

FILED
U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

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AMENDED CRIMINAL JUSTICE ACT PLAN DISTRICT OF UTAH
November 2011

BY: _____
DEPUTY CLERK

I. AUTHORITY Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), 18 U.S.C. §3006A, 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 Utah, adopt this Amended Criminal Justice Act Plan (Plan) for furnishing representation in federal court for persons financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Plan Objectives.

1. To attain the ideal of equality before the law for all persons. 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 unable to afford legal representation necessary to an adequate defense.
2. To set forth 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 Office (FPDO), 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 FPDO with a 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 FPDO shall maintain a current copy of the CJA Guidelines for CJA Panel members and shall make it available to them.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.

- B. "Appointed attorney" includes private attorneys, the Federal Public Defender, and assistant attorneys of the FPDO.

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 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 18 U.S.C. Chapter 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. § 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
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. When a district 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 28 U.S.C. §§ 2254 or 2255;

- 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 18 U.S.C. Chapter 209.
- g. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and who has been represented by counsel appointed under section 3006A of Title 18, United States Code in connection with a related criminal case.

B. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (C) of the CJA.

C. 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 district or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, or when a district or magistrate judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest. Counsel also shall be provided to persons who initially are financially able to retain private counsel but who, as proceedings against them progress, are determined by a district or magistrate judge to meet the CJA eligibility requirements.

D. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed for any defendant in any case determined by the court to be complex. In a capital case, 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, 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 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 consider appointing 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. Pursuant to 18 U.S.C. § 3599, at least one of the attorneys appointed in a capital case 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 or, if no such organization exists in the district, of the Administrative Office of the United States Courts.

b. Attorney Qualification Waiver. Pursuant to 18 U.S.C. § 3599, the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599, 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 to the unique and complex nature of the litigation.

E. Eligibility for Representation.

1. Fact-finding. Determination of eligibility for CJA representation is a judicial function to be performed by a district 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 promptly advise the court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

- A. Establishment of a FPDO. Pursuant to subsection (g)(1) and (g)(2)(A) of the Criminal Justice Act 18 U.S.C. §3006A, and subject to the approval of the Judicial Council of the Tenth Circuit, the District of Utah establishes a Federal Public Defender Organization.
- B. Organization and Management of the Federal Defender Office. The Federal Public Defender shall be responsible for organizing, supervising, and managing the FPDO.
- C. Assignment of Cases to the FPDO. All persons that are referred by a district or magistrate judge to the FPDO for purposes of representation shall be assigned to the Federal Public Defender who shall be responsible for the subsequent assignment of them, at his or her discretion, to assistant defenders in the FPDO.
- D. Assigned Caseload. The Federal Public Defender shall receive approximately 70% of the District of Utah CJA appointments.
- E. Operative Guidelines. The FPDO shall operate pursuant to the provisions of subsection (g)(2)(A) of the CJA as well as the *Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures*.
- F. Day-to-Day Administration of the CJA Panel. The Federal Public Defender Office shall be responsible, under the oversight of the district and magistrate judges, for the day-to-day administration of the court's CJA Panel. However, magistrate or district court judges shall assign CJA Panel members to cases.
- G. Responsibility for Providing Training. The FPDO shall be responsible for developing and conducting training sessions on various aspects of effective criminal defense advocacy, including but not limited to the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. This responsibility includes providing a series of required advocacy training programs for applicants for membership on the CJA Panel as well as continuing education in-service programs for current members of the panel and professional staff in the FPDO.

VI. CRIMINAL JUSTICE ACT PANEL OF PRIVATE ATTORNEYS

- A. Establishment and Organization of CJA Panel The court's panel of Criminal

Justice Act attorneys (CJA Panel) shall consist of attorneys who are eligible and willing to be appointed to provide representation under the CJA. The court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to Section VII of this Plan. Members of the CJA Panel shall serve at the pleasure of the court.

- B. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be assigned for approximately 30% of the appointments in which the accused is determined to be financially eligible for representation under the CJA.
- C. Size. The Court may expand or diminish from time to time the size of the CJA Panel depending on the size and complexity of the court's criminal caseload. 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 the Sentencing Guidelines and thereby provide high-quality representation.
- D. Eligibility. Attorneys who serve on the CJA Panel must be active members in good standing of the bar of this court, the Utah State Bar, and have relevant experience with and knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. They also must participate in regular training sessions offered by the FPDO. Applicants for membership on the CJA Panel must complete a required series of training sessions offered through the FPDO before they will be considered for membership on the panel.
 - 1. Level 1 Panel. Attorneys eligible for the Level 1 Panel must meet the following criteria:
 - a. One to Five years legal practice or judicial clerkship;
 - b. Completion of mandatory 16 hours CLE for CJA panel lawyers (including basic 6-hour core course) within one year of panel membership. If counsel is unable to attend the mandatory 6-hour core course, counsel may seek approval of CJA Panel Administrator or Chief Magistrate Judge to substitute the Federal Bar Association Criminal Practice Seminar or another 6 hour training program offered by the Office of Defender Services Training Branch. Proof of CLE attendance must be shown upon completion or panel membership will be reviewed for suspension or termination;

