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EIGHTH CIRCUIT JUDICIAL COUNCIL

ORDER

I hereby certify that the Eighth Circuit Judicial Council has approved the Amended Criminal Justice Act (CJA) Plan dated December 3, 2003, for the Western District of Arkansas.



Millie B. Adams
Circuit Executive

St. Louis, Missouri
January 9, 2004

cc: Judicial Council Members
Chief Judge Jimm Larry Hendren
Christopher Johnson, Clerk
Administrative Office

Approval was given by the Defender Services Committee.

SPO1640

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

**CRIMINAL JUSTICE ACT PLAN
(AS AMENDED)
(Pursuant to 18 U.S.C. 3006A)**

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS**

**CRIMINAL JUSTICE ACT PLAN
(AS AMENDED)**

I. AUTHORITY

Pursuant to the provisions of 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 Western District of Arkansas do hereby adopt, subject to approval of the Judicial Council of the Eighth Circuit, the following Plan for implementation of said Act.

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 a 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 (q)), the Civil Asset Forfeiture Reform Act of 2000 (codified in part at 18 U.S.C. 983), 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 Organization, post conviction relief organizations, if any, 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. The Clerk of Court shall provide the Federal Public Defender and each private attorney with a 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.

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III. SCOPE OF THE PLAN

A. Mandatory Appointments.

Representation under this Plan shall be provided for any financially eligible person who is:

1. Charged with a felony or with a Class A misdemeanor;
2. A juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. 5031;
3. 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);
4. Under arrest, when such representation is required by law;
5. Entitled to appointment of counsel in parole proceedings;
6. 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;
7. Subject to a mental condition hearing under 18 U.S.C. 4241, et seq.;
8. In custody as a material witness;
9. Seeking to set aside or vacate a death sentence under 28 U.S.C. 2254 or 2255;
10. Entitled to appointment of counsel in connection with prisoner transfer proceedings under 18 U.S.C. 4109;
11. Entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
12. Faces loss of liberty in a case, and Federal law requires the appointment of counsel.

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B. Discretionary Appointments.

Whenever the presiding judicial officer determines that the interests of justice so require, representation may be provided for any financially eligible person who is:

1. Charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
2. Seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. 2241, 2254, or 2255;
3. Charged with civil or criminal contempt and faces loss of liberty;
4. 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;
5. Proposed by the United States Attorney for processing under a pretrial diversion program;
6. Held for international extradition under 18 U.S.C. 3181, et seq.;
7. In need of legal consultation, and the Court determines that such is warranted;
8. Has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and is represented by counsel under this Plan in connection with a related criminal case. In such an event, the Court may authorize counsel to represent the person with respect to a forfeiture claim, or;
9. Involved in “ancillary matters appropriate to the proceedings” pursuant to 18 U.S.C. 3006A (c).

C. Waiver of Counsel.

1. In every case in which a person entitled to representation under this Plan appears without counsel, the United States magistrate judge or district judge shall advise the person of the right to be represented by counsel and that counsel will be appointed to represent the defendant if the defendant is financially unable to obtain counsel.
2. Unless the person waives representation by counsel in open court, the judicial officer, if satisfied after appropriate inquiry that the person is

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financially unable to obtain counsel, shall appoint counsel to represent him or her.

