

JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT

NORMAN E. ZOLLER
Circuit Executive

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September 27, 1996
THOMAS C. CAVER, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

56 Forsyth St., N.W.
Atlanta, Georgia 30303
(404) 331-5724

RECEIVED
OCT 28 2003
By *[Signature]*

The Honorable Myron H. Thompson
Chief Judge
United States District Court
Middle District of Alabama
Post Office Box 235
Montgomery, Alabama 36101

Dear Chief Judge Thompson:

In response to the letter from Thomas C. Caver of February 15, 1996, the amendment to the CJA Plan for the Middle District of Alabama has been approved by the Judicial Council of the Eleventh Circuit.

By copy of this letter, I am filing copies of the action of the Council and the amendment to the Plan with the following:

- Director, Administrative Office of the United States Courts;
- Clerk, United States Court of Appeals for the Eleventh Circuit.

Sincerely,

[Signature]
Circuit Executive

NEZ/aj

Enclosure

- c: Members of the Judicial Council of the Eleventh Circuit
Director, Administrative Office of the United States Courts
Clerk, United States Court of Appeals for the Eleventh Circuit
Clerk, United States District Court for the Middle District of Alabama

JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT

The attached amendment of the CJA Plan of the United States district Court for the Middle District of Alabama, having been reviewed by the Judicial Council of this Circuit, is approved.

The following judges comprised and acted as the Judicial Council:

(a) United States Court of Appeals Members

Chief Judge Gerald Bard Tjoflat
Judge Phyllis A. Kravitch
Judge Joseph W. Hatchett
Judge R. Lanier Anderson III
Judge J.L. Edmondson
Judge Emmett R. Cox
Judge Stanley F. Birch, Jr.
Judge Joel F. Dubina
Judge Ed Carnes

(b) United States District Court Members

(Alabama)

Judge Edwin L. Nelson
Chief Judge Myron H. Thompson
Chief Judge Charles R. Butler, Jr.

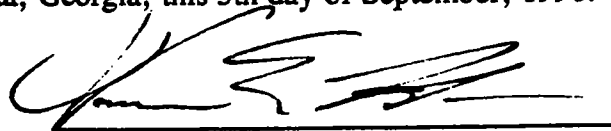
(Florida)

Chief Judge Maurice M. Paul
Judge Edward B. Davis

(Georgia)

Judge William C. O'Kelley
Chief Judge Duross Fitzpatrick

Entered for the Council at Atlanta, Georgia, this 5th day of September, 1996.



Norman E. Zoller
Secretary to the Council

FILED

SEP. 5 1996

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

CLERK
S. DISTRICT COURT
MIDDLE DIST. OF ALA

CRIMINAL JUSTICE ACT PLAN

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 Middle District of Alabama, adopt 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 shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at 21 U.S.C. § 848(g)), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk, the Community Defender Organization 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 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 shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorney" includes private attorneys and the executive director and staff attorneys of the Community Defender Organization (CDO).

IV. PROVISION OF REPRESENTATION

A. Circumstances.

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 of 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 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. Whenever 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. § 2241, § 2254, or § 2255;
 - c. is charged with civil or criminal contempt who faces loss of liberty;
 - d. is proposed by the United States attorney for proceedings under a pretrial diversion program.

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

B. When Counsel Shall be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a district or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, or when the district or magistrate judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

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.
2. Qualifications. Except as provided by 21 U.S.C.

§ 848(q)(7), at least one attorney appointed in a capital case shall meet the qualification requirements set forth in 21 U.S.C. § 848(q)(5) and (6). Pursuant to § 848(q)(7), the presiding judge, for good cause, may appoint an attorney who may not qualify under §§ 848(q)(5) and (6), but who has the back ground, 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 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 advise the court.

V. COMMUNITY DEFENDER ORGANIZATION

- A. Establishment. The court has determined that the use of a Community Defender Organization as defined in 18 U.S.C. § 3006(A)(g)(2)(B), will facilitate the representation of persons entitled to the appointment of counsel under the CJA. This court finds that the Middle District of Alabama Federal Defender Program, Inc., a Alabama not for profit corporation, whose bylaws are attached to this plan as Appendix I and incorporated herein by reference, is a non-profit defense counsel service established and administered to provide legal representation, and is otherwise eligible under the CJA to qualify as the community defender organization for the Middle District of Alabama.

