

CRIMINAL JUSTICE ACT PLAN
of the
UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF PENNSYLVANIA

Adopted pursuant to
the Criminal Justice
Act of 1964, as
amended. This Local
Plan was last
revised July 28,
2003.

CRIMINAL JUSTICE ACT PLAN

CONTENTS

I.	AUTHORITY	1
II.	STATEMENT OF POLICY	1
	A. Objectives	1
	B. Compliance	2
III.	DEFINITIONS	2
	A. Representation	2
	B. Appointed Attorney	3
IV.	PROVISION OF REPRESENTATION	3
	A. Circumstance	3
	1. Mandatory	3
	2. Discretionary	4
	B. When Counsel Shall Be Provided	5
	C. Number and Qualifications of Counsel	6
	1. Number	6
	2. Qualifications	7
	D. Eligibility for Representation	8
	1. Fact-finding	8
	2. Disclosure of Change in Eligibility	8
V.	FEDERAL PUBLIC DEFENDER ORGANIZATION	9
	A. Establishment	9
	B. Supervision of Defender Organization	9
	C. Management of CJA Panel	9
VI.	PRIVATE ATTORNEYS	10
	A. Establishment of CJA Panel	10
	B. Organization	10
	C. Ratio of Appointments	10

CONTENTS, continued

VII.	REPRESENTATION IN STATE DEATH PENALTY HABEAS PROCEEDINGS UNDER 28 U.S.C. § 2254	11
VIII.	DUTIES OF APPOINTED COUNSEL	11
	A. Standards	11
	B. Professional Conduct	11
	C. No Receipt of Other Payment	11
	D. Continuing Representation	12
IX.	DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES	12
	A. Presentation of Accused for Appointment of Counsel	12
	B. Pretrial Services Interview	12
	C. Notice of Indictment or Criminal Information	13
X.	MISCELLANEOUS	13
	A. Forms	13
	B. Claims	13
	C. Supersession	14
XI.	PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT	15
	A. Composition of Panel of Private Attorneys	15
	1. CJA Panel	15
	2. Panel Selection and Review Committee	17
	3. CJA Training Panel	18
	B. Selection for Appointment	19
	1. Maintenance of List and Distribution of Appointments	19
	2. Method of Selection	19
	C. Compensation - Filing of Vouchers	21
	D. Investigative, Expert and Other Services	21
XII.	EFFECTIVE DATE	22

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CRIMINAL JUSTICE ACT PLAN

I. **AUTHORITY**

Pursuant to the Criminal Justice Act of 1964, as amended, Title 18, United States Code, §3006A ("CJA"), 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 Western District of Pennsylvania 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, or any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of

Title 21, United States Code), and the CJA Guidelines in a way that meets the needs of this District.

B. Compliance.

1. The court, its clerk, Federal Public Defender organization, Capital Habeas Unit of the Defender Association of Philadelphia or any Capital Habeas Unit established in the Western District of Pennsylvania, and private attorneys appointed under the CJA, shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the district clerk with a then-current copy of the CJA Guidelines and 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 CJA. The clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Plan 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, the Federal Public Defender and staff attorneys of that organization, and the Executive Director of the Capital Habeas Unit of the Defender Association of Philadelphia or any Capital Habeas Unit established in the Western District of Pennsylvania, and staff attorneys of those organizations.

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 §5031 of Title 18, United States Code;

c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);

d. is under arrest, when such representation is required by law;

e. is entitled to appointment of counsel in parole proceedings;

f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition or extension or revocation of a term of supervised release;

g. is subject to a mental condition hearing under chapter 313 of Title 18, United States Code;

h. is in custody as a material witness;

i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28, United States Code;

j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of Title 18, United States Code;

k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or,

l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judge or United States 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 under sections 2241, 2254, or 2255 of Title 28, United States Code (other than to set aside or vacate a death sentence);

c. is charged with civil or criminal contempt and 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 self-incrimination, 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.

