

**FILED**  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

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

APR 2 1991

MURRAY L. HARRIS, CLERK  
BY Jay Handwerker

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 Eastern District of Texas 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 (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, the Death Penalty Resource Center, 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 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, and the Death Penalty Resource Center and staff attorneys of that 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 or 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 judge or United States magistrate 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 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 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 or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

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, 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.

D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or magistrate 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. FEDERAL PUBLIC DEFENDER ORGANIZATION

a. Establishment.

1. Pursuant to subsections (g)(1) and (g)(2)(A) of the CJA, the Federal Public Defender Organization for the Eastern District of Texas is hereby established. Upon organization of the federal public defender's office, the federal public defender shall notify this court that he or she is available to accept appointments for representation.
2. The Federal Public Defender Organization shall be capable of providing legal services throughout the district and shall maintain offices in Tyler and Beaumont, Texas.

- 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.

- C. Management of CJA Plan. The United States District Clerk shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel subject to the provisions of the Plan for the Composition, Administrators, and Management of the Panel of Private Attorneys under the Criminal Justice Act, found at Appendix I of this CJA Plan, until such time as the Chief Judge, in his discretion, shall determine that the federal public defender shall assume such responsibility.

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.
- D. Choice of Counsel by Defendant. Where counsel is appointed by the court from the CJA Panel, the Court is under no obligation to appoint a particular attorney solely because the defendant desires that attorney.

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

- A. Appointment of Counsel. The court shall appoint the federal public defender with his or her consent, or 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. The Death Penalty Resource Center may be appointed to assist such other counsel in providing representation; where no other counsel is available, the Death Penalty Resource Center may be appointed as counsel for the petitioner.

B. Death Penalty Resource Center

1. Establishment. The Texas Appellate Practice and Educational Resource Center in Austin, Texas, previously designated as a community defender organization pursuant to the provisions of the CJA, is hereby recognized as the Death Penalty Resource Center for the district.

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, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct and 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.

IX. 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 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 CJA, 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, arrange to have the person promptly presented before a magistrate or judge of this court for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview.

A person in custody shall have the right to appointed counsel at the pretrial services interview. The probation officer conducting the interview shall notify the person in custody of his right to have an attorney appointed if he is financially unable to afford counsel. If the person in custody states that he desires representation at that time but is unable to afford

counsel, the pretrial services interview being conducted shall terminate at that time. The person in custody shall then be taken before the appropriate judicial officer, who may make a determination as to the financial status of the person in custody and may appoint the Federal Public Defender or counsel from the panel of private attorneys if appointment of counsel is warranted.

- 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 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. 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. 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.

XI. EFFECTIVE DATE.

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

APPENDICES:

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

SIGNED this 18<sup>th</sup> day of December, 1990, for the Court.



CHIEF JUDGE, U. S. DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT on February 21, 1991



LYDIA G. COMBERREL, Secretary to the Council

APPENDIX I to the Model Criminal Justice Act Plan

COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF  
PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

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. 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, and the Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to 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. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, 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.

4. Terms. The CJA Panel established pursuant to this Plan will consist of those attorneys appointed by the Court. The term of service on the panel shall be determined by the Court for each attorney at the time of appointment. The Court may in its discretion appoint an attorney to an indeterminate term of service on the CJA panel.

5. Reappointment. A member of the CJA Panel appointed for a specific term of years shall not be eligible for reappointment to the panel for the one year period immediately following expiration of his or her term, unless waiver of this restriction is certified by the Court.

6. 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.

#### B. PANEL SELECTION COMMITTEE

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one magistrate, one attorney who is a member of the CJA Panel, and the Federal Public Defender. The Committee shall select its own Chairperson.

#### 2. Duties.

a. The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee shall also review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually

as to the continued availability and willingness of each panel member to accept appointments.

b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated, and shall be immediately eligible for reappointment notwithstanding the one-year restriction imposed by paragraph A(5) above, if applicable.

C. CJA TRAINING PANEL

The Panel Selection Committee may establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a "second chair" capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting 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.

II. SELECTION FOR APPOINTMENT

A. 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 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. 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 Federal Public or Community Defender office and private attorneys, according to the formula described in the CJA Plan for the District. The Chief Judge may, in his discretion, assign the responsibilities listed in this paragraph to the Federal Public Defender.

## B. METHOD OF SELECTION

Appointments from the list of private 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.

Upon the determination of a need for the appointment of counsel, the judge or magistrate shall notify the Clerk of Court or Federal Public Defender, where appropriate, of the need for counsel and the nature of the case.

The Clerk of Court or Federal Public Defender advise the judge or magistrate as to the status of distribution of cases, where appropriate, as between the Federal Public or Community Defender and the panel of private attorneys. If the magistrate or judge decides to appoint an attorney from the panel, the Clerk or Federal Public Defender shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge or magistrate.

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 may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate shall notify the Clerk of Court or Federal Public Defender 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 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 judge or magistrate.

# THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

## REVIEWING PANEL --- CRIMINAL JUSTICE ACT PLAN

The attached order, entered December 18, 1990, setting forth a revised Criminal Justice Act Plan for the Eastern District of Texas, having been reviewed by the Reviewing Panel of this Circuit, is approved.

Entered for the Reviewing Panel at New Orleans, Louisiana, this 21st day of February, 1991.

  
Lydia G. Comberrel  
Secretary to the Judicial Council  
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Charles Clark  
Henry A. Politz  
Carolyn D. King  
Sam D. Johnson  
Will Garwood  
E. Grady Jolly  
Patrick E. Higginbotham  
W. Eugene Davis  
Edith H. Jones  
Jerry E. Smith  
Morey L. Sear  
Frank J. Polozola  
Tom Stagg  
Neal B. Biggers, Jr.  
Henry T. Wingate  
Mary Lou Robinson  
Norman W. Black  
William Wayne Justice  
H. F. Garcia

(b) United States District Judge:

  
Robert M. Parker  
Chief United States District Judge  
Eastern District of Texas