D. Standby Counsel.

1. For a Financially Eligible Defendant. The Court recognizes that criminal defendants have both a constitutional and statutory right to self-representation in federal court. However, the presiding judicial officer may find it necessary to appoint “standby” counsel to be available to assist a *pro se* defendant in his or her defense. While the Court has inherent authority to appoint standby counsel, such appointments may not be made and counsel may not be compensated under this Plan unless the defendant qualifies for appointed counsel.
2. For a Financially Ineligible Defendant. In circumstances in which appointment is made under the Court’s inherent authority, and counsel serves exclusively on behalf of the Court to protect the integrity and continuity of the proceedings, and does not represent the defendant, any compensation paid to counsel shall be in the capacity of an “expert or consultant” pursuant to 5 U.S.C. 3109. An appointment pursuant to this section may be made regardless of whether the defendant is financially able to obtain adequate representation, and compensation will be determined by the judicial officer in accordance with the CJA hourly rates and case compensation maximums. If, during the course of the proceedings, a *pro se* defendant who is financially able to retain counsel elects to do so, the Court’s appointment of an attorney pursuant to 5 U.S.C. 3109 shall be terminated.
3. Scope of Standby Counsel’s Responsibilities. Since the CJA and *Guidelines* are silent on this issue, the court and counsel may wish to take into consideration the American Bar Association Standards for Criminal Justice, 4-3.9.

E. Appointment Alternatives.

1. Counsel furnishing representation under this Plan shall be selected from:
 - a) the Federal Public Defender’s Office (see section G below); or
 - b) a CJA panel of attorneys designated or approved by the Court.
2. However, when the judicial officer 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 CJA defendant.

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3. 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.

F. Representation in Federal Capital Cases and in Death Penalty Federal Habeas Corpus Proceedings.

1. Number of Counsel.
 - 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.

If qualified under paragraph 3 of this section, an attorney furnished by a state or local public defender organization or by a legal aid agency or other private, nonprofit organization may be appointed to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed *pro hac vice* in accordance with the *CJA Guidelines*. Such appointments should be made when the Court determines that they will provide the most effective representation. In making this determination, the Court should take into consideration whether the attorney represented the person during prior state court proceedings.

2. Procedures for Appointment in Federal Capital Prosecutions. In appointing counsel in federal capital prosecutions, the Court shall consider the recommendation of the Federal Public Defender. In fulfilling this responsibility, the Federal Public Defender Organization should consult with counsel (if counsel has already been appointed or retained) and the Court regarding the facts and circumstances of the case to determine the qualifications which may be required to provide

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effective representation. In evaluating the qualifications of counsel considered for appointment, the Federal Public Defender Organization should consider:

- a) the minimum experience standards set forth in 21 U.S.C. 848(q), 18 U.S.C. 3005, and other applicable laws or rules;
- b) the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;
- c) the recommendations of other federal public and community defender organizations, and local and national criminal defense organizations;
- d) the proposed counsel's commitment to the defense of capital cases; and
- e) the availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

3. Attorney Qualification Requirements.

- 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.
- 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 that 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.

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4. Continuity of Representation.

- a) In the interest of justice and judicial and fiscal economy, unless precluded by a conflict of interest, presiding judicial officers are urged to continue the appointment of state post-conviction counsel, if qualified under paragraph 3, when the case enters the federal system.
- b) Title 21 U.S.C. 848(q)(8), provides: “Unless replaced by similarly qualified counsel upon the attorney’s own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.”

G. Federal Public Defender Organization.

1. Establishment.

- a) Pursuant to subsections (g)(1) and (g)(2) of the CJA, a separate Federal Public Defender Office for the Western District of Arkansas shall be established as the Federal Defender Organization for this District.
- b) The Federal Public Defender Organization shall be capable of providing legal services throughout the district and shall maintain its primary office in Fort Smith, Arkansas, with staffed branch offices in Fayetteville, Arkansas and Hot Springs, Arkansas.

2. Ratio of Appointments. Where practical and cost effective, the Federal Public Defender Organization shall be appointed in approximately 75% of the cases in which the accused is determined to be financially eligible for representation under the CJA. Private attorneys from the CJA Panel shall be appointed in approximately 25% of the appointments under the CJA annually throughout the district.

3. Capital Habeas Representations. Capital habeas appointments shall be assigned to the Federal Public Defender Organization for the Eastern District of Arkansas, or other attorney who qualifies for appointment pursuant to 21 U.S.C. 848(q).

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4. 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.

H. Time of Appointment.

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

I. Services Included.

Representation under this Plan shall include counsel and investigative, expert, and other services necessary for adequate representation.

