

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Under the Criminal Justice Act of 1964, as amended, (CJA), 18 U.S.C. § 3006A and the *Guidelines for Administering the CJA and Related Statutes (CJA Guidelines)* (located in the *Guide to Judiciary Policy (Guide)*, Volume 7A), the judges of the United States District Court for the District of Minnesota, 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 must be administered so that those accused of crime, or otherwise eligible for services under the CJA, will not be deprived of an adequate defense because they cannot afford to hire an attorney.
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 *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 must comply with the *CJA Guidelines* approved by the Judicial Conference of the United States (or its Committee on Defender Services) and with this Plan.
2. The Federal Public Defender must provide each private attorney a copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the panel of private attorneys appointed under the CJA (CJA Panel). The Federal Public Defender must maintain a current copy of the *CJA Guidelines* for the use of the CJA Panel and must make known its availability to such attorneys.

The Federal Public Defender must also ensure that a current copy of this Plan is posted on the website of the U.S. District Court, District of Minnesota.

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. Circumstances.

1. Mandatory. Representation must be provided for any financially eligible person who:
 - a. is charged with a felony or 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 (*see Guide*, Vol. 7A, § 210.20.10(e));
 - 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 in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109; and
 - k. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or faces loss of liberty in a case and federal law requires the appointment of counsel (*see Guide*, Vol. 7A, § 210.20.10(i)).
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 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 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 or 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 standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and is represented by counsel under this Plan in connection with a related criminal case. In such an event, the Court may authorize counsel to represent the person with respect to the forfeiture claim.

3. Other. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings under 28 U.S.C. § 3006A(c).

B. When Counsel Must Be Provided. Counsel must be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a district judge or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, or when a district judge or magistrate 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 sufficiently difficult. In a capital case, the following applies:
 - a. *Federal Capital Prosecutions*. Under 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 must be learned in the law applicable to capital cases. Under 18 U.S.C. § 3599(a)(1), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

- b. *Habeas Corpus Proceedings.* Under 18 U.S.C. § 3599(a)(2), 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 attorneys.

2. Qualifications. Qualifications for appointed counsel must be determined by the court. In capital cases, the following also applies:

- a. *Appointment of Counsel Prior to Judgment.* Under 18 U.S.C. § 3599(b), 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 trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Under 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court will consider the recommendation of the Federal Public Defender.

- b. *Appointment of Counsel After Judgment.* Under 18 U.S.C. § 3599(c), 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 felony-case appeals in that court.
- c. *Attorney Qualification Waiver.* Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, or 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 district judge or magistrate

judge after making appropriate inquiries concerning the person's financial condition.

2. 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 must advise the court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment.

1. The Federal Public Defender Organization (FDO) of the District of Minnesota, previously established in this district under the provisions of the CJA, is hereby recognized as the federal public defender organization for this district.
2. The FDO must be capable of providing legal services throughout the district and must maintain a staffed office in Minneapolis, Minnesota, and such other unstaffed offices as may be necessary.

B. Supervision of the FDO. The Federal Public Defender is responsible for the supervision and management of the FDO. Accordingly, the Federal Public Defender must 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 Panel. The Federal Public Defender is 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, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act*, found in the Appendix of this Plan.

VI. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The existing, previously established CJA Panel, consisting of attorneys 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 in the Appendix of this Plan.

- C. **CJA Panel Representation.** Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA.

VII. DUTIES OF APPOINTED COUNSEL

- A. **Standards.** The services to be rendered to a person represented by appointed counsel must be commensurate with those rendered if counsel were privately employed by the person.
- B. **Professional Conduct.** Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Minnesota Rules of Professional Conduct, as required under LR 83.6.
- C. **No Receipt of Other Payment.** Appointed counsel must 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 must continue the representation until: (1) the matter, including appeals or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal), is closed; (2) substitute counsel has filed a notice of appearance; (3) an order has been entered allowing or requiring the person represented to proceed *pro se*; or (4) the appointment is terminated by court order.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. **Presentation of Accused for Appointment of Counsel.** Federal law enforcement and prosecutorial agencies, federal probation officers, and those acting on their behalf, must 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. In such cases in which the person indicates that he or she is not able, the Federal Public Defender must be notified of that fact. The Federal Public Defender will discuss with the person the right to representation and the right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a district judge or magistrate judge of this court for determination of financial eligibility and appointment of counsel.
- B. **Pretrial Interview.** The Court recognizes the importance of the advice of counsel for

persons subject to proceedings under 18 U.S.C. §§ 3142-3149, before they are interviewed by a probation officer. Accordingly, all law enforcement and related agencies must:

1. Advise all such persons of their right to counsel as provided in this Plan; and
 2. Make every reasonable effort to ensure that such persons have consulted with counsel or have had the opportunity to consult with counsel before the probation officer conducts the interviews, having due regard for the importance of affording the probation officer adequate time to conduct the interview and verify information before the bail hearing.
- 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 or supervised release, the Clerk of Court, the United States Attorney, or the probation officer, as appropriate, must immediately serve 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.

