

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**PLAN FOR IMPLEMENTING THE CRIMINAL
JUSTICE ACT REVISION OF 1984, 18 U.S.C. § 3006A**

Pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. 3006A (the "Act"), the Judges of the United States District Court for the Eastern District of Oklahoma adopt the following plan for the representation of any person otherwise financially unable to obtain adequate representation.

1. Representation *shall* be provided for any financially eligible person who is:
 - a. charged with a felony or a Class A misdemeanor;
 - b. a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031 (see 18 U.S.C. § 5034 with regard to appointment of counsel);
 - c. charged with a violation of probation;
 - d. under arrest, when such representation is required by law;
 - e. entitled to appointment of counsel in parole proceedings pursuant to chapter 311 of Title 18 U.S.C.;
 - f. subject to a mental condition hearing under chapter 313 of Title 18, U.S.C.;
 - g. in custody as a material witness;
 - h. entitled to appointment of counsel under the Sixth Amendment to the Constitution;
 - i. seeking to set aside or vacate a death sentence under section 2254 or section 2255 of Title 28, U.S.C.;
 - j. facing loss of liberty in a case and federal law requires the appointment of counsel;

k. 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; or

l. entitled to the appointment of counsel under 18 U.S.C. § 4109.

2. Whenever the Court determines that the interests of justice so require, representation *may* be provided for any financially eligible person who is:

a. charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized;

b. seeking relief under 28 U.S.C. § 2241, 28 U.S.C. § 2254 or 28 U.S.C. § 2255;

c. charged with civil or criminal contempt who faces a loss of liberty;

d. 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. proposed by the United States Attorney for processing under a pretrial diversion program; or

f. 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 under subsection (c) of the Act.

I. Provision for Furnishing Counsel

A. This plan provides for the furnishing of legal services by a federal public defender organization, supervised by a federal public defender, and serving the United States

District Courts for the Northern and Eastern Districts of Oklahoma. In addition, this plan provides for the appointment and compensation of private counsel in a substantial proportion of cases. The term “private counsel” includes counsel furnished by a bar association or a legal aid agency, and a claim by such an organization for compensation will be approved on the same basis as in the case of the appointment of private counsel.

B. The determination of whether a party entitled to representation will be represented by the federal public defender organization or by private counsel is within the discretion of the appointing judge or magistrate judge. Insofar as practicable, private attorney appointments will be made in at least 25 percent of the cases.

II. Federal Public Defender Organization

A. The Court has determined that the use of a federal public defender organization, as defined in subsection (g)(2)(A) of the Act, serving this District as well as the Northern District of Oklahoma, will facilitate the representation of persons entitled to the appointment of counsel under the Act, and that the Northern and Eastern Districts of Oklahoma are adjacent districts in which at least two hundred (200) persons annually require the appointment of counsel, as required by subsection (g)(1) of the Act, concerning the qualifications necessary to establish such an organization.

A federal public defender organization with headquarters in Tulsa, Oklahoma, has been properly established. A branch office in Muskogee, Oklahoma will also be maintained. These offices are capable of rendering defense services on an appointed basis in the Northern

and Eastern Districts of Oklahoma. The federal public defender organization is authorized to accept appointments in cases initiated in the Eastern and Northern Districts of Oklahoma and, if a need arises, in the Western District of Oklahoma. The public defender organization may accept appointments in the Western District of Oklahoma subject to the approval of the Chief Judges of the respective districts.

B. The federal public defender organization shall operate pursuant to the provisions of subsection (g)(2)(A) of the Act, as well as the *Guidelines for Administering the Criminal Justice Act and Related Statutes*, promulgated by the United States Judicial Conference pursuant to subsection (h) of the Act.

C. Neither the federal public defender nor any appointed staff attorney may engage in the private practice of law.

D. The federal public defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by the Director, reports of the organization's activities, its financial position and proposed budget.

E. The federal public defender shall furnish to this Court the initial roster of staff attorneys and shall report any changes thereto to this Court.

F. In order to ensure the effective supervision and management of the federal public defender organization, the federal public defender will be responsible for the assignment of cases among the staff attorneys in the federal public defender office.

Accordingly, the Court will assign cases in the name of the federal public defender organization rather than in the name of individual staff attorneys.