Therefore, the court designates the Middle District of Alabama Federal Defender Program, Inc. as the community defender organization for the Middle District of

Alabama. The court may review the continued eligibility of the Middle District of Alabama Federal Defender Program, Inc. from time to time, and may at any time by order and on reasonable notice terminate its designation as the community defender organization for the Middle District of Alabama.

- B. Supervision of Defender Organization. The executive director of the CDO shall be responsible for the supervision and management of the CDO. Accordingly, the executive director of the CDO shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the executive director.
- C. Management of CJA Panel. The executive director of the CDO 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 Appendix II of this CJA Plan. The court may, however, resume management of the CJA panel at any time.

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 Appendix II of this CJA Plan.
- B. 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 Model Code of Professional Conduct or 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, 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 and prosecutorial agencies, 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, and shall, in such cases in which the person indicates that he or she is not able, notify the executive director of the CDO. The executive director or a staff attorney shall discuss with the person the right to representation and the 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 of this court for determination of financial eligibility and appointment of counsel.

IX. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the

Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judicial officer. 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.

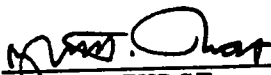
X. EFFECTIVE DATE.

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

APPENDICES:

- I. By-Laws of the Community Defender Organization.
- II. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.

ENTERED FOR THE COURT ON THE 5th DAY OF September, 1996.


CHIEF JUDGE
MIDDLE DISTRICT OF ALABAMA

APPENDIX II

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 shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to paragraph B of this Plan. 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.

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, the Sentencing Guidelines, the Criminal Justice Act and the Guidelines for the Administration of the CJA (Vol. VII, Guide to Judiciary Policies and Procedures).

4. Admission of Pro Hac Vice Attorney. In exceptional circumstances, if the district or magistrate judge presiding over 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 defendant. The attorney, who may or may not maintain an office in this District, must possess such qualities as would qualify him or her for admission to the CJA Panel as set forth in this Plan.

5. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by

the Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE

The Panel Selection Committee shall be appointed for the purpose of developing a panel of attorneys who will be available for appointment to specific cases. The Panel Selection Committee shall consist of a District Judge and a Magistrate Judge both appointed by the Chief District Judge in this District, the executive director of the CDO, and a member of the criminal defense bar of this district in good standing appointed by a majority vote of the remaining committee members. The Committee shall select its own chairperson who will be responsible for scheduling meetings of the Committee at least once every six months and shall be responsible for conducting the business meetings of the Committee. The Panel Selection Committee shall be responsible for developing and maintaining a panel of attorneys available for appointment to cases in this District. The panel will consist of private attorneys regularly practicing before the court who have demonstrated their professional responsibilities, interests, and ability in criminal practice and in representing the legally indigent.

Application forms for panel membership shall be made available by the Clerk of this Court to any member of the bar upon request. Completed applications shall be submitted to the Clerk of the Court who will refer these applications to the members of the Panel Selection Committee. At its meetings, the Committee shall review the existing panel membership, applications for membership, and shall make additions or deletions to the panel membership as may be appropriate. The Committee will condition panel membership upon a continued demonstration of proficiency, ability, and interest in representation of the legally indigent. In determining the membership of the panel, the Committee shall also consider comments and recommendations of the judges and magistrate judges of this court.

After each meeting of the Panel Selection Committee or at any time after the membership of the

CJA panel has been amended, the Committee shall distribute a copy or amended copy of the panel of attorneys to each judge and magistrate judge of this District. A copy of this list shall also be made available to the CDO, the U. S. Attorney's Office, U. S. Probation, U. S. Pretrial Services, and the U. S. Marshals Service. A copy of the current list of the panel of attorneys shall be kept on file with the Clerk of Court.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Clerk of the Court 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 Clerk shall furnish a copy of this list to each district and magistrate judge. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Community Defender Organization and CJA panel attorneys, according to the formula described in the CJA Plan for the District.

B. METHOD OF SELECTION

Appointments from the list of panel 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, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and qualified representation for each CJA defendant. The Clerk of Court shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Community Defender Organization and the panel of private attorneys.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge or magistrate judge may appoint the executive director of the CDO or any attorney from the CJA list. In all cases where members

of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Clerk of Court 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 Clerk of Court. The Clerk of Court shall review the claim form for mathematical and 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 form for the consideration and action of the presiding judge or magistrate judge.

APPROVED BY THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT ON
THE _____ DAY OF _____, 1995.

CHIEF JUDGE
ELEVENTH CIRCUIT COURT OF APPEALS