IV. ELIGIBILITY

A. Factfinding.

1. The determination of eligibility for representation under this Plan is a judicial function to be performed by a district judge or a magistrate judge after making appropriate inquiries concerning the person's financial condition. Other officers or employees of the Court may be designated by the Court to obtain or verify the facts upon which such determination is to be made.
2. Unless it will result in undue delay, factfinding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. 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 as to eligibility may be made subsequent to appointment of counsel and as soon thereafter as practicable.
3. All statements made by a person in requesting appointed counsel or during the inquiry into eligibility shall be either:
 - a) by affidavit (preferably CJA Form 23) sworn before the Court, the court clerk, a deputy clerk, or a notary public; or
 - b) under oath in open court.

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4. The person seeking appointment of counsel has the responsibility of providing the Court with sufficient and accurate information upon which the Court can make an eligibility determination.

B. Standards for Eligibility.

1. A person is “financially unable to obtain counsel” within the meaning of this Plan if his or her net financial resources and income are insufficient to enable him or her to obtain qualified counsel.
2. Any doubts as to a person’s eligibility should be resolved in his or her favor.
3. At the time of determining eligibility, the judicial officer should inform the person of the penalties for making a false statement, and of his or her obligation to inform the Court and his or her attorney of any change in his or her financial status.

C. Partial Eligibility.

1. If a person’s net financial resources and income anticipated prior to trial are in excess of the amount needed to provide him or her and his or her dependents with the necessities of life and to provide the defendant’s release on bond, but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under this Plan and should direct him or her to pay the available excess funds to the Clerk of Court at the time of such appointment or from time to time thereafter.
2. The judicial officer may increase or decrease the amount of such payments and impose such other conditions from time to time as may be appropriate.
3. Funds collected pursuant to this subsection are held and shall be disposed pursuant to 18 U.S.C. 3006A(f).

V. PANEL SELECTION COMMITTEE

A. Membership.

A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, both magistrate judges, the CJA Panel Representative, the Clerk of Court, and the Federal Public Defender. The Committee shall be chaired by the district judge. The CJA Panel Representative shall be appointed by the Chief District Judge and shall serve in that position at the Chief Judge’s pleasure.

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B. Duties.

1. The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies on the current panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee shall also review the operations and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

2. 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.
3. When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph VI.B of this Plan. At least once each year the Committee shall provide the Court with information on the panel of attorneys in each of the categories listed in paragraph VI.B.

VI. CRIMINAL JUSTICE ACT PANELS

A. Composition.

1. The Court shall establish separate panels of private attorneys (hereinafter referred to as the CJA panels) for each of the six divisions of the Western District of Arkansas. Members of the CJA panels shall serve at the pleasure of the Court.
2. Each panel shall consist of attorneys in each division who are eligible, willing, and competent to provide adequate representation under the CJA.
3. The panels shall be adequate in number to supply the needs of the district at any given time.

B. Qualifications.

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Any member in good standing of the bar of this Court, who has demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines, shall be deemed qualified to serve on the CJA panel for his or her division. However, the Panel Selection Committee, with the approval of the Court, may establish additional qualifications, including relevant training and experience. All qualified attorneys 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.

C. Naming Panel Members.

Attorneys presently serving as members of a CJA panel shall continue to serve at the pleasure of the Court. Qualified attorneys may, by order of the Court, be added to, or deleted from, the roster at any time. Periodically, the Panel Selection Committee, after consultation with other knowledgeable persons, shall make recommendations about additions to or deletions from the panels.

Upon recommendation of the Panel Selection Committee or on the Court's own motion, a judge may at any time add or delete panel members. Approval of the panel in a division may be given by the Chief Judge or the judge having primarily responsibility for the caseload in that division.

D. Maintenance of List and Distribution of Appointments.

The Clerk of Court shall maintain in each division a current list, in alphabetical order, of all attorneys included on the CJA panel for that division, with current office addresses, telephone numbers, social security numbers, and/or tax identification numbers. A copy of this list shall be furnished to each district judge, magistrate judge, and the Federal Public Defender, as well as additions or deletions which may be made from time to time as the Court may deem necessary and appropriate.