- c. Completion of 8 or more hours of CJA related education per year after completion of mandatory CLE hours referenced in paragraph b above.
 - d. Copy of Federal Criminal Code and Rules; United States Sentencing Guidelines; and District of Utah Local Rules;
 - e. CM/ECF and Electronic Notice registration, and computer and FAX capability;
 - f. Willingness/availability to accept Level A cases which include: misdemeanors, basic felony cases and case related matters.
2. Level 2 Panel. Attorneys eligible for the Level 2 Panel must meet the following criteria:
- a.. Five (5) years or more criminal law related legal experience; or
 - b. Three (3) years of experience as a Level 1 CJA panel attorney; or
 - c. Trial counsel in three (3) or more felony federal or state jury trials;
 - d. Completion of mandatory 8 hours or more of CJA related CLE per year (including basic 6-hour core course). If counsel is unable to attend the mandatory 6-hour core course, counsel may seek approval of CJA Panel Administrator or Chief Magistrate Judge to substitute the Federal Bar Association Criminal Practice Seminar or another 6 hour training program offered by the Office of Defender Services Training Branch. Proof of CLE attendance must be shown upon completion or panel membership will be reviewed for suspension or termination;
 - e. Copy of Federal Criminal Code and Rules; United States Guidelines; District of Utah Local Rules; and Federal Rules of Appellate Procedure;
 - f. CM/ECF and Electronic Notice registration; and computer and FAX capability;
 - g. Willingness/availability to accept representation in Level B cases which include: complex felony cases (including complex white collar;

multiple count/complex felonies; drug offenses; felonies alleging violence against persons).

3. Level 3 Panel. Attorneys eligible for the Level 3 Panel must meet the following criteria:
 - a. Experienced criminal defense counsel willing to accept cases which include special court appointments in complex cases on an occasional basis;
 - b. Copy of Federal Criminal Code and Rules; United States Sentencing Guidelines; District of Utah Local Rules; and Federal Rules of Appellate Procedure;
 - c. CM/ECF and Electronic Notice Registration, and computer and FAX capability.

E. Removal of CJA Panel Members:

1. Mandatory Removal: A member of the CJA Panel whose license to practice law in the district or state has been suspended or revoked shall be removed from the panel.
2. Referral to Panel Selection Committee: Panel members who fail to attend the required amount of CJA related CLE will be referred to the Panel Selection Committee to determine whether or not that Panel member will face suspension or removal from the Panel.

If the court is unable to contact a Panel member for court appointments or who continually declines to accept court appointments will be referred to the Panel Selection Committee to determine whether or not that Panel member will face suspension or removal from the Panel.

All complaints concerning the conduct of Panel members shall be referred to the Panel Selection Committee. The Committee will determine if the complaint alleges facts which, if true, warrant consideration of removal or suspension.

- F. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, ethnicity, gender, age, or disability.

G. Selection of CJA Panel Representative. The court shall select one member of the panel to serve as the Panel Representative, without compensation. The Panel Representative shall participate in panel management responsibilities as herein described.

H. CJA Panel Attorney Panel Listing, Reporting, and Selection Procedures.

1. List. The Federal Public Defender Office shall maintain a current list of all attorneys on the CJA Panel, with current office addresses, telephone numbers and e-mail addresses, as well as a statement of qualifications and experience, and shall furnish a copy of this list routinely to each district and magistrate judge and to the clerk each time the list is updated.

2. Statistical Records and Reports. The Clerk of Court shall maintain a public record of assignments to private counsel and provide a quarterly statistical report reflecting the proration of appointments between attorneys from the FPDO and private attorneys, according to the formula described in this Plan.

3. Selection. Selection of attorneys for CJA assignments shall be made from the current list of CJA Panel attorneys by random assignment, based on a weighted model with random selection of equally-weighted attorney assignees. Points are assigned as follows:

3 Points Accept, Decline, or Judicial Appointment

1 Point Unable to Reach Attorney

0 Points Case Conflict or Legitimately Unable to Accept

Points are assigned on current, new CJA appointments. No points are assigned in post-judgment matters. The program randomly selects an attorney that has the least amount of points. If multiple attorneys have the same lowest point value, the system will randomly select from that pool and give points when an attorney is appointed. The program, for CJA Panel members new to the program, initially assigns points at an average-weighted point value.

4. Judicial Selection. In exceptional cases, however, when the district judge presiding over the case or the magistrate judge to whom the case has been referred determines that the appointment of a specific 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, such appointment may be made directly by the judicial

officer. Alternatively, when the district or magistrate judge, in exceptional circumstances, determines that 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 the appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Where, in the judgement of the district or magistrate judge, the unusual circumstances of the case warrant assignment of an attorney who may not maintain an office in the district, such attorney 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. In the event of an emergency, the assigned district or magistrate judge may appoint any attorney from the list.

