plan.

IT IS SO ORDERED.

Dated: December 7, 2017



ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

**United States District Court
for the
Western District of Michigan**



Criminal Justice Act Plan

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (CJA), as amended, 18 U.S.C. § 3006A, and Guide to Judiciary Policy (Guide), Volume 7A, the judges of the United States District Court for the Western District of Michigan adopt this Plan, as approved by the circuit, 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 a 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 USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the Guide, Volume 7A, in a way that meets the needs of this district.

B. Compliance

1. The Court, its Clerk, the Federal Public Defender, and private attorneys appointed under the CJA shall comply with the Guide, Volume 7A, approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. The Court will ensure that a current copy of the CJA Plan is made available on the Court's website. Each private attorney shall be provided by the Federal Public Defender 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 Federal Public Defender shall also maintain a current copy of the Guide, Volume 7A for the use of members of the CJA Panel, and shall make its availability known to such attorneys. Failure to familiarize him or herself with this Plan

shall not excuse an attorney from complying with its provisions.

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 Federal Public Defender recognized under paragraph V of this Plan.
- C. “CJA Panel Administrator” is a person designated by the Federal Public Defender to administer the CJA Panel.

IV. PROVISION OF REPRESENTATION

A. Circumstances

- 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 as 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 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 18 U.S.C. §§ 4241-4248;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255;
 - 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 18 U.S.C. § 4109;
 - 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 Judge or United States 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 of 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 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 that 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 18 U.S.C. §§ 3181-3196;
 - g. has received a letter indicating that he or she is a “target” of a federal criminal investigation, as that term is defined in the United States Attorneys’ Manual;
 - h. is involved in “ancillary matters appropriate to the proceedings” pursuant to subsection (c) of the CJA. 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, *inter alia*, one of the following objectives:
 - (1) to protect a Constitutional right;
 - (2) to contribute in some significant way to the defense of the principal criminal charge;
 - (3) to aid in preparation for the trial or disposition of the principal criminal charge;
 - (4) to enforce the terms of a plea agreement in the principal criminal charge;
 - (5) to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding pursuant to 18 U.S.C. § 983, 21 U.S.C. § 881, 19 U.S.C. § 1602, or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the CJA; or

- (6) 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 pursuant to Fed. R. Crim. P. 41(g), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) 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 Judge or United States Magistrate Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a District Judge or United States Magistrate Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest. Such appointment may be made retroactive to include any representation furnished pursuant to the Plan prior to appointment.

C. Number and Qualifications 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, two or more attorneys may be appointed as required by 18 U.S.C. §§ 3005 and 3599 and other applicable law.
2. Qualifications: In capital cases, at least one of the attorneys appointed shall be learned in the law applicable to such cases pursuant to 18 U.S.C. § 3005. 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.

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.

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 Judge or United States Magistrate Judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility: If, at any time after appointment, appointed 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. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

1. The Office of the Federal Public Defender for the Western District of Michigan, previously established in this District pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this District.
2. The Federal Public Defender Organization shall be capable of providing legal services in the Southern and Northern Divisions of the District and shall maintain offices in Grand Rapids and Marquette, Michigan.

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, and these cases may be subsequently reassigned to staff attorneys or CJA Panel attorneys at the discretion of the Federal Public Defender. Not later than January 31 of each year, the Federal Public Defender Organization shall provide the Court with a list of all defendants assigned to that office during the preceding calendar year, along with such related information which will assist the Court in reviewing the distribution of case assignments between the Federal Public Defender Organization and the CJA Panel.

C. CJA Panel: Acting under the supervision of the Federal Public Defender, the CJA Panel Administrator within the Federal Public Defender Organization shall be responsible for the systematic distribution of cases to, and for the management of, the CJA Panel.

VI. CJA PANEL ATTORNEYS

A. Establishment: The Court shall establish a Panel of private attorneys 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 Court's Criminal Law Committee and the Federal Public Defender. Members of the CJA Panel shall serve at the pleasure of the Court.

