

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

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), Section 3006A of Title 18, United States Code, Volume VII, the judges of the United States District Court for the Southern District of California, have adopted this Plan for any person financially unable to obtain adequate representation in connection with a criminal matter.

II. STATEMENT OF POLICY

This district plan provides for the furnishing of attorneys by a Community Defender Organization which shall be compensated for representation and services hereunder in accordance with Title 18, U.S.C. § 3006A(d) and (e) and related provisions. In addition, this plan provides for the continued appointment and compensation of private counsel in a substantial proportion of cases.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorney" includes private attorneys, and the community 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 charged with a petty offense (Class B or C misdemeanor) for which a sentence of confinement is authorized and the judge does not indicate he/she will not impose time in custody.
 - c. is a juvenile alleged to have committed an act of juvenile delinquency as defined in § 5031 of Title 18, United States Code;
 - d. is charged with a violation of probation, or faces a change of term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - e. is under arrest, when such representation is required by law;
 - f. is entitled to appointment of counsel in parole proceedings;
 - g. 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;
 - h. is subject to a mental condition hearing under chapter 313 of Title 18, United States Code;
 - i. is in custody as a material witness;
 - j. is seeking to set aside or vacate a death sentence under §§ 2254 or 2255 of Title 28, United States Code;

- k. 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 penal sentence under § 4109 of Title 18, United States Code;
 - l. is otherwise entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - m. 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 of confinement is not authorized; or for which the judge indicates confinement will not be imposed;
 - b. is seeking relief, other than to set aside or vacate a death sentence under §§ 2241, 2254, 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, 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 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.

A party deemed entitled to representation shall not have the right to select his or her appointed counsel from the attorneys of the community defender organization or from the panel of attorneys or otherwise.

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, the following applies:
 - a. Federal Capital Prosecutions. 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 director of the community defender organization.

b. Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.

c. Attorney Qualification Waiver. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience

necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness for the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Fact finding. Whenever the party states that he is financially unable to obtain counsel and desires the appointment of counsel, if the case is then pending before a magistrate judge, it shall be the duty of the magistrate judge to inquire into and to make a finding as to whether the defendant is financially able to obtain counsel. An appointment may be made retroactive to include any representation furnished prior to such appointment. The court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

All statements made by a defendant in such an inquiry shall be either (a) by affidavit sworn to before a district judge or magistrate judge, or (b) under oath in open court before a magistrate judge or a district judge.

2. Counsel (whether or not appointed under the Criminal Justice Act) for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his case may request such services in an ex parte application before a judge, or before a magistrate judge if the services are required in connection with a matter over which the magistrate judge has jurisdiction or if the district judge otherwise refers such application to a magistrate judge for findings and report.

Upon a finding, after appropriate inquiry in such ex parte proceeding, that the services are necessary, and that the person is financially unable to obtain them, the court, or the magistrate judge, as the case may be, shall authorize counsel or the community defender organization to obtain the services. The district judge or magistrate judge may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by statute. The statements made by or on behalf of the party in support of the request for services shall be made either by affidavit or under oath in open court before the magistrate judge or district judge.

3. If at any time after the appointment of counsel, the district judge or magistrate judge finds that the party is financially able to obtain counsel or make partial payment for the representation, he or she may terminate the appointment of counsel or order that any funds available to the party be ordered paid as provided in 18 U.S.C. § 3006A(f).
4. 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. The court will then take appropriate action which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such defendant.

V. FEDERAL COMMUNITY DEFENDER ORGANIZATION

- A. Federal Defenders of San Diego, Inc., previously established in

this district pursuant to the provisions of the CJA, is hereby recognized as the community defender organization for this district.

- B. The community defender organization shall be capable of providing legal services throughout the district and shall maintain an office in San Diego, California, and El Centro, California.
- C. Supervision of Defender Organization. The community defender 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.
- D. The court may nevertheless review the continued eligibility of Federal Defenders of San Diego, Inc. from time to time, and may at any time by order and on reasonable notice terminate the designation of Federal Defenders of San Diego, Inc. as the Community Defender Organization of the Southern District of California.