5. Terms of Panel Membership. Attorneys who meet the qualification requirements for membership in the court's CJA Panel, unless otherwise determined by a district or magistrate judge, will be retained on the panel for indefinite terms of service. Where the number of criminal cases does not warrant retaining the number of panel members that currently comprise the panel because opportunities for representation are not sufficient to enable all panel members to retain their skills, the court may reduce the size of the panel by criteria to be established at the time such reduction is made. If the level of interest among qualified attorneys in serving on the panel exceeds the number of attorneys serving on the panel, the court in its discretion may establish fixed terms of service to permit all interested and qualified attorneys an opportunity for service.
6. Application. Application forms for membership on the CJA Panel shall be distributed by the clerk of court at the semi-annual new attorney ceremonies and made available, upon request, by the Federal Public Defender. Completed applications shall be submitted to the Chief Magistrate Judge, who will review and transmit them to the Panel Selection Committee for its review and appropriate determination.
7. Compensation. CJA Panel member claims for compensation shall be submitted on the appropriate CJA form to the Federal Public Defender who shall review for reasonableness, accuracy and for conformity with the *Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures)*. Upon such review, the Federal Public Defender shall transmit the claim forms to the financial administrator in the clerk's office who shall also review for accuracy and for conformity with the *Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures)* who shall then enter the claim forms into the CJA Panel Attorney Payment System. The

financial administrator, in turn, shall forward the claim form for the consideration and action of the assigned district or magistrate judge. All persons involved in the processing of vouchers shall exert their best effort to avoid delays in processing vouchers, absent extraordinary circumstances, judges should act on claims for compensation within 30 days of submission.

VII. PANEL SELECTION COMMITTEE

- A. Membership. A Panel Selection Committee shall be established by the court. The Committee shall consist of one or more magistrate judge, the selected CJA Panel Representative, and the Federal Public Defender. The Committee shall select its own chairperson.
- B. Duties:
 - 1. The Panel Section Committee shall meet as required to consider applications for membership on the court's CJA Panel. In considering prospective members, the Committee shall review the qualifications of applicants and take into account the size of the panel.
 - 2. The Committee also shall review on an annual basis the operation and administration of the panel over the preceding year, and recommend to the court any changes it deems necessary or appropriate regarding the appointment process and panel management. The Committee also shall inquire as to the continued availability and willingness of each panel member to accept appointments.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services rendered to persons represented by appointed counsel shall be commensurate with those rendered if counsel were retained by such persons.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall be governed by and shall comply with the rules of practice adopted by the court and with the Utah Rules of Professional Conduct, as revised and interpreted by this court.
- C. No Receipt of Other Payment. Appointed counsel shall neither require nor accept any payment, promise of payment, or other valuable consideration for representation under the appointment, unless such payment is approved by court order.
- D. Continuing Representation. Once appointed under the CJA, counsel shall continue the representation until (i) the matter, including appeals or review by certiorari, is closed; (ii) substitute counsel has filed a notice of appearance; (iii) an order has been

entered allowing or requiring the person represented to proceed pro se; or (iv) until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agency officers, 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 appointment of counsel appears likely, such officers shall assist the person with completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly appear before a district or magistrate judge for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. Prior to commencing the pretrial services interview, the probation or pretrial services officer shall (i) advise any person who is in custody, or who may be entitled to counsel under the CJA, of his or her rights as set forth in the bi-lingual Notice to Defendants (Pretrial Services Form 1), and (ii) provide such person opportunity to carefully review, complete, and sign the form.
- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of 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 mail 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.

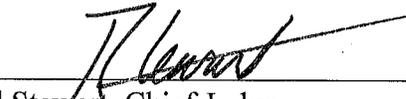
X. MISCELLANEOUS

- 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.

XI. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Tenth Circuit.

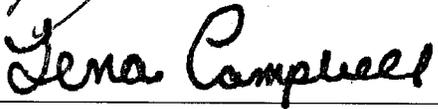
Dated this 14th day of November, 2011.



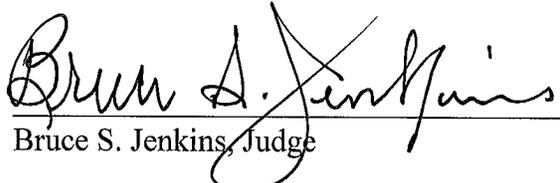
Ted Stewart, Chief Judge



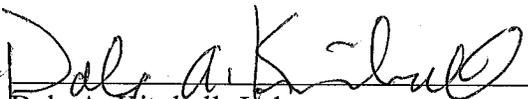
Dee Benson, Judge



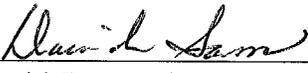
Tena Campbell, Judge



Bruce S. Jenkins, Judge



Dale A. Kimball, Judge



David Sam, Judge



Clark Waddoups, Judge