

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), Section 3006(A) of Title 18 United States Code, and the Guidelines for Administering the CJA and Related Statutes, (CJA Guidelines), Volume 7A of the Guide to Judiciary Policy the Judges of the United States District Court for the Eastern District of Missouri adopt this 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 ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that all 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 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 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 attorney's first appointment under the CJA. The Clerk shall maintain a current copy of the CJA Guidelines for the use of attorneys admitted to practice before this Court, and shall make the guidelines available to attorneys upon request.

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. 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 violation of probation, or faces a change in 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 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 of 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 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.
 - g. is designated by the United States Attorney or the Federal Public Defender as a potential defendant or possible witness who desires counsel.

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, 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 unusually complex. 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\(a\)\(1\)\(B\)](#), 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 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. 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 actual 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 shall 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 appeals in felony cases in the court. The court shall consider the recommendation of the Federal Public Defender in making such appointments.
 - 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, 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 district judge or magistrate judge after making the 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 a 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 DEFENDER ORGANIZATION

A. Establishment.

1. A Federal Public Defender Organization is established for the Eastern District of Missouri pursuant to 18 U.S.C. § 3006A(g)(2)(A) provide legal services for persons eligible by law 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 Southern District of Illinois 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.
2. The Federal Public Defender Organizations for the Southern District of Illinois and Central District of Illinois shall be permitted to provide representation to persons entitled to representation under the Criminal Justice Act in the Eastern District of Missouri, 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 Eastern District of Missouri. Accordingly, the Federal Public Defender shall be appointed and all cases assigned to that organization may subsequently be reassigned to staff attorneys at the discretion of the Federal Public Defender.

C. The Federal Public Defender is not responsible for management of the CJA Panel.

VI. COMPOSITION OF PRIVATE ATTORNEY PANELS

A. CJA General Panel. All attorneys who are admitted to practice before this court under Local Rule 12.01 shall be members of the CJA General Panel of Attorneys. Each member of the CJA General Panel shall be eligible to be appointed to provide representation under the Criminal Justice Act. Any member of the CJA General Panel with special interest in being appointed pursuant to the Act may apply for membership on the Lead or Training Panel by completion of an application form available from the Office of the Clerk of Court's website.

- B. CJA Lead Panel. The CJA Lead Panel is comprised of attorneys selected and appointed by the court upon recommendation of the Panel Selection Committee. Members of the CJA Lead Panel must be attorneys in good standing in the Bar of the Eastern District of Missouri who have, prior to their recommendation for selection, demonstrated substantial experience and ability in the trial defense or prosecution of criminal defendants and who have demonstrated a desire to increase the quality of criminal representation in this district. Members of the CJA Lead Panel, if called upon by the court, must accept at least two appointments under the CJA each year; must be willing to act as unpaid mentors or advisers of the General Panel or Training Panel; and, must be willing to participate in the offering of continuing criminal law education for interested members of the bar of this court. Prior service on the Training Panel shall not be required for membership on the Lead Panel. The court has authority to remove a member of the Lead Panel who fails to fulfill any of the duties specified in this paragraph.
- C. CJA Training Panel. The CJA Training Panel is composed of attorneys selected and appointed by the court upon the recommendation of the Panel Selection Committee. Members of the CJA Training Panel must be attorneys in good standing in the Bar of the Eastern District of Missouri who have, prior to their recommendation for selection, demonstrated experience and ability in matters involving criminal law but who do not have the experience required for membership in the CJA Lead Panel. Members of the CJA Training Panel may be assigned by the Court to assist as "second chair", without compensation, an attorney appointed from the Lead Panel representing indigent defendants. Members of the CJA Training Panel may be linked to members of the Federal Public Defender's Office in order to enhance their experience. Members of the CJA Training Panel may, if appropriate, be appointed to represent indigent defendants in non-complicated cases when they have acquired and demonstrated a sufficient degree of expertise. Members of the CJA Training Panel may submit a written application to be a member of the Lead Panel after one year, if they have achieved sufficient experience; however, selection for the Training Panel does not automatically entitle an attorney to membership on the CJA Lead Panel.
- D. Length of Term. Except for an initial appointment to a panel, all appointments to the Lead or Training Panel shall be for a period not to exceed four (4) years, at which time all members will be asked to submit a renewal application on a form available from the Office of the Clerk of the Court or on the Court's website.
- E. Equal Opportunity. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, and will be selected without regard to race, color, religion, sex, age, national origin or disabling condition.
- F. Professionalism. All attorneys appointed to CJA panels or who otherwise participate in the representation of indigent defendants are expected to provide representation

consistent with the highest professional and ethical standards applicable to members of the Bar. The Court shall have the authority to monitor the performance of panel attorneys and to remove a member from a panel when the quality of legal representation being provided is deemed by the Court to be unsatisfactory.