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

C. 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. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death

penalty proceedings, judicial officers should 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 21 U.S.C. § 848(q)(5), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender or, if no such organization exists in the district, of the Administrative Office of the United States Courts.

b. Appointment of Counsel After Judgment.

Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to

practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.

c. Attorney Qualification Waiver. Pursuant to 21 U.S.C. §848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.

2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

V. **FEDERAL PUBLIC DEFENDER ORGANIZATION**

A. Establishment.

1. The existing Federal Public Defender Organization for the Western District of Pennsylvania previously established in this district pursuant to the provisions of the CJA is hereby recognized as the Federal Public Defender Organization for this District.

2. The Federal Public Defender Organization shall be capable of providing legal services throughout the district.

B. Supervision of Defender Organization. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

C. Management of CJA Panel. The Federal Public Defender shall be responsible for the systematic distribution of cases to the CJA Panel and for the management of the CJA Panel on behalf of the District Court.

VI. **PRIVATE ATTORNEYS**

A. Establishment of CJA Panel. The existing, previously established panel of private attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized. At any time, the District Court or the Panel Selection and Review Committee may require a CJA Panel Member to supply non-privileged information concerning his or her qualifications, training, background or experience.

B. Organization. The CJA Panel shall be organized according to the Plan for the Composition, Administration, and Management of the Panel of private attorneys under the CJA, as provided in Section XI of this Plan. A separate panel shall be established for each of the Pittsburgh, Erie and Johnstown Divisions. However, this division shall not prohibit the Court where appropriate from appointing a panel member from one division to serve in another division, nor prohibit the Court on the basis of geographic considerations from allowing a panel member to serve in two or more divisions.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial number of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" is defined as approximately 25% of the appointments under the CJA annually throughout the district.

VII. **REPRESENTATION IN STATE DEATH PENALTY HABEAS PROCEEDINGS UNDER 28 U.S.C. §2254**

Appointment of Counsel. The court shall appoint the Capital Habeas Unit of the Defender Association of Philadelphia, any Capital Habeas Unit established in the Western District of Pennsylvania, and the federal public defender with his or her consent, or private attorneys who are members of the District's CJA panel and who qualify for appointment pursuant to section 848(q) of title 21, United States Code, to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code. See also IV.C.1.b. of this Plan.

VIII. **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 *Pennsylvania 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, 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.

IX. **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, arrange to have the person promptly presented before a magistrate judge or judge of this Court for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview. No accused person who is financially unable to secure representation of counsel may be interviewed by a Pretrial Services Officer until the accused has had the opportunity to consult with an attorney in person or by telephone concerning the advisability of consenting to the interview.

C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney or the United States Probation officer, shall mail or otherwise deliver forthwith 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 United States Judicial Conference or its Defender Services Committee 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 the Court. The Clerk or the Clerk's designee 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 consideration to the appropriate judge or magistrate judge. The judicial officer shall exert

his or her 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 District.

**XI. PLAN FOR THE COMPOSITION, ADMINISTRATION AND
MANAGEMENT OF THE PANEL OF PRIVATE
ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT**

A. Composition of Panel of Private Attorneys.

1. CJA Panel.

a. 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 (CJA). The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection and Review Committee" established pursuant to paragraph 2. of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court, and may be added or removed from the panels at any time as the District Court shall see fit. The District Court may also suspend an attorney from the Panel until he or she presents evidence that he or she has received training in a particular area of criminal law.

b. 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.

c. 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 and the Federal Rules of Evidence, and must have had formal training on the Sentencing Guidelines.

Subsection (b) of the CJA provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney who is not a member of the CJA Panel, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant.

Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the district's CJA panel in the ordinary course of panel selection.

d. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Federal Public Defender or Clerk of Court. Completed applications shall be submitted to the Federal Public Defender who will forward the application, together with his or her recommendation, to the Panel Selection and Review Committee.