B. Size: The Court shall fix, periodically, the size of the CJA Panel. The CJA 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.

- C. Eligibility: Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District, have criminal trial experience, and have demonstrated experience in knowledge of federal criminal law, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Federal Sentencing Guidelines.

In exceptional circumstances, if the Court determines that the appointment of an attorney, who is not a member of the CJA Panel or the Federal Public Defender Organization, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, an attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent a CJA defendant. Consideration for preserving the integrity of the Panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney should possess such qualities as would qualify him or her for admission to the District's CJA Panel in the ordinary course of panel selection.

- D. Application: Application forms for membership on the CJA Panel shall be made available, upon request, by the Federal Public Defender Organization. Completed applications shall be submitted to the Federal Public Defender who will transmit the applications to the Court.

- E. Terms: Lawyers selected for the CJA Panel after 2006 will serve a three-year term. Any member selected with no previous panel experience shall serve a one-year probationary period.

- F. Equal Opportunity: All qualified attorneys shall be encouraged to apply for membership without regard to race, color, religion, sex, age, national origin, or disabling condition.

- G. Facilities and Technology Requirements:

1. CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.
2. CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.

- H. Maintenance of List and Distribution of Appointments: The Federal Public Defender 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 Federal Public Defender shall furnish a copy of this list to each District Judge and United States Magistrate Judge. The Federal Public Defender shall also maintain a record of assignments to private counsel, and when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender's Office and private attorneys, according to the formula described in this Plan.

- I. Method of Appointment: Appointments from the CJA Panel should generally 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.

Upon determination of a need for the appointment of counsel, the District Judge or United States Magistrate Judge shall advise the Federal Public Defender as to the need for counsel and the nature of the case.

The Federal Public Defender, through the CJA Panel Administrator, shall then determine whether to continue the representation personally, reassign the case to a staff attorney, or assign the case to a CJA Panel attorney. Under exceptional circumstances, the Federal Public Defender may assign a case to a private attorney not on the CJA Panel list.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Federal Public Defender’s office, the presiding judge or United States Magistrate Judge may appoint any attorney from the CJA Panel list. In all cases where members of the CJA Panel are appointed by the Court, the Court shall notify the Federal Public Defender as to the name of the attorney appointed and the date of appointment.

- J. Ratio of Appointment: Where practical and cost effective, attorneys from the CJA Panel shall be appointed in a substantial portion 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.

- K. Investigative, Expert, and Other Necessary Services: Investigative, expert, or other services reasonably necessary to provide adequate representation, as authorized by the CJA, shall be available as provided by statute to persons who are eligible for representation under the CJA, including eligible persons who have elected to proceed *pro se* and persons who have retained counsel but who are found by the Court to be financially unable to obtain necessary services.

- L. Removal of a Lawyer from the CJA Panel

1. Automatic Removal; Reinstatement: Any attorney whose license is revoked or suspended by an Attorney Discipline Board of any state or for any other reason is no longer a member in good standing of the state bar and the Bar of this Court, shall be removed automatically from the CJA Panel. Upon reinstatement to membership in good standing of his or her state bar and the Bar of this Court, an attorney who desires to be reinstated to the CJA Panel shall proceed as on original application.

2. Other Removal; Reinstatement: In the event that a District Judge or United States Magistrate Judge considers that an attorney should be removed from the CJA Panel for reasons other than bar membership status including, but not limited to, formal accusation of a crime, conviction of a crime not resulting in action by the Attorney Discipline Board, indications of lack of professional competence or lack of adherence to ethical standards, indications of mental or emotional instability affecting professional responsibilities, and indications of a lack of desire to accept or handle case assignments, referral of the matter shall be made to the Court's Criminal Law Committee. Upon consideration of the Committee's report, the Court may remove the attorney from the CJA Panel, either permanently or for a period of time. Prior to making its determinations, the Court may, within its sole discretion, give the attorney written notice of its intended action and may also afford the attorney an opportunity to be heard before a hearing panel designated by the Chief Judge, which panel shall then submit a report to the Court. Any attorney removed under this provision who desires to be reinstated to the CJA Panel shall proceed as on original application.