- G. Continuing Legal Education. Members of the CJA Lead and Training Panels shall attend a minimum of twelve (12) hours of continuing legal education in federal criminal defense, every four (4) years to remain on a CJA panel. Attendance at seminars conducted by the Federal Public Defender shall be counted in satisfying this requirement. In addition, periodically the Court will sponsor, or seek the aid of local bar associations in sponsoring, seminars and programs designed to educate and assist attorneys who might be appointed pursuant to the Criminal Justice Act. Proof of compliance with this CLE requirement shall be provided by the CJA Panel member to the Office of the Clerk of Court as part of their renewal application.

VII. PANEL SELECTION COMMITTEE.

- A. Membership. There shall be a Panel Selection Committee established by the Court. This Committee shall consist of the Chief District Judge and another District Judge, the Chief Magistrate Judge, at least two attorneys in private practice with sufficient experience and ability who are selected by the Chief District Judge for a term of two years, and the Federal Public Defender for this district who shall be a permanent member of the Panel Selection Committee.
- B. Duties. The Panel Selection Committee shall review applications for membership in, and recommend for Court appointment to, one of the CJA Panels. The Panel Selection Committee shall be permitted to gather information about any applicant from any source for the purpose of making a worthiness determination. The Panel Selection Committee shall meet when summoned by the Chief District Judge, at least twice a year to review applicants for the CJA Panels and to review the performance of the members of CJA Panels. When the names of applicants for panel membership are submitted to the Court for approval, the Committee shall furnish information regarding recruitment efforts undertaken by the Committee in furtherance of the equal opportunity statement in Paragraph VI.E of this plan. At least once each year the Committee shall provide the Court such information as may be available regarding the composition of the CJA Panels of attorneys.

VIII. SELECTION OF ATTORNEYS

- A. Maintenance of Lists of Panels. The Clerk of Court shall maintain a current list of attorneys who are members of the CJA General Panel, the CJA Lead Panel and the

CJA Training Panel, with current office addresses, telephone numbers, fax numbers and e-mail addresses. The Clerk shall also maintain a record of the appointments of each attorney. The Clerk periodically shall furnish to judges a copy of each panel list. The Clerk shall remove from the list the name of a panel attorney when directed to do so by the Court pursuant to Paragraph VI.F.

- B. Method of Selection. Appointments from the Lead and Training CJA Panels of Attorneys shall be made on a rotational basis, as nearly as possible, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, as well as geographical and timing considerations. Upon the determination of a need for the appointment of counsel, the District Judge or Magistrate Judge shall first endeavor to appoint the Federal Public Defender. In the event that the Office of the Federal Public Defender is unavailable for appointment, the Court shall appoint a member of the Lead or Training Panels before a member of the General Panel.

IX. COMPENSATION

- A. Each claim for compensation shall be submitted on appropriate CJA forms, with required supplemental information about the claim, to the office of the Clerk of Court. The Clerk of Court shall review the claim and the accompanying information for the mathematical and technical accuracy and for conformity with the Guidelines for Administering the Criminal Justice Act (Volume VIIA, Guide to Judiciary Policy) and, if correct, shall forward the form and accompanying claim materials for the consideration and action by the appropriate judge.
- B. If the court determines that a claim should be reduced, appointed counsel shall be provided written notice of the proposed reduction with a brief statement of the reason(s). Counsel shall have ten (10) days from the date of the notice to provide a response. Notice shall not be provided to counsel when a reduction is based on mathematical or technical errors.

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

The Court may appoint the Federal Public Defender, or other attorney recommended by the Federal Public Defender who qualifies for the appointment pursuant to 18 U.S.C. § 3599 to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under Section 2254, Title 28 United States Code.

XI. 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 Missouri Rules of Professional Conduct, or the American Bar Association's Model Rules of Professional Conduct, when not in conflict with the Missouri 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 the Court.

XII. DUTIES OF PRETRIAL SERVICES OFFICERS.

- A. Presentation of accused for appointment of counsel. Pretrial services officers in this district 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. In cases in which the person indicates that he or she is not able to secure counsel, the Pretrial Services Officer shall assist in the completion of the Financial Affidavit(CJA Form 23) and arrange for the prompt presentment of the person before a United States Magistrate Judge for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. An accused shall be advised prior to any interview by a pretrial services officer that he or she has a right to consult with counsel prior to such interview.

XIII. 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 Clerk

of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate district judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Supersession. This Plan supersedes prior Criminal Justice Act Plans for this Court.

XIV. EFFECTIVE DATE

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

APPROVED BY THE JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT ON

_____ JUNE 3, 2011.

United States Courts
Judicial Council of the Eighth Circuit
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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 Eastern District of Missouri which was adopted by the court on April 13, 2011.


Millie B. Adams
Circuit Executive

St. Louis, Missouri
June 3, 2011

cc: Judicial Council Members
Chief Judge Catherine D. Perry
James G. Woodward, Clerk of Court
Lee T. Lawless, Federal Public Defender
Administrative Office

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

JCO 2320