

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL JUSTICE ACT PLAN

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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 Judges of the United States District Court for the District of New Jersey 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 a crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representative, 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 AntiDrug Abuse Act of 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 this District.

B. Compliance

1. The Court, its Clerk, the Federal Public Defender Organization, 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 the Court with a then-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 Public Defender, and staff attorneys of the Federal Public 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 as defined in section 5031 of Title 18, United States Code;
 - 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 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 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 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 the 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 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. Waiver of Appointment of Counsel

1. In the event that an otherwise eligible person desires to waive representation by counsel, the Magistrate Judge or District Judge shall present to him or her a written waiver form. If the person executes such waiver, it shall be filed. If the person waives representation by counsel but refuses to execute a written waiver, the Magistrate Judge or District Judge will note such fact on the record. If the person admits, or the Magistrate Judge or District Judge finds after appropriate inquiry, that he or she is financially able to obtain counsel but declines to do so, the Magistrate Judge or District Judge shall note such fact on the record.
2. In the event a person waives representation by counsel and a Magistrate Judge or District Judge deems representation necessary, and the person qualifies for appointed counsel and agrees to be represented at least in part, “standby” counsel shall be appointed to assist the person in his or her defense.
3. When a person waives representation by counsel and is financially eligible, the Magistrate Judge or District Judge may appoint counsel, under the Court’s inherent authority, in the capacity of an expert or consultant to serve exclusively on behalf of the Court to protect the integrity and continuity of the proceedings.

C. When Counsel Shall Be Provided

Unless representation by counsel has been waived, 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 District Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a Magistrate Judge or District Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest. If, at any stage of the proceeding, a Magistrate Judge or District Judge finds that a party – for whom counsel has not previously been appointed under this Plan but who has retained his or her own attorney – subsequently becomes financially unable to provide for continued representation, the Magistrate Judge or District Judge may appoint counsel for such party.

D. 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, at least two attorneys should be appointed.
2. Qualifications Except as provided by Section 848(q)(7) of Title 21, United States Code, at least one attorney appointed in a capital case shall meet the qualification requirements set forth in sections 848(q)(5) and (6) of Title 21, United States Code. Pursuant to Section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under sections 848(q)(5) and (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 to the unique and complex nature of the litigation.

E. 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 Magistrate Judge after making appropriate inquiry concerning the person's financial condition. The test for the appointment of counsel is not indigence; it is the financial inability of a party to secure competent representation and to obtain an adequate defense.
2. On the basis of such inquiry, if the District Judge or Magistrate Judge finds that the person is financially unable to obtain counsel, the

District Judge or Magistrate Judge shall immediately direct his or her attention to the question of bail, adjourn the remainder of the proceeding forthwith, and appoint counsel as soon thereafter as is reasonably possible, as provided herein. Such appointment may be made retroactive to include any representation furnished pursuant to the Plan prior to appointment.

3. It shall be the duty of any person released on bail and for whom counsel is appointed to report to such appointed counsel at his or her office as promptly as possible, and not later than five days from the date of the Clerk's mailing of the order of appointment.
4. It shall be the duty of any attorney who is appointed to represent a person incarcerated at the time the appointment to communicate with that person at his or her place of incarceration as promptly as possible, and not later than five days from the date of the Clerk's mailing of the order of appointment.
5. No such person shall select his or her own counsel from the panel of attorneys, or otherwise. The selection of counsel shall be within the exclusive province of the District Judge or Magistrate Judge as provided herein.
6. The District Judge or Magistrate Judge shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.
7. The District Judge or Magistrate Judge may, in the interest of justice, substitute one or more appointed counsel for another at any stage of the proceedings before him or her.
8. Counsel appointed by a District Judge or Magistrate Judge shall represent the person in proceedings before the District Judge or Magistrate Judge and in all subsequent proceedings before the Court unless or until relieved by order of the District Judge or Magistrate Judge or the Court.
9. No counsel appointed hereunder shall seek or accept any fee from a person whom he or she represents. 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.

