

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL



In the Matter of the Review of the *
Plan of the United States *
District Court for the * No. 309
Middle District of North Carolina *
in Implementation of the Criminal Justice Act *

ORDER

The Plan of the United States District Court for the Middle District of North Carolina , which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:



Samuel W. Phillips, Secretary

Date: October 21, 2013

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CRIMINAL JUSTICE ACT PLAN



I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006A (CJA), and the *Guidelines for Administering the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume 7A of the *Guide to Judiciary Policy*, the Judges of the United States District Court for the Middle District of North Carolina adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to promote the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those 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 Re-authorization Act of 2005 (re-codified 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, the Clerk of Court, the Federal Public Defender, 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 attorney shall be provided with a 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 of Court 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. 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.

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 18 U.S.C. § 5031;
 - c. is charged with a violation of probation, or faces a change of term or condition of probation (unless the modification sought is favorable to the defendant 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 a change of term or condition of supervised release (unless the modification sought is favorable to the defendant and the government has not objected to the proposed change);
 - g. is subject to a mental condition hearing under 18 U.S.C. § 313;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2241, 2254 or 2255;
 - 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 18 U.S.C. § 4109;
 - k. is entitled to appointment of counsel under the Sixth

- Amendment to the Constitution, or
1. faces loss of liberty in a case and federal law requires the appointment of counsel.
 2. Discretionary. Whenever a United States District 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 28 U.S.C. §§ 2241, 2254, or 2255;
 - c. is charged with civil or criminal contempt and 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 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 United States Magistrate Judge or United States District Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States Magistrate Judge or United States District Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest. An appointment may be made retroactive to include any representation furnished prior to appointment.

C. Number and Qualifications of Counsel.

1. More than one attorney may be appointed in any case determined by the Court to be extremely difficult.
2. In capital cases, the following applies:
 - a. Federal Capital Prosecutions. Pursuant to 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 shall be learned in the law applicable to capital cases. Pursuant to 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. 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, the Court should consider appointing at least two counsel.
3. Qualifications for appointed counsel shall be determined by the Court.
4. In capital cases, the following applies:
 - a. Appointment of Counsel Prior to Judgment. Pursuant to 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 not have had less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 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. Pursuant to 18 U.S.C.

§ 3599(c), at least one of the attorneys appointed must have been admitted to practice in the United States Court of Appeals for the Fourth Circuit 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 United States Court of Appeals for the Fourth Circuit Court.

- c. Attorney Qualification Waiver. Pursuant to 18 U.S.C. § 3599(d), the Court, 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 United States District Judge or United States Magistrate Judge after making 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 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 PUBLIC DEFENDER ORGANIZATION

A. Establishment.

1. The Office of the Federal Public Defender for the Middle District of North Carolina, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the federal public defender organization for this district.
2. The Federal Public Defender shall be capable of providing legal services throughout the district. The Federal Public Defender shall maintain a central office in Greensboro, North Carolina and, subject to

the availability of funds, a satellite office in Winston-Salem, North Carolina.

- B. Supervision of Defender Organization. The Federal Public Defender shall be responsible for the supervision and management of the federal public defender organization. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender. If the name of the staff attorney designated by the Federal Public Defender is available, the staff attorney may be appointed, by name, in addition to the Federal Public Defender.
- C. CJA Panel Appointments. The Federal Public Defender shall be responsible for the systematic distribution of cases to the CJA Panel in accordance with 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 to this Plan.

VI. PRIVATE ATTORNEYS

- A. Establishment and Organization 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 adopted, subject to reconstitution in accordance with 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 Plan.
- B. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall 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" shall be defined as approximately 30% of the appointments under the CJA annually throughout the district, subject to variance in exceptional circumstances.

VII. 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 Rules of Professional Conduct adopted by the North Carolina State Bar.
- 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 (as governed by the United States Court of Appeals for the Fourth Circuit Court 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.

VIII. INQUIRY REGARDING COUNSEL AND NOTICE OF CHARGES

- A. Presentation of Accused for Appointment of Counsel. The United States Probation Office and/or, if appropriate, the United States Attorney's Office or federal law enforcement agency, 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, and shall, in such cases in which the person indicates that he or she is not able, arrange to have the person promptly presented before a United States Magistrate Judge or United States District Judge for determination of financial eligibility and appointment of counsel.
- B. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing or unsealing of a petition to modify or revoke probation or supervised release, the United States Attorney's Office or the United States Probation Office, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel.

IX. 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. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

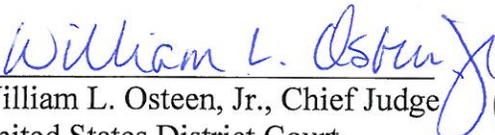
X. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the United States Court of Appeals for the Fourth Circuit.

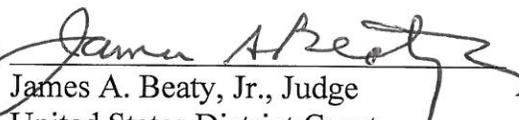
APPENDIX:

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

Adopted and approved on the 10th day of October, 2013.



