

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

**CRIMINAL JUSTICE ACT PLAN
(As Amended)**

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), Title 18, United States Code, § 3006A, 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 Minnesota, adopt this plan for furnishing representation in the 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 Title 21, United States Code, § 848(q)), the Civil Asset Forfeiture Reform Act of 2000, 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 Federal Public Defender 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

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of Private Attorneys under the Criminal Justice Act (CJA Panel). The Federal Public Defender 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. Circumstances.

- 1. **Mandatory.** Representation shall 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 Title 18, United States Code, § 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 an unfavorable 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 Title 18, United States Code, Chapter 313;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under Title 28, United States Code, §§ 2254 or 2255;

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- j. is entitled to appointment of counsel in connection with prisoner transfer proceedings under Title 18 U.S.C. § 4109;
 - k. is entitled to appointment of counsel under the Sixth Amendment of the United States 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 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 Title 28, United States Code, §§ 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, a civil or criminal contempt proceedings, 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 Title 18, United States Code, Chapter 209;
 - 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.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

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- 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 Judge or Magistrate Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a 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, at least two attorneys must be appointed.
 2. **Qualifications.** Except as provided by Title 21, United States Code, § 848(q)(7), at least one attorney appointed in a capital case shall meet the qualification requirements set forth in Title 21, United States Code, §§ 848(q)(5) and (6). Pursuant to § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under §§ 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. In assigning counsel in a capital case, the Court shall consider the recommendation of the Federal Public Defender for the District of Minnesota as provided in 18 U.S.C. § 3005.
- 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 federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.
 2. **Change in Eligibility.** If at any time after the appointment of counsel, the Court finds that the party is financially able to obtain counsel or to make partial payment for the representation, the Court may terminate the appointment of counsel or order that any funds available to the party be paid as provided in 18 U.S.C. § 3006A(f).

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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 District of Minnesota was established by this Court in its CJA Plan adopted June 1, 1978.
 2. The Federal Public Defender Organization shall maintain a staffed office in Minneapolis, Minnesota and such other unstaffed offices as may be necessary.
- 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 Panel. The Federal Public Defender 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, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act*, found in the Appendix of this CJA Plan.

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 in the Appendix of this CJA Plan.

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- C. Ratio of Appointments. 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 CJA.

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 the Rules of Professional Conduct as adopted by the United States District Court for the District of Minnesota.
- 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.

VIII. 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, notify the Federal Public Defender who shall discuss with the person the right to representation and right to appointed counsel, and if

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appointment of counsel seems likely, arrange to have the person promptly presented before a Judge or Magistrate Judge of this Court for determination of financial eligibility and appointment of counsel, or assist in the completion of a financial affidavit (CJA Form 23) for the Court's review.

B. Pretrial Services Interview.

1. The Court recognizes the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. § 3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, all law enforcement and related agencies shall:

a. advise any such person of his or her right to counsel as provided in this Plan;

b. having due regard for the importance of affording the pretrial service officer adequate time to interview the defendant and verify information prior to the bail hearing, make every reasonable effort to insure that such person has consulted with counsel or has had the opportunity to consult with counsel prior to such interview.

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, 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.

IX. 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

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the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

- B. Claims. Advance authorizations and final payments pertaining to the CJA shall be routed through the Office of the Federal Public Defender. 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 for the consideration of the appropriate 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.
- 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 Judge or Magistrate Judge. Upon finding that the services are necessary and that the person is financially unable to obtain them, the Court shall authorize counsel to obtain the services. The Judge or Magistrate Judge (and Circuit Judge in cases exceeding the monetary threshold) may establish a limit on the amount which may be expended or promised for such services pursuant to 18 U.S.C. § 3006A (e)(3).
 2. **Without Prior Request.** Counsel appointed under the Criminal Justice Act 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 a maximum of \$300 and expenses reasonably incurred. Failure to obtain prior authorization will result in the disallowance of any amount claimed for compensation in excess of \$300, unless the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization pursuant to 18 U.S.C. § 3006A(e)(2).

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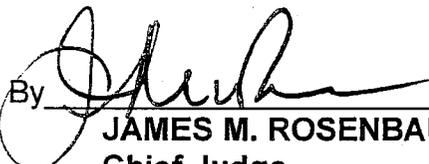
X. EFFECTIVE DATE

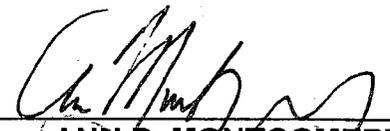
This Plan supersedes all prior Criminal Justice Act Plans of this Court. This plan shall become effective when approved by the Judicial Council of the Eighth Circuit.

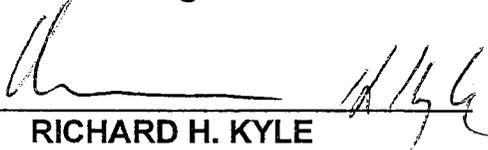
APPENDIX:

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 10th day of December, 2002.