E. Method of Selection.

Appointments from the list 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 time and geographical considerations.

F. No Favoritism.

Appointing officers are to avoid favoritism and monopoly, or the appearance thereof, in making appointments. Such officers are to be mindful that attorneys who accept appointments under this Plan do so in fulfillment of their professional obligations as officers of the court and should not be called upon to discharge disproportionately as individuals the responsibility which rests upon the bar as a whole.

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G. Separate or Plural Appointments.

1. The United States magistrate judge or district judge shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.
2. Subject to this prohibition, the same attorney or the same team of attorneys may be appointed to represent plural clients in the same case or in two or more related cases.
3. In such instances, claims for compensation shall be made on separate vouchers. Time spent in common on more than one indictment or case must be prorated among the indictments or cases on which the time was spent, and each indictment or case must be cross-referenced on the vouchers. Time spent exclusively on any one indictment or case may properly be charged on the voucher for that indictment or case.

H. Two Attorneys for One Client.

1. In a proper case, more than one attorney may be appointed to represent the same client. In a capital case, or in an extremely difficult case, where the Court finds it is in the interest of justice to appoint an additional attorney, and the order states such finding, two attorneys may be appointed for one defendant and each attorney is eligible to receive the maximum compensation allowable under the CJA.
2. Where for other reasons, including substitution, the same client is represented in the overall proceedings involving him or her by more than one attorney, the aggregate compensation to be paid by the United States under this Plan to both, or all, of the attorneys shall not exceed the sum that would have been paid for the services of a single attorney, unless the case involves extended or complex representation.
3. Unless appointed by the Court, co-counsel or associate attorneys may not be compensated under the CJA. However, appointed counsel may claim compensation for services furnished by a partner or associate or, with prior authorization by the Court, counsel who is not a partner or associate, within the maximum compensation allowed by the CJA, separately identifying the provider of each service.

VII. DURATION AND SUBSTITUTION OF APPOINTMENT

A. Duration of Appointment in District Court.

1. A person for whom counsel is appointed shall be represented at every stage of the proceedings from his or her initial appearance before the United States magistrate judge or district judge through appeal, including ancillary matters appropriate to the proceedings.
2. In any criminal case in which the defendant has a right to appeal, counsel appointed hereunder shall advise the defendant of said right and the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal.

B. Representation on Appeal.

Counsel appointed under the CJA 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. If the Court of Appeals determines that assistance of counsel is required to perfect the appeal, the Court of Appeals will issue a CJA voucher for claiming compensation and expenses on appeal.

C. Change in Financial Status.

1. If, at any time after the appointment of counsel, the United States magistrate judge or district judge finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment, as the interests of justice may dictate.
2. 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.
3. Upon the finding that funds are available for payment from or on behalf of a person furnished representation, the judicial officer may authorize or direct that such funds be paid:
 - a) to the appointed attorney;
 - b) to the bar association or legal aid agency which provided the appointed attorney;
 - c) to any person or organization authorized under this Plan to

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render investigative, expert, or other services; or

- d) to the Court for deposit in the Treasury as a reimbursement to the appropriation current at the time of payment.

Except as so authorized or directed, appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representing a defendant under the appointment from any person, institution, or organization.

D. Inability to Pay Retained Counsel.

If at any stage of the proceedings, including appeal, the United States magistrate judge or district judge finds that the person is financially unable to pay retained counsel, the Court may appoint counsel and authorize payment as provided in this Plan, as the interests of justice may dictate. An appointment may be made retroactive to include any representation furnished pursuant to this Plan prior to appointment.

E. Substitution of Counsel.

The United States magistrate judge or district judge may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

F. Transferred Cases.

Absent special circumstances, whenever a case is transferred to another district, such as under Rules 5, 20, and 21, FRCrP, representation by counsel appointed in this district shall cease, and new counsel shall be appointed in the transferee district.

