

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF LOUISIANA**

**ORDER**

IT IS ORDERED that the Plan of the United States District Court for the Eastern District of Louisiana pursuant to the Criminal Justice Act of 1964, as revised April 2004, is hereby abrogated, and the attached Revised Plan of April 2016 for Furnishing Representation Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) is adopted in its place.

New Orleans, Louisiana, this 29th day of April, 2016.



KURT D. ENGELHARDT, CHIEF JUDGE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**REVISED PLAN OF APRIL, 2016**

**FOR FURNISHING REPRESENTATION PURSUANT TO  
THE CRIMINAL JUSTICE ACT OF 1964 (18 U.S.C. § 3006A)**

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APPENDIX

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

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), section 3006A of title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the judges of the United States District Court for the Eastern District of Louisiana, adopt this amended 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 shall be administered so that those accused of a 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 Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The Court, its Clerk, the Office of the Federal Public Defender, and private attorneys appointed under the CJA shall comply with the provisions of this Plan, the *CJA Guidelines* approved by the Judicial Conference of the United States, and any other guidelines that may be implemented by the CJA Committee.
2. Each private attorney shall be provided by the Federal Public Defender with a current copy of this Plan upon the attorney's first appointment under the Criminal Justice Act or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk and the Federal Public Defenders 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 necessary for an adequate defense.
- B. "Appointed attorney" includes private attorneys, the Federal Public Defender and staff attorneys of the federal public defender organization.

### 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;
  - 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 sections 2254 or 2255 of title 28, United States Code;
  - 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 section 4109 of title 18, United States Code;
  - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
  - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
- 2. Discretionary. Whenever a judge or 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;
  - 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; or
  - g. is in any other circumstances in which a judge of the district court, or a magistrate judge believes the appointment of counsel would be appropriate.
3. Ancillary. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to 18 U.S.C. § 3006A. 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.

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 magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Eligibility for Representation.

1. Fact Finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or 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.

D. Number of Counsel.

1. Non-Capital Cases. Except as otherwise provided, only one attorney shall be appointed to represent a person who has requested representation under the Act.

More than one attorney may be appointed in any case determined by the Court to involve exceptional circumstances that are extremely difficult or complex. The Court shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown.

2. Capital and Capital-Eligible 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 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case. In assigning counsel, the Court shall consider the recommendation of the federal public defender organization.
3. Capital Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), 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, judicial officers should always consider appointing two or more counsel.

E. Qualifications of Counsel.

Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:

1. Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. § 848(q)(5), 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 have had not 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.
2. Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), 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.
3. Attorney Qualification Waiver. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), 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.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment.

1. The Federal Public Defender's Office for the Eastern District of Louisiana, 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 organization shall be capable of providing legal services throughout the district, and shall maintain an office in New Orleans, Louisiana.

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.

C. Management of CJA Panel. The Federal Public Defender shall 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 the Appendix of this CJA Plan.

VI. PRIVATE ATTORNEYS

A. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at the Appendix of this CJA Plan.

B. Appointments. If the federal public defender organization cannot accept an appointment, the Federal Public Defender or a staff member shall select a panel attorney who is willing to undertake the representation. The appointment of a panel attorney is on a rotational basis, with the Federal Public Defender identifying the attorney next eligible and available to take a case. Exceptions are allowed due to the nature and complexity of the case, an attorney's experience, language skills, and geographical location.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall 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" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

## 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 provisions of the American Bar Association's *Model Rules of Professional Conduct* or the American Bar Association's *Model Code of Professional Conduct* and any 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 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 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.

## VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement, prosecutorial agencies, and probation 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, and shall, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender who shall 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 (CJA Form 23) and arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.
- B. Pretrial Interview. Prior to any probation officer interviewing a person subject to proceedings under 18 U.S.C. § 3142 et. seq., the officer shall ask any person who is in custody, or who otherwise may be entitled to counsel under the Criminal Justice Act, whether he or she is financially able to secure representation. In those cases where the person says that he or she is unable to do so, the officer shall notify the Federal Public Defender. The Federal Public Defender or his or her representative may offer advice to the person prior to the pretrial interview or may also attend the interview itself for the purpose of providing assistance. If a representative from

the Federal Public Defender chooses to be present for the interview, he or she must report promptly to the interview so as to afford the probation officer adequate time to complete the interview and verify information prior to the court appearance. Should there be no one available from the Federal Public Defender's office who can promptly appear, or should the Federal Public Defender choose not to appear, the probation officer may begin and complete the interview.

- 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, immediately shall electronically serve 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.

