

**UNITED STATES COURTS
DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS**

**AMENDED PLAN FOR IMPLEMENTING
THE CRIMINAL JUSTICE ACT OF 1964, 18 U.S.C. § 3006A**

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), 18 U.S.C. § 3006A, and the *Guidelines for Administering the CJA and Related Statutes (CJA Guidelines)*, Volume 7A of the *Guide to Judiciary Policy*, the Chief Judge of the District Court for the Northern Mariana Islands adopts 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 any 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, 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 of Defender Services and with this Plan.
2. Each private attorney will be provided by the clerk of court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk 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. "Court" means the District Court for the Northern Mariana Islands.
- B. "Eligible person" means an individual who establishes financial inability to obtain counsel.
- C. "Representation" includes counsel and investigative, expert, and other services.
- D. "Judge" means a U.S. District Court Judge, U.S. Magistrate Judge, or a designated judge pursuant to 48 U.S.C. § 1821(b)(2), unless otherwise stated.

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 (see CJA Guidelines, § 210.20.10(a)(5));
 - 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 (18 U.S.C. § 4241 *et seq.*);
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under 18 U.S.C. § 2254 or 2255;
 - j. is entitled to appointment of counsel in verification of consent proceedings in connection with 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 (*see* CJA Guidelines, § 210.20.10(a)(9)); or

l. faces loss of liberty in a case and federal law requires the appointment of counsel (*see* CJA Guidelines, § 210.20.10(a)(9)).

2. Discretionary. Whenever a 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 18 U.S.C. § 2241, 2254, or 2255 (*see* CJA Guidelines, § 210.20.20(a)(2));

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 would 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 (18 U.S.C. § 3181 *et seq.*).

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings under subsection (c) of the CJA.

B. Timely Appointment of Counsel.

1. 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.

2. *“On-call attorney.”* The Chief Judge, after consultation with the CJA Standing Committee, may appoint a CJA panel attorney or attorneys to be on call to advise persons who are in custody, or who otherwise may

be entitled to counsel under the CJA, during the pretrial interview process. The on-call attorney will serve in such capacity for a term of one month. The representation will be limited to advising the person during the pretrial interview process. At the person's request, the on-call attorney may be present at the pretrial interview.

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 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. Under 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 have had not less than three years' experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law 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 Administrative Office of the United States Courts (there being no federal public defender in the district).
 - b. 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 presiding 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 to the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Factfinding. 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. 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 so advise the court.

V. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA Panel) who are eligible 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 Appendix I of this CJA Plan.

VI. 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 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.

- 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. Appointment as counsel also requires representation of the client in connection with issues concerning probation revocation, supervised release violations, and remand following appeal.

VII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, must 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 must, in such cases in which the person indicates that he or she is not able, assist in the completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a judge for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. In recognition of the importance of the advice of counsel for persons being interviewed by pretrial services officers, the pretrial services officers of this District, prior to conducting such interviews, must notify the defendant, in writing, of the nature and purpose of the particular interview, that the defendant is not obligated to speak to the pretrial services officer, that the defendant has a right to speak with an attorney before answering any questions and that the defendant has the right to appointment of such an attorney if the defendant cannot afford an attorney.
- 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, must immediately 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.

VIII. 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, must be used, where applicable, in all proceedings under this Plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form, to the office of the Clerk of Court. That office will review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, will forward the claim form for the consideration of the appropriate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.
- D. Resources. Answers to questions concerning appointment under the Act can generally be found in the applicable federal statutes: 18 U.S.C. § 3006A, Adequate Representation of Defendants; 18 U.S.C. § 3005, Counsel and Witnesses in Capital Cases; 18 U.S.C. § 3599, Counsel for Financially Unable Defendants; 18 U.S.C. § 983(b), Civil Forfeiture Proceedings; and the Guide to Judiciary Policy, Vol. 7.

IX. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Ninth Circuit.¹

¹ Approved by the Judicial Council for the Ninth Circuit on February 18, 2015.

APPENDIX

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. Establishment. 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.
2. Term. Members of the CJA Panel shall serve at the pleasure of the Court for a term of three (3) years. There is no limit to the number of terms an attorney may serve on the CJA Panel.
3. Reappointment. Within sixty (60) days of the implementation of this CJA Plan, the Clerk will notify each member of the current CJA Panel whether he or she is appointed to a three-year term. Within sixty (60) days prior to the expiration of any CJA Panel attorney's term, the Clerk will notify that attorney whether he or she is reappointed. Appointment and reappointment are at the sole discretion of the Chief Judge. An attorney who is not reappointed will be permitted to complete the representation of CJA clients in any pending cases but will not be assigned any new cases.
4. Size. The size of the panel will be fixed at twelve (12) unless otherwise determined by the Chief Judge. The panel will 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.
5. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. However, when the judge presiding over the case, or the chief judge if a 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.