VIII. COMPENSATION OF COUNSEL AND CLAIMS THEREFOR

A. Limitations.

1. Counsel providing representation under this Plan shall be compensated and reimbursed as provided in 18 U.S.C. 3006A(d), and compensation and reimbursement shall be subject to all of the limitations appearing in that subsection or to such limitations as may be fixed from time to time by the Judicial Conference.
2. Compensation shall not exceed the hourly rates set forth in the CJA or subsequently adjusted by the Judicial Conference for time reasonably expended in court or out of court. The hourly rates of compensation as designated are intended to be maximum rates and are to be treated as such.

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B. Expenses.

1. Attorneys shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate judge or district judge.
2. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented.
3. Compensation may be approved for time spent in necessary and reasonable travel.
4. Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile to conduct official business, plus parking fees, etc.
5. Counsel shall obtain prior approval from the presiding judicial officer for unusually large amounts of travel, out-of-state travel, and travel which will involve an overnight stay.

C. Excess Payment.

1. Payment in excess of any maximum amount provided in the CJA may be made for extended or complex representation whenever the Court in which the representation was rendered, or the United States magistrate judge, if the representation was furnished exclusively before the magistrate judge, certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the district judge or magistrate judge and by the Chief Judge of the Eighth Circuit, or that judge's designee.
2. In any case in which compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit, with the voucher, a CJA Form 26, Supplemental Information Statement For a Compensation Claim in Excess of the Statutory Case Compensation Maximum: District Court.
3. For purposes of determining whether or not an excess payment is warranted under this subsection, the case is considered "complex" if the legal or factual issues are unusual, thus requiring the expenditure of more time, skill, and effort by the attorney than would normally be required in an average case. The case is considered "extended" if more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings.
4. After establishing that a case is extended or complex, the approving

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judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be used in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; and extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

D. Interim Payments to Counsel.

1. Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic and interim payments for both services and expenses.
2. If excess compensation is anticipated, application should be made to the presiding judge for a Memorandum Order outlining payment procedures.
3. Written approval of the procedure must be obtained from the Chief Judge of the Eighth Circuit, or that judge's designee, before issuance of the Memorandum Order.

E. Filing Claims.

1. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.
2. A separate claim for compensation and reimbursement shall be made to the district court for representation in the district court, and to each appellate court before which the attorney provided representation for the person involved.
3. Each claim shall be submitted on a form CJA Form 20 and shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate judge and district judge, and the compensation and reimbursement applied for or received in the same case from any other source.
4. Each claim shall be further supported by such documentation as the Administrative Office of the United States Courts may require and shall be itemized on such forms as the Administrative Office may prescribe.

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F. Audit by CJA Liaison.

Each claim shall be reviewed and audited by the CJA liaison in the clerk's office 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 be forwarded to the appropriate district judge or magistrate judge for consideration.

G. Approval by District Judge or Magistrate Judge.

The district judge shall fix the compensation and reimbursement to be paid to the claimant, except that in cases where representation is furnished exclusively before a United States magistrate judge, the claim shall be submitted to the magistrate judge to fix the compensation and reimbursement to be paid.

H. Court Approval Required.

In cases where representation is furnished other than before the United States magistrate judge, district judge, or an appellate court, claims shall be submitted to the District Court which shall fix the compensation and reimbursement to be paid.

I. New Trials.

For purposes of compensation and other payments authorized under this Plan, an order by the Court granting a new trial shall be deemed to initiate a new case.

J. Time Limits.

Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown.

IX. SERVICES OTHER THAN COUNSEL

A. Upon Request.

1. Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an *ex parte* application.
2. With prior authorization, compensation for services under this subsection is limited to \$1,000 per organization or individual, exclusive of reimbursement for expenses reasonably incurred, per individual authorization to perform said service.
3. Upon finding, after appropriate inquiry in an *ex parte* proceeding, that the services are necessary and that the person is financially unable to obtain

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them, the United States district judge or magistrate judge, if the services are required in connection with a matter over which the magistrate judge has jurisdiction, shall authorize counsel to obtain the services.