G. The federal public defender organization will make such arrangements with federal, state, and local investigative and police agencies, the United States Marshal's Service and the United States Attorney's Office as will adequately assure that at the earliest practicable stage, persons who have: (i) been arrested under circumstances where such representation is required by federal law, (ii) received a summons to appear in court to answer to formal charges, or (iii) received a grand jury subpoena and/or are targets of a grand jury investigation may promptly have counsel furnished them by the organization. In communities where an organization attorney is not available, such law enforcement agencies and prosecutorial offices shall have access to the name, address and telephone number of an attorney from the panel of private attorneys approved by the Court, as described in Title III of this plan.

III. Panel of Private Attorneys

A. Composition of Panel of Private Attorneys

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to provide representation under the Act. The Court shall approve attorneys for membership on the CJA Panel after receiving recommendations from the "Panel Selection Committee," established pursuant to part B of this Title. 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 CJA Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the Criminal Justice Act case load, 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 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 United States Sentencing Guidelines.

4. Status: Active and Inactive. The CJA Panel will be divided into two groups consisting of active and inactive panel members. Attorneys on the active list will be those attorneys who have accepted CJA appointments during the preceding calendar year. In order to remain on the active list, an attorney, during a calendar year, must have accepted at least one appointment and have attended a minimum of two of the meetings as described below in “Part 6. Continuing Legal Education.” Should a panel attorney fail to satisfy these requirements, the Panel Selection Committee shall place that attorney on the inactive list, thus making that attorney ineligible for CJA appointments. The Panel Selection Committee may waive the attendance requirement for good cause shown. An attorney may request to be placed on the inactive list due to personal, business or other reasons. In order to return to the active list, an attorney must request reinstatement in writing. The federal public

defender shall periodically review the active and inactive lists and report the findings to the Panel Selection Committee for further action.

5. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the federal public defender. Completed applications shall be submitted to the federal public defender, who will transmit the applications to the chairperson of the Panel Selection Committee.

6. Continuing Legal Education. The federal public defender shall regularly schedule and conduct meetings and programs for panel attorneys. Such meetings and programs should be held at least four (4) times during a calendar year. These meetings shall be designed to ensure that panel attorneys are kept current on recent developments in federal criminal law and to present speakers and topics of interest to attorneys who act as appointed counsel under the Criminal Justice Act.

B. Panel Selection Committee.

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one or more district judges, one or more magistrate judges, one attorney who is a member of the CJA Active Panel, and the federal public defender. The Committee shall select its own chairperson.

2. Duties.

a. The Panel Selection Committee shall meet at least every six months to consider applications for the panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill any existing vacancies.

At each meeting, the Committee shall also review the operation and administration of the Panel since the preceding meeting, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process, Panel management, and Panel membership.

The federal public defender shall also inquire periodically as to the continued availability and willingness of each Panel member to accept appointments and shall report the findings to the Committee.

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.

C. The 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 federal public defender to assist CJA Panel attorneys or staff attorneys 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.

IV. 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 judge and

magistrate judge. The federal public defender shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between the federal public defender organization and private attorneys, according to the formula described in part A of Title I of this plan.

B. Method of Selection.

1. Generally. Appointments from the list of private attorneys should 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, geographical considerations or other good cause. 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 Court shall notify the federal public defender of the need for counsel and the nature of the case. The federal public defender shall devise, institute and maintain a system for the appointment of counsel to ensure that a proper ratio of staff-to-panel appointments is maintained and that all panel attorneys are provided equal opportunity to accept CJA appointments. Should a panel attorney be assigned a "duty" day, that attorney would be responsible for any cases that require appointed counsel. Compensation for panel attorneys will be made in accordance with Part VII as set forth below.

The federal public defender shall advise the Court as to the status of the distribution of cases as between the federal public defender organization and the panel of private attorneys. If the Court 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, *e. g.*, weekends, holidays, or other non-working hours of the office of the federal public defender, the Court may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the Court shall notify the federal public defender as to the name of the attorney appointed and the date of appointment.

2. On Application by United States Attorney. In circumstances where the United States Attorney concludes that it may be appropriate for the Court to appoint counsel for a person under 18 U.S.C. § 3006A, the United States Attorney may apply to the Court for such an appointment.

The application shall be presented to the United States magistrate judge member of the CJA Panel Selection Committee or, if he or she is unavailable, to another judge or magistrate judge of the district. If the application is approved, the Court may appoint an attorney from the CJA Panel without regard to the next attorney in rotation or appoint an

attorney not on the panel. The Court may or may not notify the federal public defender of the appointment as circumstances warrant.

