

# United States District Court Southern District of Illinois

David R. Herndon, Chief United States District Judge  
Nancy J. Rosenstengel, Clerk of Court



## CRIMINAL JUSTICE ACT PLAN

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### I. Introduction

Pursuant to the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (the “CJA”), and the “Guidelines for Administering the CJA and Related Statutes,” contained in Chapter 7 of the *Guide to Judiciary Policy* (the “CJA Guidelines”), the United States District Court for the Southern District of Illinois adopts this Criminal Justice Act Plan (the “CJA Plan”) to prescribe the procedures and requirements for furnishing representation in this Court to any person financially unable to obtain adequate representation in accordance with the CJA. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

### II. Objectives

The objective of this CJA Plan is to attain the ideal of equality before the law for all persons. It shall be administered so that those accused of a crime (or otherwise eligible for services pursuant to the CJA), will not be deprived of legal services because they are financially unable to pay for adequate representation or any element of representation necessary to an adequate defense. It is also the objective of this CJA Plan to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (codified in part at 18 U.S.C. § 3599 -- formerly the Anti-Drug Abuse Act of 1988), and the CJA Guidelines to meet the needs of this judicial district.

### III. Definitions

“**Appointed Attorney**” includes private attorneys, the Federal Public Defender, and staff attorneys of the Federal Public Defender in this judicial district.

“**Clerk**” or “**Clerk of Court**” means the Clerk of the United States District Court for the Southern District of Illinois or her designee.

“**Court**” means the United States District Court for the Southern District of Illinois and includes

any of the District Judges and Magistrate Judges assigned to this judicial district.

“**Judicial Officer**” includes a United States District Judge or a United States Magistrate Judge assigned to the Southern District of Illinois, a Judge designated to sit in the Southern District of Illinois, a Judge of the United States Court of Appeals for the Seventh Circuit, or a Justice of the United States Supreme Court.

“**Representation**” includes counsel and investigative, expert, and other services authorized by the CJA.

#### **IV. Compliance**

The Court, the Clerk of Court, the Federal Public Defender, and private attorneys appointed under the CJA shall comply with this CJA Plan and with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services.

#### **V. Provision of Representation**

##### **A. Timing**

Counsel shall be provided to a financially eligible person as soon as feasible after the person is taken into custody, when the person first appears before a Judicial Officer, when the person is formally charged or notified of charges (if formal charges are sealed), or when a Judicial Officer otherwise considers appointment of counsel appropriate under the CJA, whichever occurs first.

##### **B. Circumstances**

###### **1. Mandatory Representation**

Representation *shall* be provided for any financially eligible person who:

- is charged with a felony or a Class A misdemeanor;
- is a juvenile alleged to have committed an act of juvenile delinquency (as defined in 18 U.S.C. § 5031);
- 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);
- is under arrest, when such representation is required by law;
- 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 (unless the change to the condition or term of supervised release is favorable to the offender, and the government has not objected to the proposed change);
- is subject to a mental condition hearing pursuant to 18 U.S.C. §§ 4241-4248;
  - is in custody as a material witness;
  - is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution.
  - faces loss of liberty in a case, and federal law requires the appointment of counsel;
  - is entitled to appointment of counsel in a proceeding to transfer to or from a foreign country under 18 U.S.C. § 4109;
  - is entitled to appointment of counsel in parole proceedings; or
  - is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255.

## **2. Discretionary Representation**

Whenever a Judicial Officer determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized;
- is seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. §§ 2241, 2254, or 2255;
- is charged with civil or criminal contempt and faces loss of liberty;
- 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;
- is proposed by the United States Attorney for processing under a pretrial diversion program;
- is held for international extradition under 18 U.S.C. §§ 3181-3196.

## **3. Ancillary Matters**

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings. *See Guide to Judiciary Policy, Volume 7, Chapter 2, § 210.20.30.*

## **C. Number of Counsel**

### **1. Criminal Cases**

More than one attorney may be appointed in any case determined by the Court to be extremely difficult. In any case in which a defendant is charged with a crime which may be punishable by death, a defendant shall be entitled to at least two attorneys.

