

**United States District Court  
for the District of Rhode Island**

**CRIMINAL JUSTICE ACT  
PLAN**

*Revised Eff. July 7, 2008*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

**CRIMINAL JUSTICE ACT PLAN**

**I. AUTHORITY**

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judicial officers of the United States District Court for the District of Rhode Island, 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 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, the Federal Public Defender, 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. A copy of this Plan shall be given to each private attorney upon the attorney's designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk of Court 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**

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

### **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 Section 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 judicial officer determines that the interest 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 Sections 2241, 2254, or 2255 of title 28, United States Code;
- c. is charged with civil or criminal contempt who faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
- e. is proposed by the United States attorney for processing under a pretrial diversion program;
- f. is held for international extradition under 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 judicial officer, when they are formally charged or notified of charges if formal charges are sealed, or when a judicial officer 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, at least two attorneys shall be appointed.
2. Qualifications (Capital Cases). 18 U.S.C. § 3005 states:

“Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel; and the Court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases, and who shall have free access to the accused at all reasonable hours. In assigning counsel

under this section, the Court shall consider the recommendation of the Federal Public Defender organization, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. The defendant shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution.”

**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 judicial officer 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 Rhode Island branch office of the Federal Public Defender Organization for the District of Massachusetts, established in this district pursuant to the provisions of the CJA, is hereby recognized as the RI Federal Public Defender Organization .
2. The RI Federal Public Defender Organization shall be capable of providing legal services throughout the district and shall maintain an office in Rhode Island.

**B. Supervision of the RI Federal Public Defender Organization**

1. The Federal Public Defender of the District of Massachusetts shall be responsible for the supervision and management of the RI Federal Public Defender Organization. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that office for subsequent assignment to the

Assistant Federal Public Defenders in Rhode Island. Subsequent assignment is done at the discretion of the Federal Public Defender.

2. The RI Federal Public Defender Organization shall operate pursuant to the provisions of subsection (g)(2)(A) of the CJA, as well as the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures.

**C. Assignment of Cases**

Any defendant who satisfies the guidelines to receive court-appointed counsel will be referred to either the Federal Public Defender or to a CJA Panel attorney using an assignment system that is managed by the Clerk of Court under the direction of the Chief Judge. The goal of the assignment system is to have at least 25% of all indigent defendants be assigned to CJA Panel attorneys and to have those defendants equitably distributed among the CJA Panel attorneys, subject to their availability. In achieving this goal, the assignment system shall take into consideration declinations of assignments due to conflict of interest and multi-defendant cases. Any exceptions to this policy must be authorized by a judicial officer of this Court.

**VI. PRIVATE ATTORNEYS**

**A. Establishment of CJA Panel.**

The existing, previously established CJA Panel who are eligible and willing 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.

**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 standards of professional conduct of this Court, including but not limited to the provisions of The Rules of Professional Conduct of the Rhode Island Supreme 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.

**E. Case Budgeting.**

Case budgeting techniques will be used in representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel on behalf of an individual CJA defendant). If case budgeting is appropriate (either on its own or upon request of counsel), counsel should submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds. Case budgets should be submitted ex parte and filed and maintained under seal.

**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, arrange to have the person promptly presented before a judicial officer of this Court for determination

of financial eligibility and appointment of counsel.

**B. 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, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

**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 Officer 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 **no later than 45 days after the final disposition of the case unless good cause is shown**. In addition to the claim form, the attorney shall submit an itemization of his/her hours spent and the work performed. 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. CJA Transcripts**

All transcripts produced for and on behalf of CJA defendants shall be billed on the CJA Form 24. Copies of the form and instructions for its completion shall be furnished to the court reporters by the Clerk. The Clerk shall submit the form to the presiding judicial officer for approval. Payment shall be made by the Clerk upon approval of the judicial officer.

In multi-defendant cases involving more than one CJA defendant, only one transcript



shall be purchased from the reporter for the benefit of all CJA defendants. One of the appointed counsel shall take responsibility for ordering the transcript and arranging for duplication, at commercially competitive rates, of enough quantities of the transcript for each of the CJA defendants for whom a transcript has been approved. The cost of such duplication will be charged to the CJA appropriation.

Routine apportionment of accelerated transcript costs among parties in CJA cases is prohibited. In those criminal cases where accelerated transcript services are approved as necessary by the presiding judicial officer, the party making the request shall pay for the original, and if the requesting or ordering party is other than defense counsel appointed under the CJA, the CJA counsel shall be entitled to a copy at the copy rate.

**D. Supersession.**

This Plan supersedes all prior Criminal Justice Act Plans of this Court.

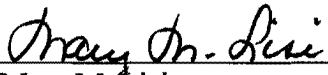
**X. EFFECTIVE DATE**

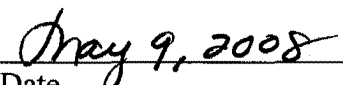
This Plan shall become effective when approved by the Judicial Council of the First Circuit.

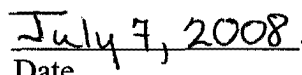
**APPENDIX:**

- I. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.

APPROVED:

  
\_\_\_\_\_  
Mary M. Lisi  
Chief Judge

  
\_\_\_\_\_  
Date

APPROVED by the Judicial Council of the First Circuit on   
Date

  
\_\_\_\_\_  
Chief Judge  
First Circuit Court of Appeals

## APPENDIX I

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

#### 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. 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 for three years 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. In addition, they must:

- a. have prior representation of any party in at least three felony trials to verdict or have prior representation of any party in at least three felony trials to verdict as associate counsel under the supervision of a mentor attorney.
- b. submit a written certification that four hours of continuing legal education in criminal law and procedure have been completed during the preceding year (July 1 through June 30). Certification shall be submitted no later than July 30 of each year.
- c. agree to accept appointments in the full range of CJA cases; and
- d. be available to act as a mentor for attorneys seeking to qualify for court appointment;

Failure to comply with these requirements will result in removal from the CJA Panel. Subsection (b) of the Act 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 federal defender organization furnishing representation pursuant to the plan.

However, when a judicial officer determines that the appointment of an attorney, who is not a member of the CJA panel, is 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.

4. Application - Application forms for membership on the CJA Panel shall be made available, upon request by the Clerk of Court. Completed applications shall be submitted to the Clerk of Court.

5. Equal Opportunity - All qualified attorney shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.

#### **B. Method of Selection.**

Appointments from the list of private attorneys should be made by a judicial officer on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, and 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.

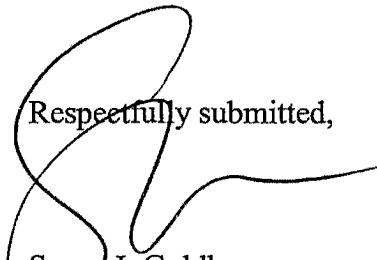
## **II. COMPENSATION - FILING OF VOUCHERS**

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of Court. The itemization of hours spent and work performed must be submitted along with the CJA form. 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 judicial officer.

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

Entered: July 7, 2008

The First Circuit Judicial Council has voted to approve the Criminal Justice Act Plan for the U. S. District Court for the District of Rhode Island, as revised May 2008.

  
Respectfully submitted,  
Susan J. Goldberg  
Deputy Circuit Executive