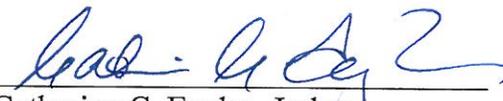
William L. Osteen, Jr., Chief Judge
United States District Court



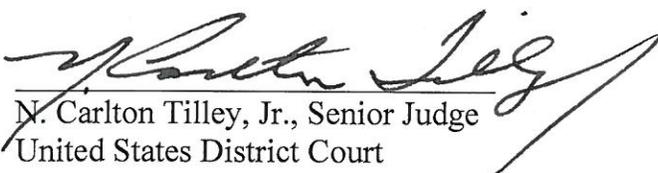
James A. Beaty, Jr., Judge
United States District Court



Thomas D. Schroeder, Judge
United States District Court



Catherine C. Eagles, Judge
United States District Court



N. Carlton Tilley, Jr., Senior Judge
United States District Court

APPENDIX I

PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA Panel

1. Approval. 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 adopted, subject to reconstitution in accordance with this Plan.

Not later than one year after the adoption of this Plan, the Court shall reconstitute the panel of private attorneys who are eligible and willing to be appointed to provide representation under the CJA. The Court shall approve attorneys for membership on the reconstituted CJA Panel after receiving recommendations from the “Panel Selection Committee,” established pursuant to paragraph B of this Plan.

2. Size. The Court shall 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 licensed to practice law in North Carolina, admitted to practice in the United States District Court for the Middle District of North Carolina and the United States Court of Appeals for the Fourth Circuit, a member in good standing of each bar to which they are admitted, and must maintain an office in the Middle District of North Carolina.
4. Knowledge, Experience and Continuing Education. Attorneys who serve on the CJA Panel must have demonstrated knowledge of federal criminal law and procedure, including relevant provisions of the United States Constitution, the United States Code, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the United States Sentencing Guidelines, and the Federal Rules of Appellate Procedure.

Applicants must have a minimum of three years of relevant experience sufficient to prepare them to serve as counsel of record at all phases of a non-capital felony case, including a jury trial. Attorneys who serve on the CJA Panel must attend at least 12 hours every two years of continuing legal education pertaining to federal criminal law and procedure.

5. Equal Opportunity. All qualified attorneys shall be encouraged to seek membership on the CJA Panel, without regard to race, color, religion, sex, age, national origin or disabling condition.
6. Terms. The reconstituted CJA Panel established pursuant to 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.
7. Removal. The Court may, for good cause, remove members of the CJA Panel prior to the expiration of their term after providing written notice of the proposed removal, a statement of the reasons therefore, and an opportunity to respond.
8. Reappointment. A member of the CJA Panel may be considered for immediate reappointment to the panel following expiration of his or her term; however, they must satisfy the same qualifications and complete the same application process as new applicants.
9. Application. Application forms for membership on the CJA Panel shall be made available, upon request by the Clerk of Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one United States District Judge, one United States Magistrate Judge, the CJA Panel

Representative, one attorney who is a member of the CJA Panel, and the Federal Public Defender or his or her designee. The Committee shall be chaired by the United States District Judge.

2. Duties.

- a. The Panel Selection Committee shall meet at least once a year to consider all applications for the vacancies created by the terms expiring each year. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

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 by the Committee regarding the appointment process and panel management. The committee shall 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 Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated.
- c. When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee will furnish information to the Court on recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.5. of this Plan. At least once each year, the Committee will provide the Court information on the panel of attorneys in each of the categories listed in paragraph I.A.5. of this Plan.

(Paragraph I.B.2.c. is taken, verbatim, from the Model CJA Plan and Appendix, and its requirements are specifically

included in the Office of Defender Services, Administrative Office of United States Courts, periodic evaluation of the Office of the Federal Public Defender.)

C. CJA TRAINING PANEL

The Panel Selection Committee may establish a “CJA Training Panel,” consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned by the Court to assist members of the CJA Panel in a “second chair” capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS.

The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Federal Public Defender shall furnish a copy of this list to each United States District Judge and United States Magistrate Judge. The Federal Public Defender shall also maintain for the Court a record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender office and private attorneys, according to the formula described in the CJA Plan for this District.

B. METHOD OF SELECTION.

Appointments from the list of private attorneys shall be made on a rotational basis, subject to the Court’s and/or Federal Public Defender Case Manager’s discretion to make exceptions due to conflicts of interest, the nature and complexity of the case, an attorney’s experience, the attorney’s availability, and geographical or other relevant considerations. This procedure should strive for a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon determination of a need for the appointment of counsel, the United States

District Judge or United States Magistrate Judge shall notify the Federal Public Defender of the need for counsel and the nature of the case.

The Federal Public Defender shall advise the United States District Judge or United States 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 the United States Magistrate Judge or United States District Judge decides to appoint an attorney from the panel, the Federal Public Defender shall 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 the appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing United States District Judge or United States Magistrate Judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding United States District Judge or United States Magistrate Judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing United States District Judge or United States Magistrate Judge shall notify the Federal Public Defender as to the name of the attorney appointed and the date of the appointment.

III. COMPENSATION - FILING OF VOUCHERS

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 United States District 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. "If the Court determines that a claim should be reduced, appointed counsel should be provided prior notice of the proposed reduction with a brief statement of the reason(s) for it, and an opportunity to address the matter." *Guide to Judiciary Policy*, Volume 7A, Chapter 2, § 230.36.