

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT  
CRIMINAL JUSTICE ACT PLAN**

**I. AUTHORITY**

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A)[hereinafter referred to as CJA], and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the Judges of the United States District Court for the District of Connecticut adopt the following amended plan for furnishing representation in federal court to any person financially unable to obtain adequate representation.

**II. STATEMENT OF POLICY**

**A. OBJECTIVES**

1. The objective of this Plan is to attain the goal of equality before the law for all persons. This plan, therefore, shall be administered so that those accused of crime, or otherwise eligible for service 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 effective defense.

2. The further objective of this Plan is to particularize the requirements of the CJA 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's Office, 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 or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (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. PROVISION OF REPRESENTATION**

A. Representation shall be provided in this District for any financially eligible person who:

1. is charged with a felony or Class A misdemeanor;
2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
3. 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);
4. is under arrest, when such representation is required by law;
5. is entitled to appointment of counsel in parole proceedings;
6. 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;

7. is subject to a mental condition hearing under 18 U.S.C. §§ 4241-4247;
8. is in custody as a material witness;
9. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
10. 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 18 U.S.C. § 4109;
11. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
12. faces loss of liberty in a case, and Federal law requires the appointment of counsel.

B. Whenever the judicial officer determines that the interests of justice so require, representation may be provided in this District for a financially eligible person who

1. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
2. is seeking relief, other than to set aside or vacate a death sentence under 28 U.S.C. §§ 2241, 2254, or 2255;
3. is charged with civil or criminal contempt who faces a loss of liberty;
4. 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 a loss of liberty;
5. is proposed by the United States attorney for processing under a pretrial diversion program; or
6. is held for international extradition under chapter 209 of title 18, U.S. Code.

#### **IV. PROVISION FOR FURNISHING COUNSEL**

A. This plan provides for the furnishing of legal services by the Federal Public Defender Office and for the continued appointment and compensation of private counsel in a substantial proportion of cases.

B. The court in its discretion will determine whether any person entitled to representation will be represented by the Federal Public Defender's Office or by a private attorney. When practicable, private attorney appointments will be made in at least 25% of the cases.

#### **V. ESTABLISHMENT OF THE FEDERAL PUBLIC DEFENDER ORGANIZATION**

The court continues to find that the use of a Federal Public Defender Organization in this district, as defined in 18 U.S.C. § 3006A(g)(2)(A), is appropriate and should continue. The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed, reports of the office's activities and the financial position and proposed budget of the office. Copies of the reports shall be furnished to this court and to the Judicial Council for the Second Circuit. Neither the Federal Public Defender, nor any staff attorney appointed as an Assistant Federal Public Defender, may engage in the private practice of law.

#### **VI. CRIMINAL JUSTICE ACT PANEL**

##### **A. Formation of a Standing Committee to Oversee the Criminal Justice Act Panel**

1. The Judges of the United States District Court for the District of Connecticut hereby create a standing committee to oversee the CJA panel. This committee

shall consist of five (5) attorneys, each a voting member, who possess sufficient experience and interest in the federal criminal justice system to administer the CJA panel.

2. The Federal Public Defender or his or her representative will be a permanent voting member of the committee. The Clerk or his or her designee shall be an ex officio, non-voting member of the committee.

3. In addition to the Federal Public Defender or his or her representative, two (2) of the members of the standing committee will be appointed for a one-year term and the remaining two (2) members for a two-year term. Thereafter, appointments will be made for two-year terms. The standing committee will be permitted to use the staff of the Clerk for clerical and record-keeping matters.

4. The standing committee shall meet formally at least four (4) times per year. In addition to reviewing panel membership, the committee shall identify and define any operating difficulties encountered in the administration of the panel and make recommendations to the Court for appropriate changes.