2. Panel Selection and Review Committee.

a. Membership. A Panel Selection and Review Committee shall be established by the Court. The Committee shall consist of the Chief Judge, the Chief Magistrate Judge, the Federal Public Defender, and three members of the CJA Panel approved by the Chief Judge. The Committee shall be chaired by the Chief Judge.

b. Duties. The Panel Selection and Review Committee shall meet at least annually to consider applications for membership and to review the existing roster of attorneys. The Committee shall review the qualifications of applicants and existing members to determine those persons best qualified to fill and retain positions on the Panel.

3. CJA Training Panel.

The Court may establish a "CJA Training Panel" consisting of attorneys who do not have the experience required for membership on the CJA Panel, and who wish to gain experience in federal criminal practice. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a "second chair" capacity, with the consent of the appointed counsel and the defendant. 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.

B. Selection for Appointment.

1. 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 the Chief Judge, each judge and magistrate judge and the Clerk of Court. The Federal Public Defender shall also maintain a record of assignments to panel members, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender office and panel attorneys, according to the formula described in the CJA Plan for the District.

2. Method of Selection.

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, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate judge shall notify the

Federal Public Defender of the need for counsel and the nature of the case.

The Federal Public Defender shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the panel of private attorneys when requested. If the judge or magistrate judge decides to appoint an attorney from the panel, the Federal Public Defender shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge or magistrate judge.

In the event of an emergency, or on weekends, holidays, or other non-working hours of the Federal Public Defender Office, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Federal Public Defender as to the name of the attorney appointed and the date of the appointment.

C. 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, or his designee, 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. The hourly rate of compensation and case compensation maximums shall be as set forth in the *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to Judiciary Policies and Procedures*), Section A, Chap. II, ¶¶ 2.22(A) and (B), and in effect at the time the services are rendered. Interim payments may be allowed in the discretion of the trial judge, but after first obtaining approval of the Chief Judge of the Third Circuit Court of Appeals, or his designee.

D. Investigative, Expert and Other Services.

Investigative, expert or other services necessary to adequate representation, as authorized by subsection (c) of the CJA, shall be available to Panel Attorneys with prior authorization of the Court. Claims for compensation shall be submitted on the appropriate CJA form to the office of the Clerk of Court. The Clerk of Court, or his designee, 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. The maximum compensation rates shall be as set forth in the *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to Judiciary Policies and Procedures*), Section A, Chap. III, ¶¶ 3.02(A) and (B), and in effect at the time the services are rendered. Interim payments may be allowed in the discretion of the trial judge. (Volume VII, *Guide to Judiciary Policies and Procedures*, Section A, Appendix F).

XII. EFFECTIVE DATE.

This Plan, as amended, shall take effect immediately upon its approval by the Judicial Council of the Third Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In The Matter of Revising
The Plan for Implementing
The Criminal Justice Act
of 1964, As Amended

)
)
)
)
)
)

O R D E R

The foregoing Plan, as revised, is adopted this 19th day of
May, 2003, by the Judges of the United States District
Court for the Western District of Pennsylvania.

Donetta W. Ambrose
DONETTA W. AMBROSE, C.J.

Gary L. Lancaster
GARY L. LANCASTER, D.J.

Robert J. Cindrich
ROBERT J. CINDRICH, D.J.

Sean J. McLaughlin
SEAN J. McLAUGHLIN, D.J.

Joy Flowers Conti
JOY FLOWERS CONTI, D.J.

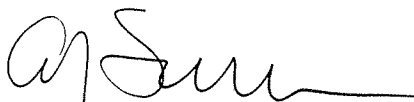
David Stewart Cercone
DAVID STEWART CERCONE, D.J.

Terrence F. McVerry
TERRENCE F. McVERRY, D.J.

Arthur J. Schwab
ARTHUR J. SCHWAB, D.J.

The foregoing Plan is approved by the Judicial Council of the Third Circuit this

28 day of July, 2003

A handwritten signature in black ink, appearing to read "A. Scirica", written over a horizontal line.

Anthony J. Scirica, Chief Judge
United States Court of Appeals for the Third Circuit