

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

**CRIMINAL JUSTICE
ACT PLAN**



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FOR THE SOUTHERN DISTRICT OF ILLINOIS
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I. AUTHORITY

Pursuant to the *Criminal Justice Act of 1964*, as amended, (CJA), Section 3006 of Title 18 United States Code, and the *Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guidelines to Judiciary Policies and Procedures*, (CJA Guidelines), the Judges of the United States District Court for the Southern District of Illinois, adopt the Criminal Justice Act Plan (hereinafter referred to as "Plan") for furnishing representation in this Court for any person financially unable to obtain adequate representation in accordance with the Criminal Justice Act.

II. STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the idea 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 §848(q) of Title 21 U.S.C.), and the CJA Guidelines in a way that meets the needs of this District.

B. Compliance

1. The Court, its Clerk, the Federal Public Defender Organization, the Capital Resource Center and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the Clerk of Court with a then current copy of this Plan, upon the attorneys first appointment under the CJA or designation as a member of the panel of private attorneys under the Criminal Justice Act (hereinafter referred to as "CJA Panel"). The Clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed Attorney" includes private attorneys, the Federal Public Defender, and staff attorneys of the Federal Public Defender Organization created hereunder, the Director and Staff Attorneys of the Capital Resource Center of the State of Illinois Appellate Defender (hereinafter referred to as the "Capital Resource Center"), and, the Federal Public Defenders and staff attorneys of the Federal Public Defender Organizations serving the Eastern District of Missouri and Central District of Illinois.

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 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, 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 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 proceeding, or loss of liberty;
 - e. is proposed by the United States attorney for processing under a pretrial diversion program; or
 - 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 earlier.

C. Number and Qualifications of Counsel

1. **Number.** More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, at least two attorneys should be appointed.
2. **Qualifications.** Except as provided by Section 848(q)(7) of Title 21, United States Code, at least one attorney appointed in a capital case shall meet the qualification requirements set forth in Sections 848(q)(5) and (6) of Title 21, United States Code. Pursuant to Section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under Sections 848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the

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

D. Eligibility for Representation

1. **Factfinding.** The determination of eligibility for representation under the CJA is a judicial function to be performed by a District 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 for the Southern and Central Districts of Illinois and the Eastern District of Missouri has heretofore provided representation in this District under the Criminal Justice Act and has established offices in East St. Louis, Illinois and Benton, Illinois. That portion of the aforementioned office and the staff thereof located in the Southern District of Illinois is hereby recognized as the Federal Public Defender Organization for the Southern District of Illinois.
2. The Federal Public Defender Organization for the Southern District of Illinois shall be capable of providing legal services throughout the District. The office shall be permitted to provide representation to persons entitled to representation under the Criminal Justice Act in the Central District of Illinois and the Eastern District of Missouri, when appointed by a District Judge or Magistrate Judge in those Districts and when such representation will not compromise the ability of the Federal Public Defender Organization to carry out its duties in this District.
3. The Federal Public Defender Organizations for the Eastern District of Missouri and Central District of Illinois (when established) shall be permitted to provide representation to persons entitled to representation under the Criminal Justice Act in the Southern District of Illinois, to the extent that such organizations are capable of providing such representation, upon the request and appointment of a District Judge or Magistrate Judge in this District.

B. Supervision of Defender Organization

The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization for the Southern District of Illinois, including, but not limited to, the subsequent assignment of cases to staff attorneys in his discretion.

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 to a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA.

VII. FEDERAL DEATH HABEAS CORPUS CASES AND FEDERAL CAPITAL PROSECUTIONS

- A. Appointment of Counsel.** The Court shall appoint the Director, Capital Resource Center, or a member or members of the Special Death Penalty Habeas Corpus Panel (where applicable) maintained by the Capital Resource Center or other attorney who qualifies for appointment pursuant to Section 848(q) of Title 21 U.S.C. to represent financially eligible persons charged with a crime which may be punishable by death, including federal capital prosecutions and any post-conviction proceeding under Section 2254 or 2255 of Title 28, U.S.C., seeking to vacate or set aside a death penalty.
- B. Capital Resource Center.** The court in its Addendum to the Plan for the Implementation of the Criminal Justice Act of 1964, dated December 22, 1989, has previously recognized the Capital Resource Center, located in Evanston, Illinois, previously designated as a community defender organization, pursuant to the provisions of the Criminal Justice Act as the Capital Resource Center for this district. To the extent that that addendum does not conflict with other provisions of this plan, its provisions are reaffirmed and it is attached as Addendum II to this plan.