#### IX. MISCELLANEOUS

- A. Claims. Claims for compensation of private attorneys and experts providing representation under the CJA shall be submitted electronically through the eVoucher system. The Federal Public Defender's office shall review the claim for technical accuracy and conformity with the *CJA Guidelines*, and, if correct, shall forward the claim for the consideration of the appropriate judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing claims and authorizing them for further processing.
- 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 Judges of the Eastern District of Louisiana and the Judicial Council of the Fifth Circuit.

APPENDIX

Plan for the United States District Court For the Eastern District of Louisiana for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

ENTERED FOR THE COURT on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT on this \_\_\_\_\_, day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
CHIEF JUDGE, COURT OF APPEALS

## APPENDIX

### PLAN FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA 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 Court shall 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 Court's CJA Panel Selection Committee shall approve attorneys for membership on the panel after receiving recommendations from the Federal Public Defender and the CJA Panel Representative for the district. Members of the CJA Panel shall serve at the pleasure of the Court.
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. As of the effective date of this plan, the panel is hereby fixed at a maximum number of 100 members.
3. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
4. Application. Application forms for membership on the CJA Panel are available online at the Clerk of Court's website for the Eastern District of Louisiana, [www.laed.uscourts.gov](http://www.laed.uscourts.gov), or on the Federal Public Defender's website, [www.lae.fd.org](http://www.lae.fd.org). Completed applications, along with a curriculum vitae, shall be submitted to the Federal Public Defender.

##### B. PANEL ATTORNEYS

1. General Qualifications. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district and of the State Bar of Louisiana, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. The minimum relevant professional experience is three years of continuous private federal criminal practice, or five years of criminal practice in state or federal court, or three years of experience as an Assistant United States Attorney or Assistant Federal Public Defender.

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 him or her for admission to the district's CJA Panel in the ordinary course of panel selection.

2. Special Qualifications for Capital Cases. Pursuant to 18 U.S.C. § 3599(b), at least one attorney must have been admitted to practice in the Court in which the prosecution is to be tried for not less than five years, and must have had not less than three years' experience in the actual trial of felony prosecutions in that Court. The presiding judicial officer, for good cause, may appoint an attorney who may not otherwise qualify, but who has the background, knowledge, and experience necessary to properly represent the defendant.

## **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, telephone numbers, and e-mail addresses. The Federal Public Defender shall furnish a copy of this list to each judge and magistrate judge. The Federal Public Defender shall also maintain a record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender's office and private attorneys, according to the formula described in the CJA Plan for the District.

### **B. METHOD OF SELECTION**

Appointments from the list of CJA Panel attorneys should be made on a rotational basis, subject to the Court's or the Federal Public Defender's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, language skills, 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 CJA defendant. Upon the determination of a need for the appointment of counsel, the judge or magistrate judge shall notify the Federal Public Defender of the need for counsel and the nature of the case. All CJA panel members shall be required to accept at least one CJA appointment per twelve month period.

The Federal Public Defender shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the CJA Panel. If the magistrate judge or 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 appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge or magistrate judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Federal Public Defender's office, the presiding judge or 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 judge or magistrate judge shall notify the Federal Public Defender as to the name of the attorney appointed and the date of the appointment.

#### C. TERM LIMITS FOR PANEL ATTORNEYS

Each panel member will serve for a three year term. A panel member's term will continue until the conclusion of any active representation under this Plan, but no new appointment will be offered, unless the panel member is selected to serve another three year term. If a panel member would like to be considered for another three year term, he/she must reapply ninety days prior to the expiration of the three year term. Members of the panel shall serve at the pleasure of the Court

#### D. REMOVAL FROM THE PANEL

1. Mandatory Removal. Any attorney whose right to practice in this District or the State of Louisiana has been suspended or revoked shall be automatically removed from the panel.
2. Discretionary Removal. For good cause shown, the Court's CJA Panel Selection Committee may remove an attorney from the panel for engaging in unethical behavior, improper billing, or misconduct or for failing to represent his or her client in a vigorous, competent, professional, or ethical way. The Court's CJA Panel Selection Committee may remove any attorney who does not accept appointments consistent with the acceptance rates for their relevant panel. The attorney will be given reasonable notice and an opportunity to cure the imbalance.
3. Reapplication to the Panel Following Removal. Any member who is removed from the panel, whether for mandatory or discretionary reasons, may reapply for panel membership after waiting one year from the date of removal.

### III. COMPENSATION

Claims for compensation shall be submitted to the Federal Public Defender's office electronically through the eVoucher system. The Federal Public Defender shall review the claim for technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, *Guide to Judiciary Policies and Procedures*) and, if correct, shall forward the claim for the consideration and action of the presiding judge or magistrate judge. Compensation claims shall be submitted timely at the conclusion of the case. Interim billing is discouraged and will be considered only when the duration of the case will cause a substantial financial hardship to counsel.