6. Training. Attorneys who serve on the CJA Panel must complete at least five (5) hours of continuing legal education (CLE) per calendar year in trial skills, federal sentencing, and/or developments in federal substantive or procedural law. The CLE requirement may be satisfied by trainings arranged by the Standing Committee, the CNMI Bar Association or other state or territorial bar association, a Federal Defender service, or other nationally recognized defender service organization, and may include webinars and other online training provided by such organizations. Proof of satisfaction of this requirement must be provided to the Clerk of Court by the end of each calendar year, not including the calendar year in which an applicant is appointed to the CJA Panel.

7. Suspension or removal. Because CJA Panel attorneys serve at the pleasure of the Chief Judge, they are subject to suspension or removal from the Panel by the Chief Judge at any time. The Chief Judge will promptly notify the suspended or removed Panel attorney of the action taken, the reasons therefor, and any conditions that the suspended or removed attorney must satisfy before applying for reinstatement or reappointment to the Panel.

- (i) *Summary suspension or removal.* If a Panel attorney is suspended or disbarred from the practice of law by any state, federal, or territorial court, or is convicted of any misdemeanor involving moral turpitude, the Chief Judge will summarily suspend or remove the attorney from the Panel.
- (ii) *Other grounds for suspension or removal.* The Chief Judge may suspend an attorney from the CJA Panel for failure to fulfill the obligations of Panel membership, including but not limited to failure to complete the required annual CLE (*see* I.A.6), inclusion of false or misleading information in CJA vouchers, unjustified or frequent failure to accept appointments, and failure to provide effective assistance of counsel. In deciding whether to remove or suspend a Panel attorney, the Chief Judge may consult with the Standing Committee.
- (iii) *Continued representation of existing clients.* An attorney who has been suspended or removed from the CJA Panel will, within seven (7) days of receipt of notice of suspension or removal, move to withdraw from the representation of clients in any active CJA cases. The suspended or removed attorney will continue to represent an existing client in a CJA case unless and until the Court substitutes another attorney.
- (iv) *Reinstatement and reappointment.* An attorney who has been suspended or removed from the Panel may apply to the Chief Judge

to be reinstated (after suspension) or reappointed (after removal) no sooner than six (6) months after the attorney was suspended or removed. In deciding whether to reinstate or reappoint an attorney to the Panel, the Chief Judge may consult with the Standing Committee.

B. STANDING COMMITTEE

1. Establishment and composition. The Court will establish a Standing Committee consisting of three CJA Panel attorneys. To be eligible to serve on the Standing Committee, an attorney must have at least three years' continuous tenure on the CJA Panel. The Clerk of Court or the Clerk's designee will be a permanent non-voting member of the Standing Committee. Selection of CJA Panel members to serve on the Standing Committee will be at the sole discretion of the Chief Judge, and for an indefinite term.

2. Chairperson and resource counsel. The Standing Committee will choose one of its members to serve as both chairperson of the Standing Committee and resource counsel for the CJA Panel.

3. Duties. The Standing Committee will meet at least once a year to discharge the following duties:

(i) Recommend to the Chief Judge whether the size of the CJA Panel should remain the same, or should be increased or decreased; and to recommend whether any vacancies that have arisen over the course of the year should be filled.

(ii) Consider all applications for membership on the CJA Panel and recommend to the Chief Judge those applicants best qualified to serve on the CJA Panel. The decision whether to appoint any person recommended by the Standing Committee will be in the sole discretion of the Chief Judge.

(iii) Review the operation and administration of the CJA Panel and make recommendations for improvement, including but not limited to amendments to the CJA Plan.

(iv) Review the training available to CJA Panel attorneys in trial skills, sentencing, and substantive and procedural changes in federal criminal law, and recommend to the Chief Judge means to improve training.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST

The Clerk of Court will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, telephone numbers, and e-mail addresses.

B. METHOD OF SELECTION

Appointments from the list of private attorneys will be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, 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 will notify the Clerk of the need for counsel and the nature of the case.

The Clerk will determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity as the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the 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 will notify the Clerk as to the name of the attorney appointed and the date of the appointment.

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of Court. The Clerk of Court 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 and action of the presiding judge.