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 Illinois Rules of Professional Conduct, or the American Bar Association's Model Rules of Professional Conduct, when not in conflict with the Illinois Rules or Rules of this 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, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. **Presentation of Accused for Appointment of Counsel.** Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, arrange to have the person promptly presented before a Magistrate Judge or District Judge of this court for determination of financial eligibility and appointment of counsel.
- B. **Pretrial Services Interview.** 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, except when the provision of counsel would unduly delay a bail determination by a District Judge or Magistrate Judge, the pretrial services officer or probation officer shall advise the Federal Public Defender that a pretrial services interview is imminent and accord the Federal Public Defender reasonable opportunity to confer with the accused before conducting the pretrial services 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. The Federal Public Defender 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 to 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.
- C. **Supersession.** This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. EFFECTIVE DATE

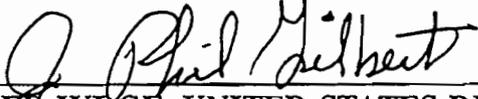
This Plan shall become effective when approved by the Judicial Council of the Seventh Circuit.

APPENDICES:

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

II. Addendum to the Plan for the Implementation of the Criminal Justice Act of 1964 as Amended, 18 U.S.C. §3006A

ENTER FOR THE COURT ON 24 DAY OF May, 1994.



CHIEF JUDGE, UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF ILLINOIS

APPROVED BY THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT on

1994

CHIEF JUDGE,
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**SOUTHERN DISTRICT OF ILLINOIS PLAN 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 existing, previously established panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the CJA is recognized and established as the CJA Panel, and its members will be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to Paragraph B. of this plan. Members of the CJA Panel shall serve at the pleasure of the Court.

2. **Size.** The Court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation.

3. **Eligibility.** Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

4. **Application.** Application forms for membership on the CJA Panel shall be made available upon request by the Federal Public Defender. Completed applications shall be submitted to the Federal Public Defender who will transmit the applications to the chairperson and members of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE

1. **Membership.** A Panel Selection Committee shall be established by the Court. The Committee shall consist of one District Judge, one Magistrate Judge, one attorney who has served at least three years as a member of the CJA Panel and the Federal Public Defender. The Committee shall select its own chairperson.

2. **Duties.**

a. The Panel Selection Committee shall review applications for membership on the CJA Panel and shall make a recommendation to the Court regarding the applicant's worthiness for service on the panel. The Panel Selection Committee shall be permitted to gather information from any source for purposes of making a worthiness determination.

b. The Panel Selection Committee shall meet at least once a year to review the performance of each member of the CJA Panel and shall provide the Court with a list of attorneys recommended for retention on the CJA Panel.

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

C. CJA TRAINING PANEL

The Panel Selection Committee may establish a CJA Training Panel consisting of attorneys who do not have the experience required for membership on the CJA Panel. CJA Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a "second chair" capacity. CJA Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the CJA Training Panel guarantee admission of an attorney to the CJA Panel.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Federal Public Defender shall maintain a current list of attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Federal Public Defender shall furnish a copy of this list to each District Judge and Magistrate Judge. The Federal Public Defender shall also maintain a public record of assignments to private counsel and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender Organization and private attorneys.

B. METHOD OF SELECTION

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the District 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 District 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 District Judge

decides to appoint an attorney from the panel, the Federal Public Defender, upon request, shall recommend an attorney from the panel.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Federal Public Defender's office, the presiding District 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 District Judge or Magistrate Judge shall notify the Federal Public Defender as to the name of the attorney appointed and the date of appointment.

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted on appropriate CJA forms 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 District Judge or Magistrate Judge.

In addition to reviewing the claim form for mathematical and technical accuracy, the Federal Public Defender may recommend that the CJA Panel attorney submitting the claim supplement the voucher with a narrative statement regarding unusual services or other charges that require clarification before the Court can adequately review the claim.

JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

COLLINS T. FITZPATRICK
CIRCUIT EXECUTIVE
PHONE (312) 435-5803

June 3, 1994

Honorable S. Phil Gilbert
Chief District Judge
Southern District of Illinois
United States Courthouse
301 W. Main Street
Benton, Illinois 62812

Dear Chief Judge Gilbert:

The Seventh Circuit Judicial Council has approved the revised Criminal Justice Act Plan for the Southern District of Illinois as submitted with your letter of March 21, 1994. Would you please notify the Administrative Office of the Council's approval of the Plan as required by 18 U.S.C. § 3006A(a).

At the meeting you had mentioned that your court had already approved the suggestions that were contained in the May 10, 1994 letter from Ted Lidz of the Administrative Office. I have assumed that the Council's approval was implicitly of the Plan with the added amendment concerning the death penalty resource centers. Would you please send me a copy of the Plan as revised.

Sincerely,

Collins T. Fitzpatrick

cc: Chief Judger Richard A. Posner
Thomas F. Strubbe
Stuart J. O'Hare
David R. Freeman