

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Plan for Administration of the Criminal Justice Act of 1964,
as Amended, 18 U.S.C. §3006a

I. Authority

Pursuant to the provisions of 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 Nevada 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 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 a then-current copy of this Plan upon the attorney's designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk 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, U.S.C. (see Section 5034 of Title 18, U.S.C., with regard to appointment of counsel);
 - (c) 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 probation;

- (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 this title;
- (h) is in custody as a material witness;
- (i) is entitled to appointment of counsel under the sixth amendment to the Constitution;
- (j) faces loss of liberty in a case and Federal law requires the appointment of counsel;
- (k) is seeking to set aside or vacate a death sentence under Section 2254 or 2255 of Title 28, U.S.C.; or
- (l) is entitled to appointment of counsel under Section 4109 of this title.

2. Discretionary. Whenever the court 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; or
- (b) is seeking relief under Section 2241, 2254, or 2255 of Title 28 [but see paragraph (1)(x) regarding appointment of counsel in death penalty cases];
- (c) is charged with civil contempt and faces loss of liberty;
- (d) has been called as a witness before a grand jury, a court, the Congress, or 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 contempt proceeding, or face loss of liberty;
- (e) is proposed by the U.S. Attorney for processing under a "pretrial diversion" program; or

- (f) is held for international extradition under Chapter 209, Title 18, United States Code;
- (g) in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA and the "Guidelines for the Administration of the Criminal Justice Act, Guide to Judiciary Policies and Procedures", promulgated by the United States Judicial Conference pursuant to subsection (h) of the CJA [hereinafter referred to as "Guidelines for the Administration of the Criminal Justice Act"]. In determining whether a matter is ancillary to the proceedings the court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal charge;
- (h) proceedings Under Section 983 of Title 18, United States Code services provided by counsel appointed under 18 U.S.C. §983(b)(1) in connection with certain judicial civil forfeiture proceedings.

Representation shall include counsel and may include investigative, expert, and other services necessary for an adequate defense.

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 judge, when they are formally charged or notified of charges if formal charges are sealed, or when a 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.

(b) Habeas Corpus Proceedings. Under 18 U.S.C. §3599(a)(2), a financially eligible person seeking to vacate or set aside a death penalty 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 approving 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), local counsel 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 substantial experience in the trial of serious felony cases. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the laws 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) Under 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.

(c) Attorney Qualification Waiver. Under 18 U.S.C. § 3599(d), the 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 judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility.

(a) 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 will advise the court.

(b) If at any time after appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for representation, or that funds are available for payment from or on behalf of a person furnished representation, the court may terminate the appointment of counsel or authorize payment as provided in subsection (f) of the Criminal Justice Act, as the interests of justice may dictate.

(c) If at any stage of the proceedings, including an appeal, the court finds that the party is financially unable to pay counsel whom the party had retained, the court may appoint counsel as provided in the CJA, and authorize such payment as therein provided, as the interests of justice may dictate.

(d) The court, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

E. Determination of Representation.

Except as otherwise ordered by the court, the determination of whether a party entitled to representation will be represented by the Public Defender Organization or by a panel attorney shall be made by the court or designee under the court's supervision pursuant to the provisions of the "Guidelines for the Administration and Management of the Criminal Justice Act". (Attachment 1)

V. Federal Public Defender Organization

- A. The Federal Public Defender Organization for the District of Nevada, established under this plan in accordance with the provisions of subsections (g)(1) and (g)(2)(A) of the Criminal Justice Act, is to be headquartered in Las Vegas, Nevada, with a divisional office in Reno, Nevada, and shall be responsible for rendering defense services on appointment throughout the district.
- B. The Federal Public Defender Organization shall operate pursuant to the provisions of subsection (g)(2)(A) of the Criminal Justice Act, as well as the "Guidelines for the Administration of the Criminal Justice Act."
- C. In order to ensure the effective supervision and management of the Federal Public Defender Organization, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in that office. Accordingly, the court will assign cases in the name of the Federal Public Defender Organization rather than in the name of individual staff attorneys.