In the event that a District Judge or United States Magistrate Judge identifies a problem with a CJA Panel attorney not serious enough to warrant removal, the Judge may refer the matter to the Federal Public Defender for appropriate action.

None of the foregoing removal provisions shall be construed to limit or alter the provision stated in Section VI that all CJA Panel attorneys serve at the pleasure of the Court.

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 Local Criminal Rule 57.1.
- 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 (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. The Circuit CJA Plan is currently available on the Sixth Circuit Court of Appeals website.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

- A. Presentation of Accused for Appointment of Counsel: The United States Probation and Pretrial Services Office shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and, whenever such person indicates that he or she is not able, shall assist in the completion of a financial affidavit (CJA Form 23) and notify and provide the completed form to the Court. If the Court determines that the appointment of counsel is appropriate, the Court shall enter an order directing the Office of the Federal Public Defender to provide representation. The United States Attorney's Office has no obligation to discuss with persons accused of a crime their right to the appointment of counsel or their eligibility for such appointment. The United States Attorney's Office and federal law enforcement agencies recognize their obligation to continue to comply with, all applicable law, standards, and procedures related to appointment of counsel.
- B. Notice of Indictment or Criminal Information: At or before the initial appearance of a person accused of a crime, upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a complaint or petition to modify or revoke probation or supervised release, the accused shall be provided a copy of the charging document by the United States Marshals Service prior to the initial appearance or, if not so received, by the Assistant United States Attorney at the initial appearance. When the accused is directed by summons to appear to answer to an indictment, information, or complaint, the United States Attorney's Office will provide a copy of the charging document along with the cover letter notifying him or her of the date to appear. When the accused is directed by summons to appear to answer to a petition to modify or revoke probation or supervised release, the United States Probation and Pretrial Services Office will provide a copy of the petition along with the cover letter notifying him or her of the date to appear.

IX. MISCELLANEOUS

- A. Compensation: Claims for compensation shall be submitted no later than 90 days after final disposition of the case, unless good cause is shown. Claims for compensation shall be submitted on the appropriate CJA form, to the office of the Federal Public Defender through the Court's eVoucher system. The CJA Panel Administrator within the Federal Public Defender Office shall review the claim form for mathematical and technical accuracy and for conformity with the Guide, Volume 7A, and, if correct, shall forward the claim form for the consideration of the appropriate District Judge or United States Magistrate Judge. The Court will exert its best effort to avoid delays in reviewing payment vouchers and submitting them for further processing.

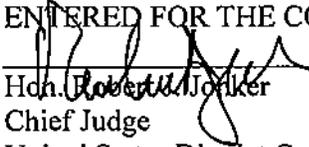
In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost, the Court may require development of a case budget consistent with the Guide, Volume 7A, Ch.2, §§ 230.26.10–20.

B. 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 Sixth Circuit.

ENTERED FOR THE COURT ON June 14 2017.



Hon. Robert A. Jonker
Chief Judge
United States District Court for the Western District of Michigan

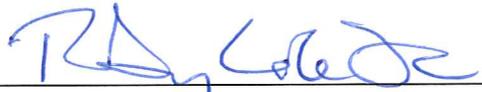
APPROVED BY THE JUDICIAL COUNCIL OF THE SIXTH CIRCUIT ON
_____ 2017.

Hon. R. Guy Cole, Jr.
Chief Judge
United States Court of Appeals for the Sixth Circuit

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, *et seq*, the foregoing revised Criminal Justice Act Plan for the United States District Court for the Western District of Michigan, has been duly received and approved via mail ballot dated September 25, 2017 as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said revised plan shall become effective upon the date of this approval.

This 18th day of October, 2017.



R. Guy Cole, Jr., Chief Judge