By 
JAMES M. ROSENBAUM
Chief Judge

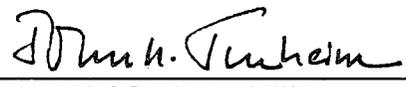
By 
ANN D. MONTGOMERY
District Judge

By  1/14/02
RICHARD H. KYLE
District Judge

By 
DONOVAN W. FRANK
District Judge

By 
MICHAEL J. DAVIS
District Judge

By 
JOAN E. LANCASTER
District Judge

By 
JOHN R. TUNHEIM
District Judge

APPROVED BY THE JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

On the 23 day of January, 2002.

By 
DAVID R. HANSEN
Chief Judge
United States Court of Appeals
for 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

I. **COMPOSITION OF PANEL OF PRIVATE ATTORNEYS**

A. CJA Panel

1. Approval. The Court shall establish a panel of private attorneys (hereafter referred to as the “CJA Panel”) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act (the “Act”). The Court shall approve attorneys for membership of the CJA Panel after receiving recommendations from the Panel Selection Committee, established pursuant to this Plan. Members of the CJA Panel shall serve at the discretion of the Court.
2. Size. 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.
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 Procedures, 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 defender organization furnishing representation pursuant to the plan.

However, when a Judge or Magistrate Judge 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 circumstance warranting his or

her appointment, the attorney may be appointed to represent the CJA eligible defendant. 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. Members of the CJA Panel shall serve indefinitely and continuously at the discretion of the Court. Members of the current CJA Panel shall automatically become members of the CJA Panel established by this Plan.

5. Case Assignments.
 - a. After making a determination that a person is eligible for representation pursuant to the Act, the Judge or Magistrate Judge, shall, whenever practical, refer the person to the Federal Public Defender's Office for its recommendation concerning appointment. Any appointments made directly by the Court shall be reported to the Federal Public Defender so that he can insure that the private attorneys are appointed in a substantial proportion of the cases.
 - b. The Federal Public Defender shall maintain a current roster of the CJA Panel and shall initially screen the cases and recommend appointment of a particular attorney or the Federal Public Defender's Office. The Federal Public Defender shall prepare the necessary forms to accomplish the appointment and submit them to the Court. The Federal Public Defender shall maintain a record of all CJA Panel appointments pursuant to the Plan.

6. Panel Selection.
 - a. Membership. All applications by private attorneys to become members of the CJA Panel shall be submitted to the Federal Public Defender. Approximately every 18 months, the Federal Public Defender shall furnish the Panel Selection Committee those applications for the Committee's review for appointment to the CJA Panel.

b. Panel Selection Committee.

1. Membership. A Panel Selection Committee shall be chosen by the CJA Panel Representative. The Committee shall consist of CJA Panel members chosen to represent a geographical cross-section of the District.
2. Duties. The Panel Selection Committee shall meet at least once every 18 months to consider applications. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified.

At its meeting, the Committee shall also review the operation and administration of the CJA Panel, and recommend to the Court any changes it deems necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire as to the continued availability and willingness of each CJA Panel member to accept appointments.

3. The Committee shall refer their recommendations to the Federal Public Defender who will forward the list with his or her comments and additions to the District Court.
4. The District Court will select the members of the CJA Panel taking into consideration the recommendations of the Panel Selection Committee and the Federal Public Defender.

B. CJA TRAINING PANEL

The District Court will select members to the CJA Training Panel taking into consideration the recommendations of the Panel Selection Committee and the Federal Public Defender. Attorneys new to the CJA Panel will serve a minimum of one term on the CJA Training Panel.

C. CJA SENIOR PANEL

The District Court may designate a "Senior Panel" to consist of

experienced attorneys who are eligible for complex or specialized case appointments.

D. CJA PANEL REPRESENTATIVE

The District Court will select from the panel an attorney to act as Panel Representative for a three-year term.

II. CLAIMS

Claims for compensation shall be submitted, on the appropriate CJA Form, to the office of the Federal Public Defender. The Federal Public Defender 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 Chief Judge or Chief Magistrate Judge. All such forms shall be maintained by the Federal Public Defender.

United States Courts
Judicial Council of the Eighth Circuit
Thomas F. Eagleton United States Courthouse
111 South 10th Street - Suite 26.325
St. Louis, Missouri 63102-1116

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Circuit Executive

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MINNEAPOLIS, MN
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EIGHTH CIRCUIT JUDICIAL COUNCIL

O R D E R

I hereby certify that the Eighth Circuit Judicial Council has approved the amended Criminal Justice Act Plan for the United States District Court, District of Minnesota.



Millie B. Adams
Circuit Executive

St. Louis, Missouri
January 23, 2003

cc: Judicial Council Members
Chief Judge James M. Rosenbaum
Richard D. Sletten, Clerk
Administrative Office

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

SPO1544