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, Requirements, and Management of the Private Attorney Panel under the Criminal Justice Act is found at Appendix I of this CJA Plan.
- C. Ratio of Appointments. The court, in its discretion, will

determine whether any party entitled to representation will be represented by an organization as described in Section V(A), or by a private attorney. Insofar as practicable, private attorney appointments will be made in at least 50 percent of the cases. For the sole purpose of allocation of cases as between private attorneys on the one hand, and an organization or organizations as described in Section V(A)., above, on the other, a "case" shall be deemed to be each proceeding actually docketed in the United States District Court.

- D. It shall be the duty of the clerk to provide the court with such current statistical data necessary to insure the proration of appointments as between private attorneys and organizations according to the formula described in Section C above.
- E. No appointed counsel may require, request or accept any payment or promise of payment or other valuable consideration for the representation of a defendant for whom he/she is appointed, unless such payment is approved by order of court.

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

The court shall appoint an attorney who qualifies for appointment pursuant to § 848(q) of Title 21, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under § 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, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct or other standards for professional conduct adopted by the Court.
- C. The Court may from time to time make such inquiries and request such information as may be needed to insure effective and competent representation, and reserves the right to remove any counsel in order to serve the effective administrative of justice.

The magistrate judge or district judge before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings before him or her.

- 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.

IX. MISCELLANEOUS

- A. 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 district 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.

- B. Effective Date. This Plan supersedes all prior Criminal Justice Act Plans of this court and will be effective when approved by the Judicial Council of the Ninth Circuit.

APPENDIX I
PLAN FOR THE COMPOSITION, REQUIREMENTS,
AND MANAGEMENT
OF
CJA PANEL ATTORNEYS FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

I

Pursuant to the Criminal Justice Act (“CJA”) the Chief Judge of the court shall appoint a committee made up of judges and magistrate judges who will administer, govern and appoint attorneys to the CJA panel.

II

The committee shall make application to the panel available to all qualified attorneys. The committee, together with any appropriate committee, will make efforts to attract new panel members, women and minority applicants.

III

Attorneys appointed to the CJA panel will serve for a period of two years. The committee may in its discretion reappoint attorneys to the panel for another two-year term. There are no limits to the number of terms that an attorney may serve on the panel.

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IV

Appointments to the panel shall be made once each year for a term to begin December 1 of each year.

V

The committee may make additional appointments or remove members of the panel at its discretion.

VI

In order to qualify for appointment to the panel, attorneys must:

1. Have read and be familiar with the Local Rules of Court for the Southern District of California; and
2. Assist and cooperate in the administration of this program; and
3. Understand and agree to abide by the rules for the CJA voucher preparation (as it relates to declarations under penalty of perjury); and
4. Prior to appointment to this panel, be qualified with reference to experience and education as follows, under one of the following alternatives:

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- A. Have practiced at least five (5) years in the United States District Court with primarily a criminal practice; or
- B. Have for the entire last two years practiced for and been employed by either of the following:
 - (1) The criminal division of the Office of the United States Attorney; or
 - (2) Federal Defenders of San Diego, Inc.
- C. Have practiced at least five (5) years in a court of competent jurisdiction; and
 - (1) In the last two (2) years have second-chaired an attorney in the United States District Court;
 - (2) Within two (2) years have second-chaired an attorney in the United States District Court:
 - (a) in two felony trials; and
 - (b) in four sentencing hearings in which the United States Sentencing Guidelines are applicable.

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5. Have in the last two years prior to appointment earned at least twelve (12) hours of MCLE credit in the area of criminal procedure.

Attendance at the Criminal Justice Act Seminar presented by Federal Defenders of San Diego, Inc. is mandatory prior to initial appointment.

APPENDIX II

CRIMINAL JUSTICE ACT ADVISORY COMMITTEE

A committee of attorneys who are members of the bar of this Court and engage in the practice of criminal law will advise the Judges of the Court and make recommendations on:

- (1) the applications of attorneys who apply to be members of the Criminal Justice Act Panel (see Appendix I); and
- (2) any other matter that will effect the improvement of the Panel.

The committee will be known as the Criminal Justice Act Advisory Committee and will be composed of seven members, one of whom will be the Chair. The members will be selected by the District Judges and will serve two-year terms, which may be renewed.

The Chair of the Committee will serve as the Criminal Justice Act Representative for the Court.