V. Determination of Need for Counsel

A. Advice of Right, Financial Inquiry, Appointment Procedure. Counsel should be provided to persons financially eligible for representation as soon as feasible after they are taken into custody, when they appear before a federal judge or magistrate judge, when formally charged, or when otherwise entitled to counsel under the Act, whichever occurs earliest. The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition. To effectuate this objective, federal law enforcement and prosecutorial agencies, the United States Probation Office and Pretrial Services in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who might otherwise be entitled to counsel under the Act, whether the person desires court-appointed counsel, and shall, in such cases in which the person indicates that he or she does seek representation, promptly notify the office of the Federal Public Defender and arrange to have the person presented before a magistrate judge or judge of this Court for determination of financial eligibility and assignment of counsel.

Unless it will result in undue delay, fact-finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. Relevant information bearing on the person's financial eligibility should be reflected on a

financial eligibility affidavit (CJA Form 23) and should be filled out by that person with the assistance of counsel. After completion, the form shall be presented to a judicial officer. Other officers or employees of the Court (i.e., clerk, deputy clerk or Pretrial Services Officer) may be designated by the Court to verify the facts contained within the affidavit upon which such determination is to be made. Employees of law enforcement agencies or United States Attorney's offices should not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.

In every criminal case in which a person is entitled to representation as provided in the preamble of this plan and appears without counsel, the Court shall advise the person of the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford adequate representation. Unless the person waives representation by counsel in writing, the Court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the person. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry may follow the person's request for appointment of counsel as soon thereafter as is practicable. All statements made by a person in requesting counsel or during the inquiry into eligibility shall be either (i) by affidavit sworn to before the Court, a court clerk or deputy, or a notary public, or (ii) under oath in open court.

When appointment of counsel is determined to be appropriate, the Court shall appoint either the federal public defender organization (and one of the staff attorneys) or an attorney from the panel of private attorneys approved by the Court, depending on whether a staff or panel attorney has been assigned to that case. However, when the Court determines that the appointment of an attorney who is not a member of the 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 panel pro hac vice and appointed to represent the 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.

Appointment of counsel may be made retroactive to include representation furnished pursuant to this plan in the United States District Court for the Eastern District of Oklahoma but prior to appointment herein.

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.

B. Continuity and Duration of Appointment. A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the United States magistrate judge or the district court judge through appeal, including

ancillary matters appropriate to the proceedings. After a case has been closed following sentencing or appeal, the Panel Attorney shall remain the attorney of record and thus is expected to continue to represent the client at any subsequent related court proceedings, including hearings to revoke supervised release or probation. If a United States magistrate judge appoints counsel to represent a person and the person is later before a district court judge in connection with the same charge, the same counsel shall appear before the judge to represent the person until the judge has had the opportunity to make an independent determination as to whether appointment of counsel in the proceedings is appropriate and, if so, who should be appointed.

C. Appeal. In the event that a criminal defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder shall advise the defendant of the right of appeal and of the right to counsel on appeal and shall consult with “the defendant about the advantages and disadvantages of taking an appeal, and mak[e] a reasonable effort to ascertain the defendant’s wishes”¹ regarding an appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal. Filing the Notice of Appeal concludes the trial representation; nevertheless, to avoid a gap in representation, the attorney shall continue to represent the defendant unless or until relieved by the court of appeals or, upon remand, by the district court.

¹*Roe v. Flores-Ortega*, 528 U.S. 470, 478 (2000).

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

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 the representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court. The Court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such party. In such event, the amount so paid or payable by the party shall be considered by the Court in determining the total compensation to be allowed to such attorney. No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the Court.

If at any stage of the proceedings, including an appeal, the Court finds that the party is financially unable to pay counsel whom he or she had retained, the Court may appoint counsel as provided in the Act, and authorize such payment as therein provided, as the interests of justice may dictate.

The Court, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

VI. Investigative, Expert, and Other Services

A. Upon Request. Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request such services in an *ex parte* application before the Court. Upon finding, after appropriate inquiry in such *ex parte* proceedings, that the services are necessary, and that the person is financially unable to obtain them, the Court shall authorize counsel to obtain the services. The maximum which may be paid to a person or organization for services so authorized shall not exceed the limit set by the Act, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the Court as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit, or the Chief Judge's designee.