5. The standing committee shall also coordinate with the Federal Public Defender's Office in providing training for the CJA panel. Such training shall include correspondence with panel attorneys on substantive and procedural changes in the law, local rules, and other matters affecting the panel attorneys, and shall also include regularly scheduled seminars for panel attorneys as well as the private bar.

#### **B. Formation of the CJA Panel**

1. Pursuant to the terms of this Plan, CJA panel attorneys shall be members of the bar of this District. In addition to bar membership, the panel attorneys should

have prior federal and/or state criminal trial experience, significant involvement in serious or complex criminal cases, knowledge of the Sentencing Guidelines and the Bail Reform Act, knowledge of other relevant areas of federal criminal practice, and/or clinical experience or participation in trial advocacy programs.

2. The panel shall consist of attorneys recommended by the standing committee and approved by a majority of the active judges of the district, pursuant to the procedures outlined in Appendix A.

## **VII. ASSIGNMENT OF CASES TO THE CJA PANEL**

A. The Clerk's Office shall be responsible for overseeing the assignment of cases to panel attorneys. Assignments shall be made on a rotational basis, except under circumstances where a judicial officer directs otherwise.

B. The Clerk's Office shall maintain a master list of CJA appointments, which will include the date of each appointment, the case name, the date of each refusal ("pass") by a panel attorney, and the reason for each pass.

C. If the Clerk's Office determines that a panel member has repeatedly passed assignments, the Clerk may refer the name of the attorney to the standing committee. The standing committee shall then consider the information provided by the Clerk and make such further inquiry as it deems appropriate.

D. The Clerk shall also maintain a public record of assignments to the Federal Public Defender's Office and to the CJA Panel, as well as current statistical data reflecting the proration of appointments.

E. The Federal Public Defender's Office will make such arrangements with federal, state, and local investigative and police agencies as will adequately assure that at the earliest practicable stage, persons arrested under circumstances where representation is required by federal law may promptly have counsel furnished to them.

## **VIII. DETERMINATION OF NEED FOR COUNSEL**

### **A. Counsel for Persons Appearing Without an Attorney**

In every case in which a person is eligible for appointment of counsel pursuant to 18 U.S.C. § 3006A(a) and the person appears without counsel, the judicial officer shall advise that person that he or she has a right to be represented by counsel throughout the case and that counsel will be appointed to represent the person if so desired, if he or she is financially unable to obtain counsel.

Whenever the person states that he or she is financially unable to obtain counsel and desires the appointment of counsel, the judicial officer shall inquire into and make a finding as to whether the person is financially able to obtain counsel. The judicial officer shall appoint separate counsel for each person involved in a single proceeding or action.

### **B. Counsel for Persons Appearing With an Attorney**

Where an arrested person has been represented by counsel before his or her presentation before a judicial officer under circumstances where such representation is authorized by 18 U.S.C. § 3006A(a), counsel may subsequently apply to the judicial officer for approval of compensation. If an application is made to a Magistrate Judge, the Magistrate Judge shall submit a recommendation to a Judge of this court for final approval. If the Judge finds that the person has been and is then financially unable to obtain an adequate defense, and

that representation was required by law, compensation will be made retroactive pursuant to 18 U.S.C. § 3006A(b).

**IX. APPOINTMENT OF COUNSEL**

**A. The Judicial Officer**

In every case in which appointment of counsel pursuant to 18 U.S.C. § 3006A(a) is appropriate, it is the duty of the judicial officer to advise the person of his or her right to counsel. The judicial officer shall appoint counsel promptly if it is found that the person is financially unable to obtain an attorney, unless the person waives his or her right to be represented by counsel.

The judicial officer shall appoint the Federal Public Defender's Office or counsel from the CJA Panel, except in extraordinary circumstances where it becomes necessary to appoint some other member of the bar of this court. Such extraordinary circumstances include cases in which the judicial officer determines that the appointment of an attorney not a member of the panel, is in the interest of justice, judicial economy or continuity of representation, or there are some other compelling circumstances warranting the attorney's appointment. The person shall not have the right to select his or her appointed counsel from the Federal Public Defender's Office, from the CJA Panel or otherwise.