4. *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 district judge or magistrate judge.

B. Without Prior Approval.

1. Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization, if necessary for adequate representation. Except as provided in subparagraph 2 of this subsection, the total cost of services obtained without prior authorization may not exceed \$300 and expenses reasonably incurred.
2. The presiding judicial officer may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds \$300.

C. Maximum Amounts.

Compensation to be paid to a person for services rendered under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed \$1,000, exclusive of reimbursement for expenses reasonably incurred. Payment in excess of that limit must be certified by the presiding judicial officer as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment must be approved by the Chief Judge of the Eighth Circuit, or that judge's designee.

D. Consulting Services in Capital Federal Habeas Corpus Cases.

Where necessary for adequate representation, public and private organizations which provide consulting services to appointed and *pro bono* attorneys in capital federal habeas corpus cases in such areas as records completion, exhaustion of state remedies, identification of issues, review of draft pleadings and briefs, etc. may be reasonably employed and compensated.

E. Services for Persons With Retained Counsel.

Investigative, expert, or other services necessary to adequate representation,

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as authorized by 18 U.S.C. 3006A(e), shall be available to persons who have retained counsel but who are found by the Court to be financially unable to obtain the necessary services.

F. Services for *Pro Se* Litigants.

Persons who are eligible for representation under this Plan, but who have elected to proceed *pro se*, may upon request, be authorized to obtain investigative, expert, and other services in accordance with 18 U.S.C. 3006A(e).

G. Claims.

All claims for services, other than counsel, under this subsection shall include the following: a statement as to the type of, dates of, and time expended for the services provided; an explanation of the fee arrangement (i.e., hourly rate, per diem rate, etc.); an itemized statement of all expenses for which reimbursement is claimed; and supporting documentation, where practicable, for all expenses of lodging and subsistence, and for any expense in excess of \$50.

X. DUTIES OF FEDERAL PERSONNEL AND APPOINTED COUNSEL

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. If the person indicates that he or she is not financially able to secure such representation, steps will be taken immediately to assist in the completion of a financial affidavit (CJA Form 23) and to arrange to have the person presented before a magistrate judge or district judge of this Court for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview.

The Court recognizes the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. 3142, et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, all law enforcement and related agencies shall:

1. Advise any such person of his or her right to counsel as provided in this Plan; and
2. Having due regard for the importance of affording the pretrial service or probation officer adequate time to interview the defendant and verify information prior to the bail hearing, make every reasonable effort to

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insure that such person has consulted with counsel or has had the opportunity to consult with counsel prior to such 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 or supervised release, the United States Attorney or the probation officer, as appropriate, shall immediately mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel, at the address shown on the defendant's bond papers or to the jail in which the defendant is incarcerated.

D. Duties of Appointed Counsel.

It is the duty of all panel members appointed under this Plan to conform to the highest standards of professional conduct. They are to represent their clients diligently and with the utmost professional skill of which they may be possessed, consistent with their obligations as officers of the court and with the Canon of Ethics to which they subscribe. The services rendered to a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

XI. 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 of Court, counsel, and other claimants.

B. Guidelines for the Administration of the Criminal Justice Act.

The Court, Clerk of Court, and private attorneys appointed under the CJA and this Plan, shall comply with the provisions of the *Guidelines for the Administration of the Criminal Justice Act*, Volume VII, *Guide to Judiciary Policies and Procedures*.

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XII. EFFECTIVE DATE

This Plan supersedes all prior Criminal Justice Act Plans of this Court. This Plan shall take effect immediately upon its approval by the Judicial Council of the Eighth Circuit.

Adopted by the United States District Court for the Western District of Arkansas
this 3 day of December, 2003.



JIMM LARRY HENDREN
CHIEF UNITED STATES DISTRICT JUDGE