IX. MISCELLANEOUS

- A. **CJA eVoucher.** Effective, April 13, 2015, all CJA Panel attorneys and CJA service providers must use CJA eVoucher to submit claims for reimbursement. CJA eVoucher will properly route the reimbursement claims to the FDO and the appropriate judicial officer.
- B. **CJA Voucher Processing.**
1. Voucher Entry. CJA Panel attorneys and other CJA service providers must submit all vouchers in CJA eVoucher in accordance with the instructions provided by the FDO.
 2. Voucher Review. In CJA eVoucher, the FDO must first review all requests for reimbursement for mathematical and technical accuracy and for conformity with the *CJA Guidelines*. After the FDO approves a claim, the claim is automatically forwarded to the appropriate judicial officer for his or her approval. The FDO and the Court will exert their best efforts to avoid delays in reviewing claims.
- C. **Investigative, Expert, and Other Services**

1. Upon Request. 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 or her case may request such services in an ex parte application before a judicial officer. Upon finding that the services are necessary and that the person is financially unable to obtain them, the Court may authorize counsel to obtain the services. The district judge or magistrate judge (and circuit judge in cases exceeding the case-compensation maximums) may limit the amount to be expended or promised for such services under 18 U.S.C. § 3006A(e)(3).
2. Without Prior Request. Counsel appointed under the CJA may obtain (subject to later review), investigative, expert, or other services without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization, however, may not exceed the case-compensation maximums authorized by the Judicial Conference. Failure to obtain prior authorization may result in the disallowance of any amount claimed for compensation in excess of the case-compensation maximum, unless the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization under 18 U.S.C. § 3006A(e)(2).

X. EFFECTIVE DATE

This Plan supersedes all prior Criminal Justice Act Plans of this Court. This plan is effective when approved by the Judicial Council of the Eighth Circuit.

APPENDIX:

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

Dated this 8th day of May, 2015.

BY THE COURT:



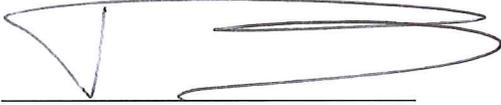
Michael J. Davis
Chief Judge, U.S. District Court



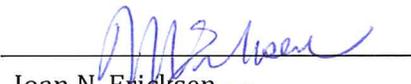
John R. Tunheim
Judge, U.S. District Court



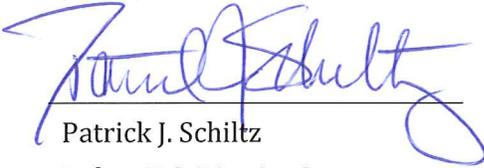
Ann D. Montgomery
Judge, U.S. District Court



Donovan W. Frank
Judge, U.S. District Court



Joan N. Ericksen
Judge, U.S. District Court



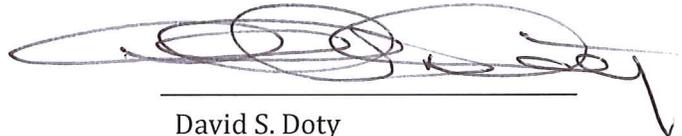
Patrick J. Schiltz
Judge, U.S. District Court



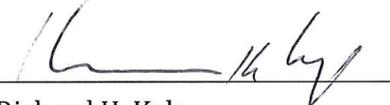
Susan Richard Nelson
Judge, U.S. District Court



Paul A. Magnuson
Judge, U.S. District Court



David S. Doty
Judge, U.S. District Court



Richard H. Kyle
Judge, U.S. District Court

APPENDIX

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

A. **CJA Panel**

1. Establishment. The panel of private attorneys who were previously approved by the Court as eligible and willing to be appointed to provide representation under the CJA is hereby recognized as the CJA Panel for this district.
2. Panel Membership.
 - a. *Approval.* Court approval is required to become a member of the CJA Panel.
 - b. *Term.* Members of the CJA Panel serve at the discretion of the Court.
 - c. *Panel Representative.* The Court must select from the CJA Panel an attorney to act as Panel Representative for a three-year term.
 - d. *Size.* The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members 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 to Join CJA Panel.
 - a. *Requirements.* To serve on the CJA Panel, an attorney must:
 - i. Be a member in good standing of this Court's bar;
 - ii. Have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedures, the Federal Rules of

