

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

REVISED PLAN OF APRIL, 2004

**FOR FURNISHING REPRESENTATION PURSUANT TO
THE CRIMINAL JUSTICE ACT OF 1964 (18 U.S.C. § 3006A)**

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
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, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the judges of the United States District Court for the Eastern District of Louisiana, adopt this amended Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of a crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate 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 office of the federal public defender, 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 of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk and 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 necessary for an adequate defense.

B. "Appointed attorney" includes private attorneys, the Federal Public Defender and staff attorneys of the Federal Public Defender organization.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
 - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of title 28, United States Code;
 - c. is charged with civil or criminal contempt 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 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; or
- g. is in any other circumstances in which a judge of the district court, or a magistrate judge believes the appointment of counsel would be appropriate.

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 judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge 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 or complex. 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 always consider appointing two or more 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 Federal Public Defender.

- 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 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 federal judge or magistrate judge 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. The Federal Public Defender's office for the Eastern District of Louisiana, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender organization for this district.
2. The Federal Public Defender organization shall be capable of providing legal services throughout the district, and shall maintain an office in New Orleans, Louisiana.

- 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 at Appendix I 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 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.

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

The court shall appoint the Federal Public Defender or another attorney who qualifies for appointment pursuant to section 848(q) of title 21, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's *Model Rules of Professional Conduct* or the American Bar Association's *Model Code of Professional Conduct* and any other standards for professional conduct adopted by the Court.
- 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 (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. 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 appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. Prior to any probation officer or pretrial services officer interviewing a person subject to proceedings under 18 U.S.C. § 3142 et. seq., the officer shall ask any person who is in custody, or who otherwise may be entitled to counsel under the Criminal Justice Act, whether he or she is financially able to secure representation. In those cases where the person says that he or she is unable to do so, the officer shall notify the Federal Public Defender. The Federal Public Defender or his or her representative may offer advice to the person prior to the pretrial interview or may also attend the interview itself for the purpose of providing assistance. If a representative from the Federal Public Defender chooses to be present for the interview, he or she must report promptly to the interview so as to afford the pretrial services officer adequate time to complete the interview and verify information prior to the court appearance. Should there be no one available from the Federal Public Defender's office who can promptly appear, or should the Federal Public Defender choose not to appear, the pretrial officer may begin and complete the 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, 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 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 form 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. 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.

APPENDIX:

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

ENTERED FOR THE COURT on this _____ day of _____, 2004.

CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT on this _____, day of _____, 2004.

CHIEF JUDGE, COURT OF APPEALS

APPENDIX I

PLAN FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA FOR THE 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's Panel Selection Committee, presently consisting of one magistrate and three district court judges, shall approve attorneys for membership on the panel after receiving recommendations from the Federal Public Defender and the CJA Panel Representative for the district. 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. As of the effective date of this plan, the panel is hereby fixed at a maximum number of 100 members.
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.

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. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
- B. 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 Federal Public Defender.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Federal Public Defender shall maintain a current list of all attorneys included on the CJA panel, with current office addresses, telephone numbers, and e-mail addresses. The Federal Public Defender shall furnish a copy of this list to each judge and magistrate judge. The Federal Public Defender shall also maintain a record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender's office and private attorneys, according to the formula described in the CJA plan for the District.

B. METHOD OF SELECTION

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's or the Federal Public Defender's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, language skills 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 judge shall notify the Federal Public Defender of the need for counsel and the nature of the case.

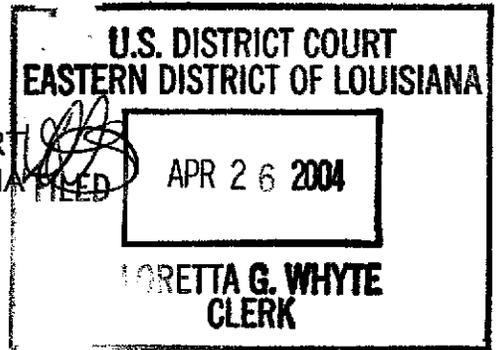
The Federal Public Defender shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the panel of private attorneys. If the magistrate judge or judge decides to appoint an attorney from the panel, the Federal Public 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 judge.

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 judge 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 judge shall notify the 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 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 presiding judge or magistrate judge.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA



ORDER

IT IS ORDERED that the Plan of the United States District Court for the Eastern District of Louisiana adopted pursuant to the Criminal Justice Act of 1964, as amended, is hereby abrogated, and the attached Revised Plan of February, 2004 for Furnishing Representation Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) is adopted in its place.

New Orleans, Louisiana, this 26th day of April, 2004.


HELEN G. BERRIGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

REVIEWING PANEL --- CRIMINAL JUSTICE ACT PLAN

The foregoing and attached Order, entered April 8, 2004 amending the Criminal Justice Act Plan for the Eastern District of Louisiana, having been reviewed by the Reviewing Panel of this Circuit, is approved.

Entered for the Reviewing Panel at New Orleans, Louisiana, this 9th day of July, 2004.



Gregory A. Nussel
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:

Carolyn D. King
Edith H. Jones
E. Grady Jolly
W. Eugene Davis
Jerry E. Smith
Emilio M. Garza
Harold R. DeMoss, Jr.
Fortunato P. Benavides
Edith Brown Clement
Edward C. Prado
Stanwood R. Duval, Jr.
James J. Brady
Rebecca F. Doherty
W. Allen Pepper, Jr.
Henry T. Wingate
Sidney A. Fitzwater
Hayden W. Head, Jr.
Thad Heartfield
W. Royal Furgeson, Jr.

(b) United States District Judge:



Helen G. Berrigan
Chief United States District Judge
Eastern District of Louisiana