B. Without Prior Request. Counsel appointed under the Act may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for adequate representation. However, the total cost for services obtained without prior authorization may not exceed the maximum set by the Act, and expenses reasonably incurred, for each person or organization providing the services. This limit may be waived, however, if the Court in the interest of justice finds that timely procurement of necessary

services could not await prior authorization. Counsel may request ratification for investigative, expert, or other services within the limit by submitting an application for *ex parte* review by the Court.

C. Ex Parte Applications. *Ex parte* applications for services other than counsel shall be heard *in camera*, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial court, subject to further order of the Court.

D. Claims. Claims for compensation of person providing investigative, expert, and other services under the Act shall be submitted on the appropriate CJA form to the office of the federal public defender. The federal public defender shall review the claim form for mathematical and technical accuracy and for conformity with the *Guidelines for Administering the Criminal Justice Act and Related Statutes*, (Volume VII, Guide to Judiciary Policy), and, if correct, shall forward the claim for the consideration of the Court.

E. Federal Public Defender Organization. The federal public defender organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this Title, *provided* that total expenditures of the organization for investigative, expert, and other services do not exceed its budget authorization for these specific categories.

VII. Payment for Representation by Private Counsel

A. Hourly Rates. Any private attorney appointed under this plan shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding the rate established under 18 U.S.C. § 3006A(d). Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the Court, subject to the limitations set forth in ¶ VI, *supra*.

B. Maximum Amounts. For representation of a person before the judge or the United States magistrate judge, or both, the compensation to be paid to a private attorney under this Plan shall not exceed the maximum amounts prescribed in the Act for each attorney in a case in which one or more felonies are charged, for each attorney in a case in which misdemeanors are charged, for representation in connection with a post-trial motion made after entry of judgment, a probation revocation proceeding, a parole proceeding, or for discretionary appointments as provided in subsection (a)(2) of the Act.

C. Waiving Maximum Amounts. Payment in excess of any maximum amount provided in the previous paragraph may be made for extended or complex representation whenever the presiding judge certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit, or the Chief Judge's designee.

D. Filing Claims. Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the federal public defender. The federal public defender shall

review the claim form for mathematical and technical accuracy, and for conformity with the *Guidelines for Administering the Criminal Justice Act and Related Statutes*, (Volume VII, Guide to Judiciary Policy), and, if correct, shall forward the claim form for the consideration and action of the presiding judge. In cases where representation is furnished other than before the district judge, magistrate judge, or an appellate court, the presiding judge shall fix the compensation and reimbursement to be paid.

In cases where the amount of compensation and reimbursement approved by the reviewing judicial officer is less than was requested by appointed counsel, the judicial officer should notify appointed counsel that the claim has been reduced, and provide an explanation for the reasons for the reduction.


VIII. Miscellaneous


A. Forms. Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the Court, the clerk, the federal public defender organization, and counsel.

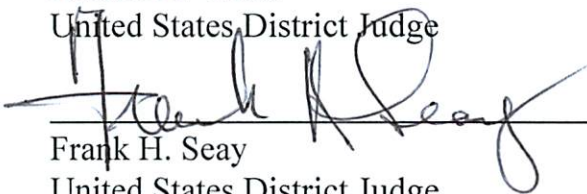
B. Guidelines for the Administration of the Criminal Justice Act. The Court, clerk of the Court, federal public defender organization, and private attorneys appointed under the Act and this plan, shall comply with the provisions of the Judicial Conference's *Guidelines for Administering the Criminal Justice Act and Related Statutes*, Volume VII, Guide to Judiciary Policy.

This CJA Plan shall become effective and supersede all previous CJA plans upon approval by the Judicial Council of the Tenth Circuit.

Dated this 29th day of August, 2013.


James H. Payne
Chief Judge, United States District Court


Ronald A. White
United States District Judge


Frank H. Seay
United States District Judge


Kimberly E. West
United States Magistrate Judge


Steven P. Shreder
United States Magistrate Judge

The foregoing CJA plan is approved by the Judicial Council of the Tenth Circuit this 18th day of September, 2013.

Circuit Executive

**MINUTES OF THE JUDICIAL COUNCIL
OF THE TENTH CIRCUIT**

September 18, 2013

The Judicial Council has approved the proposed amendments to the CJA Plan of the United States District Court for the Eastern District of Oklahoma, which were submitted on August 29, 2013. The court may choose the effective date of the new plan, and should send a copy of the final CJA Plan to the Circuit Executive.

The Judicial Council

By:



Victoria Giffin
Deputy Circuit Executive

for David Tighe
Circuit Executive and Secretary to the
Judicial Council of the Tenth Circuit