## **2. Habeas Corpus Proceedings**

Pursuant to 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, a Judicial Officer should consider appointing at least two attorneys.

### **D. Qualifications of Counsel**

A Judicial Officer should ensure that all attorneys appointed in a federal death penalty case are well qualified, by virtue of their prior defense experience, training, and commitment, to serve as counsel in highly specialized and demanding litigation. Ordinarily, “learned” counsel, as that term is used in 18 U.S.C. § 3005, should have (1) distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or (2) distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high-quality representation. When appointing counsel in federal capital prosecutions, the Court should consider the recommendation of the Federal Public Defender.

If an appointment is made in a death penalty case *before judgment*, at least one of the attorneys appointed must have been admitted to practice in this court for not less than five years and must have experience of at least three years in the actual trial of felony prosecutions. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be experienced in and knowledgeable about the defense of capital cases. If an appointment is made in a death penalty case *after judgment*, at least one of the attorneys appointed must have been admitted to practice in a federal court of appeals for not less than five years and must have experience of at least three years in handling federal appeals in felony cases. In appointing post-conviction counsel in a case where the defendant is sentenced to death, a Judicial Officer should consider the attorney’s experience in federal post-conviction proceedings and capital post-conviction proceedings, as well as the general qualifications identified above.

If an attorney does not meet the qualifications set forth above, for good cause shown, the Court may appoint an attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

### **E. Eligibility for Representation**

The determination of eligibility for representation under the CJA is a judicial function to be performed by a Judicial Officer after making appropriate inquiries concerning the person’s financial 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 promptly advise the Court.

## **VI. Federal Public Defender Organization**

The Federal Public Defender Organization for the Southern District of Illinois previously established in this district pursuant to the CJA, *see* 18 U.S.C. § 3006A(g)(2)(A), is recognized as the Federal Public Defender Organization for this district. The Federal Public Defender Organization shall maintain offices in East St. Louis and Benton, Illinois, and shall be capable of providing legal services throughout the Southern District of Illinois. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization for this district, including the assignment of cases to staff attorneys at his discretion.

## **VII. Composition of Panel of Private Attorneys**

### **A. Approval and Size**

The Court has established 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 CJA. Periodically, the Court shall fix the size of the CJA Panel. The CJA Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation. The Federal Public Defender shall maintain a current list of attorneys included on the CJA Panel, with current office and email addresses and telephone numbers. The Federal Public Defender shall furnish a copy of this list to each District Judge and Magistrate Judge.

### **B. Qualifications**

Attorneys who serve on a CJA Panel must be members in good standing of the bar of this court and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. Attorneys who serve on the CJA Panel will also be expected to have and maintain acceptable standards of competence, judgment, character, and demeanor to provide their clients with all the benefits of high quality legal counsel. All qualified attorneys shall furnish representation in CJA cases, without regard to race, color, religion, sex, age, national origin, sexual orientation, or disabling condition.

### **C. Application for Membership**

Application forms for CJA Panel membership shall be made available upon request by the Federal Public Defender. Completed applications shall be submitted to the Federal Public Defender who will forward the applications to the Chairperson of the Panel Selection Committee.

### **D. Panel Selection Committee**

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. 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 CJA Panel. The Panel Selection Committee shall be permitted to gather information from any source for purposes of making a worthiness determination.

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 regarding the appointment process and panel management.

### **E. Appointments**

When it is determined that there is a need for 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. Appointments from the list of private panel 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 defendant.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Federal Public Defender's office, a District Judge or Magistrate Judge may appoint any attorney from the current list. If a member of the CJA Panel is appointed out of sequence, the appointing District Judge or Magistrate Judge shall inform the Federal Public Defender of the attorney's name and date of appointment.

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” is defined as approximately 25% of the appointments under the CJA annually in the district.

The Federal Public Defender shall maintain a public record of assignments of private attorneys and, when appropriate, supporting statistical data.

### **VIII. Duties of Appointed Attorneys**

Services rendered by an appointed attorney shall be commensurate with those rendered if counsel were privately employed by the person. Appointed attorneys shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Rules of Professional Conduct adopted by the Supreme Court of the State of Illinois and other standards for professional conduct adopted by the Court.