Evidence, and the Sentencing Guidelines; and

iii. Have trial experience.

b. *Application.* A private attorney interested in becoming a CJA Panel member must submit a completed application to the Federal Public Defender.

c. *Unique circumstances.* When a district judge or magistrate judge determines that the appointment of an attorney who is not a member of the CJA Panel is in the interests of justice, judicial economy, continuity of representation, or some other circumstance warranting his or her appointment, the attorney may be appointed to represent the CJA-eligible defendant. 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.

4. CJA Panel Selection Committee.

a. *Membership.* The CJA Panel Representative must select a Panel Selection Committee. The Panel Selection Committee must be comprised of the CJA Panel Representative and at least four other CJA Panel members who represent a geographical cross-section of the District.

b. *Duties.*

i. *Meetings.* The Panel Selection Committee must meet at least once every other year or more often, if required by the CJA Panel Representative.

ii. *Committee work.* The Panel Selection Committee must do the following at least once every other year:

- Review all submitted CJA Panel applications and provide a recommendation for the Court as to whether each applicant meets the eligibility requirements to become a CJA Panel member.
- Inquire as to the continued availability and willingness of each CJA Panel member to accept appointments.
- Review the operation and administration of the CJA Panel, and recommend to the Court any changes it deems necessary or appropriate.

- iii. **Work product.** The Committee's recommendations and updated CJA Panel member list must be provided to the Federal Public Defender who will forward the list with his or her comments and additions to the Chief Judge.
5. **Selection.** The Court will select the members of the CJA Panel, taking into consideration the recommendations of the Panel Selection Committee and the Federal Public Defender.
6. **Roster.** The Federal Public Defender is responsible for maintaining the current CJA Panel roster that has been approved by the Court.

B. Panel Assignments.

1. **Referral to the FDO.** After a district judge or magistrate judge determines that a person is eligible for representation under the CJA, the judge must refer the case to the FDO for its recommendation concerning the appointment of counsel.
2. **Federal Public Defender Duties.** The Federal Public Defender must screen all cases that are referred to the Organization and recommend appointment of a particular private attorney or an FDO staff attorney. The Federal Public Defender must prepare all necessary forms and proposed orders to accomplish the appointment. The Federal Public Defender must maintain a record of all CJA Panel appointments made under the Plan.
3. **Order Appointing Counsel.** All proposed orders appointing counsel must be submitted to the district judge or magistrate judge to sign and enter.
4. **Direct Court Appointments.** When a district judge or magistrate judge determines that a person eligible for representation under the CJA should be represented by a particular CJA Panel Member or other experienced attorney, the judge must immediately report that appointment to the Federal Public Defender.

C. CJA Second Chair Program (Mentor Program)

In an effort to further develop and strengthen the District's CJA Panel, on November 9, 2006, the Court authorized and funded the Second Chair Program, to be administered by the FDO. The program provides training and mentoring for attorneys who do not yet possess the requisite experience to serve on the CJA Panel. Attorneys chosen to participate in this program, assist experienced panel attorneys

or FDO attorneys in a “second chair” capacity, in order to gain experience in federal criminal cases. For additional information regarding this program, consult the “District of Minnesota: Criminal Justice Act Second Chair Program Guidelines.”

United States Courts
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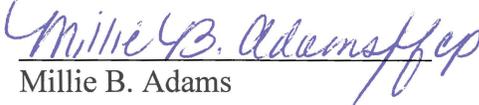
Millie B. Adams
Circuit Executive

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EIGHTH CIRCUIT JUDICIAL COUNCIL

ORDER

I hereby certify that the Eighth Circuit Judicial Council has approved the amended Criminal Justice Act Plan for the District of Minnesota which was adopted by the court on May 8, 2015.


Millie B. Adams
Circuit Executive

St. Louis, Missouri
May 29, 2015

cc: Judicial Council Members
Chief Judge Michael J. Davis
Richard D. Sletten, Clerk of Court
Katherian D. Roe, Federal Public Defender
Administrative Office

Approval was given by the Defender Services Committee (CJA).

JCO 2637