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 Attachment 1 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 portion 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 shall appoint the Capital Habeas Corpus Unit of the Federal Public Defender, or a qualified attorney or attorneys recommended by the Capital Habeas Corpus Unit of the Federal Public Defender, or other attorney who qualifies for appointment under Section 3599 of Title 18, U.S.C. 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 standards of conduct prescribed by the Model Rules of Professional Conduct as adopted and amended from time to time by the Supreme Court of Nevada, except as such may be modified by this court, the Nevada Performance Standards for Indigent Defense and other standards for professional conduct adopted by the 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 court order.
- D. Continuity and Duration of Appointment.
 - 1. In General. A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance through appeal, including ancillary matters as discussed in IV.A.2.(g) above. Unless otherwise ordered by the court, an attorney appointed to represent a defendant shall continue to represent the defendant throughout the trial court proceedings.

2. In Death Penalty Cases. In the interest of justice and judicial and fiscal economy, unless precluded by a conflict of interest, judicial officers may continue the appointment of state post-conviction counsel, if qualified under §III(A)(1)(c) of this Plan. In federal capital prosecutions and in federal death penalty habeas corpus proceedings, unless replaced by similarly qualified counsel, appointed counsel shall represent the defendant in every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motion for new trial, appeal, application for writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.
3. Appeal. In the event that a defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder 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. The attorney shall continue to represent the client on appeal unless or until relieved by the Court of Appeals. If counsel cannot or should not represent the defendant for the appeal, counsel shall request to be relieved as counsel and for new counsel to be appointed at the time of sentencing. After the Notice of Appeal has been filed, such relief must be sought from the Court of Appeals. See LCR 44-3(b)(2).

IX. Duties of Law Enforcement And Related Agencies

- A. Presentation of Accused for Appointment of Counsel. Counsel should be provided to persons financially eligible for representation as soon as feasible after they are taken into custody, when they first appear before a judicial officer, when formally charged, or when otherwise entitled to counsel under the CJA, whichever occurs earliest. 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 condition.

To effectuate this objective, federal law enforcement and prosecutorial agencies, probation and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or

who might otherwise be entitled to counsel under the CJA, whether the person desires court appointed counsel, and if so, arrange to have the person interviewed by the Federal Public Defenders Office or a panel attorney who shall promptly assist in the completion of financial eligibility forms and provide advice prior to further questioning by any agents.

- B. Pretrial Services Interview. Prior to starting a pretrial services interview, pretrial services officers must give Federal Public Defenders Office representatives or panel attorneys a reasonable opportunity to confer with persons who have expressed the desire to have court appointed counsel.
- C. Notice of Charging Documents. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke supervised release, the United States attorney, the probation officer, or court designee as appropriate, must immediately mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel.

X. Miscellaneous

- A. The “Guidelines for the Administration and Management of the Criminal Justice Act” attached hereto are approved by this court. Amendments to the “Guidelines for the Administration and Management of the Criminal Justice Act” may be entered from time to time in keeping with the needs of the court.
- B. The court, Clerk of Court, Federal Public Defender Organization and private attorneys appointed under the Act and this Plan shall comply with the provisions of the Judicial Conference’s “Guide for the Administration of the Criminal Justice Act” and the “Guidelines for the Administration and Management of the Criminal Justice Act.”

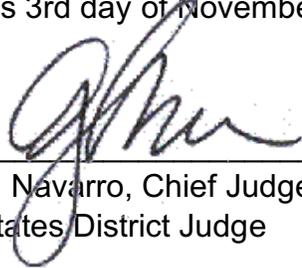
XI. Effective Date

This Plan as amended shall take effect immediately upon its approval by the Judicial Council of the Ninth Circuit and shall supersede all prior Criminal Justice Act Plans of this Court.

XII. Applicability of Provisions

This Plan as amended shall apply to all persons eligible to receive services under the Criminal Justice Act as defined by the Plan whether the person is a defendant, a witness or a petitioner in an action which falls under this Plan.

Dated this 3rd day of November, 2014



Gloria M. Navarro, Chief Judge
United States District Judge