Appointed attorneys 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 the Court.

Once counsel is appointed under the CJA, counsel shall continue the representation until: (1) the matter, including appeal and review by certiorari, is closed; (2) substitute counsel has filed a notice of appearance; (3) an order has been entered allowing or requiring the person represented to proceed *pro se*; or (4) the appointment is terminated by court order.

In cases involving a defendant charged with a crime punishable by death or post-conviction proceedings seeking to vacate or set aside a death sentence, unless replaced by similarly qualified counsel upon the attorney’s own motion or upon motion of the defendant, each appointed attorney shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

### **IX. Duties of Law Enforcement and Related Agencies**

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. If the person indicates that he or she is not able to secure representation, the agent or officer shall arrange to have the person promptly presented before a District Judge or a Magistrate Judge for determination of financial eligibility and



appointment of counsel.

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial interview without counsel, financially eligible defendants will be furnished an appointed attorney prior to being interviewed by a pretrial services officer. Appointed attorneys shall be accorded reasonable opportunity to confer with the accused before the pretrial services interview is conducted. The pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release hearing or a detention hearing held under 18 U.S.C. § 3142(f).

## **X. Compensation**

The CJA provides that the reviewing Judicial Officer shall fix the compensation and reimbursement to be paid to private counsel. Absent conflicts of interest, claims for compensation of private attorneys providing representation under the CJA shall be submitted to the office of the Federal Public Defender in a timely fashion. That office shall review the claim for mathematical and technical accuracy, for reasonableness, for recordation of statistical information, and for conformity with the CJA Guidelines. If correct, the Federal Public Defender shall forward the claim for consideration by the appropriate Judicial Officer. The Court will exert its best effort to avoid delays in reviewing payment vouchers.

In addition to reviewing the claim 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 reviews the claim. Whenever the claim for compensation exceeds the threshold amount of the district judge's authority (and must, therefore, be submitted to the Chief Judge of the Seventh Circuit for additional approval), the attorney shall provide a reasonably detailed statement as to why the representation was "extended or complex."

If a Judicial Officer determines that a claim for compensation should be reduced, appointed counsel should be provided (1) prior notice of the proposed reduction with a brief statement of the reason(s) for it, and (2) an opportunity to address the matter. Notice need not be given to appointed counsel when the reduction is based on mathematical or technical errors only.

## **XI. Miscellaneous**

Each private attorney shall be provided a copy of this CJA Plan by the Federal Public Defender at the time the attorney is designated as a CJA Panel member. The Federal Public Defender also 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. The CJA Plan shall also be available for access by attorneys and the public on the Court's website, [www.ilsd.uscourts.gov](http://www.ilsd.uscourts.gov).



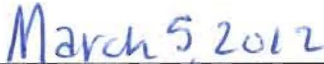
Standard forms pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts shall be used, where applicable, in all proceedings under this Amended CJA Plan.

Nothing contained in this Plan or in the CJA Guidelines should be construed as requiring a hearing or as discouraging the Court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

This Plan, as amended this 2<sup>nd</sup> day of March, 2012, shall take effect when approved by the Judicial Council of the Seventh Circuit.

APPROVED AS TO FORM AND SUBSTANCE:

  
\_\_\_\_\_  
Chief U.S. District Judge David R. Herndon

  
\_\_\_\_\_  
Date

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

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

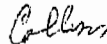
April 3, 2012

Ms. Nancy J. Rosenstengel  
Clerk  
Southern District of Illinois  
United States District Court  
Post Office Box 249  
East St. Louis, Illinois 62202

Dear Nancy:

The Judicial Council of the Seventh Circuit has approved the Criminal Justice Act Plan for the United States District Court for the Southern District of Illinois. Pursuant to 18 U.S.C. § 3006A(a), please notify the Administrative Office of the United States Courts of the Amended Plan

Sincerely,



Collins T. Fitzpatrick

CTF:tlw

cc: Chief Judge Frank H. Easterbrook  
Chief District Judge David R. Herndon  
Gino J. Agnello