

Criminal Justice Act Plan for the District of Kansas

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

United States District Court
For the District of Kansas
Criminal Justice Act Plan

I. Authority

Under the Criminal Justice Act of 1964 as amended (CJA), [section 3006A 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 District of Kansas, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. Statement of Policy

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan will be administered so that those accused of crime, or otherwise eligible for services under 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 must 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 will be provided by the clerk of court 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 Organization (FDO) will maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and will make known to such attorneys its availability.

III. Definitions

A. Representation

“Representation” includes counsel and investigative, expert, and other services.

B. Appointed Attorney

“Appointed attorney” includes private attorneys, the federal public defender and staff attorneys of the federal public defender.

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 (**See:** Guide, Vol 7A, § 210.20.10(a)(5));
 - 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 [section 2254](#) or [2255 of title 28, United States Code](#);
 - j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under [section 4109 of title 18, United States Code](#);
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution (**see:** Guide, Vol 7A, § 210.20.10(a)(9)); or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel (**see:** § 210.20.10(a)(9)).

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, other than to set aside or vacate a death sentence under [sections 2241, 2254, or 2255 of title 28, United States Code](#) (**See:** Guide, Vol 7A, § 210.20.20(a)(2));
 - 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](#).

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

B. Timely Appointment of Counsel.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States 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. 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.

source of the attorney's information is not protected as a privileged communication, counsel will advise the court.

V. Federal Public Defender Organization

A. Recognition

The Federal Public Defender Organization of the District of Kansas, previously established in this district under the provisions of the CJA, is hereby recognized as the federal public defender organization for this district. The federal public defender will be capable of providing legal services throughout the district, and shall maintain offices in Kansas City, Topeka, and Wichita.

B. Supervision of Defender Organization. The federal public defender will be responsible for the supervision and management of the federal public defender organization. Accordingly, the federal public defender will 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 CJA Coordinator - will 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 will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will 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 will appoint the federal public defender (with her consent) or a qualified attorney recommended by the federal public defender, or other attorney who qualifies for appointment under [section 3599 of title 18, 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 will be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the provisions of the Kansas Rules of Professional Conduct.
- 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 will 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, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, notify the federal public defender who will 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 ([Form CJA 23](#)) and] arrange to have the person promptly presented before a United States magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

- B. Pretrial Services Interview. In recognition of the importance of the right to counsel prior to a defendant's interview with a pretrial services officer, the defendant shall be advised prior to any such interview that he or she has a right to counsel.
- 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, must immediately mail, email, 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, must be used, where applicable, in all proceedings under this Plan. These forms are available on the District Court's and FDO's website.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form, to the FDO CJA Administrator. The Administrator will review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, will forward the claim form for the consideration of the appropriate judge or United States 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 will become effective when approved by the Judicial Council of the Tenth Circuit.

Appendix or Appendices:

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

ENTERED FOR THE COURT ON July 18, 2014.

s/ J. Thomas Marten
J. Thomas Marten
CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE TENTH CIRCUIT COURT OF APPEALS ON July 18, 2014.

Appendix I: Plan for the Composition, Administration and Management of the CJA Panel

I. Composition of Panel of Private Attorneys

A. CJA Panel

1. *Approval.* The court will 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 Panel Selection Committees will approve attorneys for membership on the panel as established under paragraph B of this Plan. Members of the CJA Panel will serve at the pleasure of the court.
2. *Size.* The Panel Selection Committees will 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 United States 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 from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

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 the attorney for admission to the district’s CJA Panel in the ordinary course of panel selection.

4. *Equal Opportunity.* All qualified attorneys are be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, sexual orientation, or disabling condition.
5. *Terms.* The initial CJA Panel established under this Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, and members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.
6. *Application.* Application forms for membership on the CJA Panel will be made available on the website of the District of Kansas, <http://www.ksd.uscourts.gov/> and the Federal Public Defender Organization (“FDO”), <http://www.kansasfpd.org/>. Completed applications must be submitted electronically to the CJA Coordinator, who will transmit the applications to the chairperson of the appropriate Panel Selection Committee.
7. *Continuing Legal Education.* All members of the CJA panel shall participate in at least six hours of continuing legal education provided by the Federal Public Defender or equivalent training in federal criminal defense. In order to enable panel counsel sufficient opportunity to attend, the Federal Public Defender shall present at least sixteen hours of continuing legal education per year.

B. Panel Selection Committees

1. *Membership.* Panel Selection Committees will be established by the court. Five panels shall be established, which shall sit in Wichita, Topeka, Kansas City, Ft. Riley, and Ft. Leavenworth. The panel committees will consist of one or more district judge, one or more magistrate judge, one member of the CJA panel, and the Federal Public Defender or her designee. The Committees will be chaired by a magistrate or district judge.
2. *Duties.*
 - a. The Panel Selection Committees will meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committees will review the qualifications of applicants and accept those applicants best qualified to fill the vacancies. If a Committee is reviewing and considering the application of a lawyer who is a member of that Panel

Selection Committee, that lawyer must recuse himself or herself from the consideration.

At its annual meeting, each Committee will also review the operation and administration of the panel over the preceding year, and make any changes deemed necessary or appropriate by the Committee on the appointment process and panel management, including the removal of counsel from the CJA panel when the Committee deems appropriate. The Committees will endeavor to keep process and administration consistent throughout the District. The Committees will also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

- b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the appropriate Committee will solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for approval.
- c. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition. When a Committee approves applicants for panel membership, the Committee will furnish information to the court on recruitment efforts undertaken by the Committee in furtherance of this goal Model Plan.

II. Selection for Appointment

A. Maintenance of List and Distribution of Appointments

The CJA Coordinator will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience. The CJA Coordinator will also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the CJA Coordinator 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 discretion of the CJA Coordinator and/or the court 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. This procedure should also facilitate the quality representation of each CJA defendant by ensuring that panel members receive enough appointments to remain proficient.

Upon the determination of a need for the appointment of counsel in an exceptional case, the CJA Coordinator will select an attorney based on the considerations listed in II B. In determining the counsel to be appointed in such a case, the CJA Coordinator will consider the specialized experience and training of the panel members in light of the nature of the case.

The CJA Coordinator will 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 an attorney from the panel is to be appointed, the JA Coordinator will 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.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed by the presiding judge or magistrate judge, the appointing judge or magistrate judge will notify the CJA Coordinator as to the name of the attorney appointed and the date of the appointment.

III. Compensation – Filing Of Vouchers

Claims for compensation must be submitted, on the appropriate CJA form, to the CJA Coordinator . The claim form will be reviewed for mathematical and technical accuracy, and for conformity with the Criminal Justice Act and these rules and, if correct, the CJA Coordinator will forward the claim form for the consideration and action of the presiding judge or magistrate judge.