Counsel appointed by a judicial officer shall, unless excused by order of court, continue to act for the person throughout the proceedings in this court. Appointed counsel is expected to appear personally at all proceedings, with substitutions or the filing of additional appearances permitted only with leave of the court. The judicial officer before whom a case is pending may,

in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

In all criminal cases, counsel shall advise the defendant of the right to appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal, and shall continue to represent the defendant, unless, or until, the attorney is relieved by the district court or the court of appeals.

If, at any time after the appointment of counsel, the judicial officer finds that the person is financially able to obtain counsel or make partial payment for the representation, the judicial officer may terminate the appointment of counsel or recommend that any funds available to the person be ordered paid as provided in 18 U.S.C. § 3006A(f).

If at any stage of the trial proceedings, the judicial officer finds that the person is financially unable to continue to pay retained counsel, the judicial officer may make an original appointment of counsel in accordance with the general procedure set forth in this plan.

If a person having a right to counsel (i.e., where the appointment is not a matter of discretion) is not represented by counsel before the judicial officer and seeks to waive his or her right to have appointed counsel, the judicial officer shall make appropriate inquiry regarding such a waiver. If the person admits or the judicial officer finds that the person is financially able to obtain counsel but declines to do so, the judicial officer shall certify that fact in the record of the proceedings.

**B. The Clerk**

1. It shall be the duty of the Clerk to provide the Judges of the District with such current statistical data necessary to insure the proration of appointments as between the Federal Public Defender's Office and the CJA Panel.

1. If a person having a right to counsel desires to have counsel appointed, then

(a) if no affidavit of financial inability to employ counsel has been filed with the Clerk, a form of affidavit shall promptly be sent to the person, to be filled out by the person and returned to the Clerk; or

(b) if the notice to the Clerk includes an affidavit of financial inability to employ counsel, as soon as the Clerk receives such an affidavit, he or she shall promptly communicate with a judicial officer to arrange for the appointment of counsel.

**X. INVESTIGATIVE, EXPERT AND OTHER SERVICES**

Counsel (whether or not appointed under the Act) for a person who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his or her case may request such services in an ex parte application before a judicial officer, as provided in 18 U.S.C. § 3006A(e)(1). Upon finding that the services are necessary, and that the person is financially unable to obtain them, the judicial officer shall authorize counsel to obtain the services.

Appointed counsel may obtain, subject to later review, investigative, expert, or other services without prior authorization, pursuant to 18 U.S.C. § 3006A(e)(2). Expenditures without prior court authorization are not favored.

Counsel shall comply with all provisions regarding financial limitations and requests for services, as set forth in 18 U.S.C. § 3006A(e), and any guidelines or regulations approved by the Judicial Conference of the United States.

**XI. COMPENSATION**

Payment of fees and expenses to counsel appointed under this Plan (other than to the Federal Public Defender's Office), and payment for investigative, expert, and other services incurred, shall be made in accordance with any statutory limitations and such rules, regulations and guidelines, as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts. No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a person, unless such payment is approved by order of court. Payment in excess of any maximum amount provided by statute or otherwise may be made for extended or complex representation, whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the Chief Judge of the Second Circuit or the Chief Judge's designee.

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 the claim is correct in form, shall forward the claim form for the consideration of the appropriate judge or magistrate.

In any case where the judicial officer intends to reduce the amount of payment requested in a voucher, CJA counsel shall be notified of the amount of the intended reduction, and may request an opportunity for review by the judicial officer. After review of any submissions by appointed counsel and the completion of any other steps deemed appropriate by the court, the judicial officer shall then take action on the voucher, consistent with this Plan, the CJA, and the interests of justice.

## **XII. FORMS**

Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the court, the clerk, the judicial officers, the Federal Public Defender's Office and counsel.