10. If, at any time after the appointment of counsel, the District Judge or Magistrate Judge finds that the person is financially able to obtain counsel, or make partial payment for his or her representation, the District Judge or Magistrate Judge may terminate the appointment of counsel or direct that payment by the person be made to the Court for deposit in the Treasury of the United States as a reimbursement under the provisions of Subsection (f) of the Act.
11. If at any stage of the proceedings the District Judge or Magistrate Judge shall find that a person for whom counsel has not been appointed previously under this Plan is financially unable to pay counsel whom he or she has retained, the District Judge or Magistrate Judge may appoint counsel in the same manner as hereinabove provided. Such appointment, if made from the panel of attorneys approved by the Court, may be made retroactive to include any representation furnished pursuant to the Plan prior to appointment.
12. If requested to do so by the person, counsel appointed under this Plan shall file a timely notice of appeal and shall continue to represent the person on appeal unless, or until, he or she is relieved by an appropriate order of the United States Court of Appeals for the Third Circuit.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

1. The Federal Public Defender Organization of the District of New Jersey, previously established in this district pursuant to the provisions of the Act, 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 throughout the district and shall maintain offices in Newark, Trenton and Camden, New Jersey.
3. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the Judicial Council of the Third Circuit for incompetency, misconduct in office or neglect of duty.
4. The Federal Public Defender may appoint, without regard to the provisions of Title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the Judicial Council of the Third Circuit and other personnel in such numbers as may be approved by the Director of the Administrative Office of the United States Courts.
5. Neither the Federal Public Defender nor any staff attorney appointed by him or her may engage in the private practice of law.

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.

VI. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. Establishment of CJA Panel

1. Approval

The existing previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the Act is hereby recognized. The CJA Panel is to be reconstituted within six months of the adoption of this Plan. The Court shall review the recommendations of the Panel Selection and Management Committee, established pursuant to Appendix I to the Criminal Justice Act Plan,

and approve attorneys for membership on the Panel who are competent to give effective representation to persons under the Criminal Justice Act. Members of the CJA Panel shall serve at the pleasure of the Court for a fixed term of years. The Court has established a separate panel for each of the Newark, Trenton and Camden vicinages. However, this division shall not prohibit the Court from appointing a panel member from one vicinage to serve in another vicinage nor prohibit the Court on the basis of geographic considerations from allowing a panel member to serve in more than one vicinage.

2. Size

The Court shall fix 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. The Court may from time to time redetermine the size of the CJA Panel to achieve these goals.

3. 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 to this CJA Plan.

4. 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 an accused is determined to be financially eligible for representation under the Act. “Substantial” shall usually be defined as approximately 25 percent of the appointments under the CJA annually throughout the district. A “case” should be deemed to be each proceeding actually docketed in the United States District Court. An Order granting a new trial should be deemed to initiate a new “case”.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254

Appointment of Counsel

The Court shall appoint the Office of the Public Defender for the State of New Jersey, the Federal Public Defender with his or her consent, or such other attorney who qualifies for appointment pursuant to section 848 (q) of Title 21, United States Code, to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of Title 28, United States Code.

VIII. 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, as described in the American Bar Association's Model Rules of Professional Conduct, as revised by the New Jersey Supreme Court, subject to such modifications as may be required or permitted by federal statute, regulation, court rule or decision of law.

C. Compensation – Filing of Vouchers

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of the Court. The Clerk of the 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 District Judge or Magistrate Judge. The Court will exert its best efforts to avoid delays in reviewing payment vouchers and in submitting them for further processing.

D. 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.

E. Continuing Representation

Once counsel is appointed under the CJA, counsel shall continue the representation until the matter is closed, including filing appropriate notices of appeal, representation on appeal, or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal); 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.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Person for Appointment of Counsel

Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the Act, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender who shall discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly presented before a Magistrate Judge or District Judge of this court for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview

Appointed counsel should be furnished to financially eligible defendants prior to the defendants being interviewed by a pretrial services or probation officer. If appointed counsel is not available within 30 minutes of notification of the defendant's arrival at the federal building, the pretrial services or probation officer may interview the defendant.

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, the United States Attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. 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. Amendments

Amendments to this Plan may be made from time to time, as adopted by a majority vote of the Judges of this Court. Any such amendment or amendments shall be subject to the approval of the Judicial Council of the Third Circuit, and shall become effective only upon and at the time of appropriate notice by it of such approval. The Clerk shall notify the Director of the Administrative Office of the United States

Courts promptly of any and all amendments to this Plan as may be made.

C. Rules of Construction

It shall be the policy and practice of this Court to construe and apply this Plan in manner and effect consistent with the purposes and provisions of the Criminal Justice Act, as well as such modification of this Plan as may be made from time to time by the Judicial Council of the Third Circuit. Provisions not contained in the Plan shall be governed and controlled by the Criminal Justice Act.

D. Supersession

This Plan supersedes all prior Criminal Justice Act Plans of this Court.

XI. EFFECTIVE DATE

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

ENTER FOR THE COURT ON SEPTEMBER 8, 1998.

ANNE E. THOMPSON, CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE THIRD CIRCUIT
ON SEPTEMBER 4, 1998.

CHIEF JUDGE, COURT OF APPEALS