

United States Courts
Judicial Council of the Eighth Circuit
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St. Louis, Missouri 63102-1116

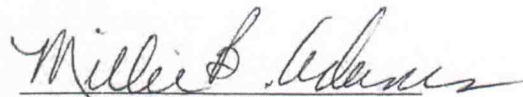
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Circuit Executive

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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 Plan for the Western District of Arkansas which was adopted by the court on March 4, 2011.


Millie B. Adams
Circuit Executive

St. Louis, Missouri
April 29, 2011

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

Approval was given by the Defender Services Committee (CJA). Judge Colloton voted to disapprove the amended plan.

JCO 2316

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



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

MARCH 2011

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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 Administering the CJA and Related Statutes (CJA Guidelines)*, Volume 7, *Guide to Judiciary Policy*, the Judges of the United States District Court for the Western District of Arkansas adopt this Plan, subject to the approval of the Judicial Council of the Eighth Circuit, 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 will 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 USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), 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 must 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 will 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 will maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and will make known to such attorneys its availability.

III. PROVISION OF REPRESENTATION

A. Circumstance

1. Mandatory Appointments

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

- a. Charged with a felony or with a Class A misdemeanor;
- b. A juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. Charged with a violation of probation;
- d. Under arrest, when such representation is required by law;
- e. Entitled to appointment of counsel in parole proceedings;
- f. 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. Subject to a mental condition hearing under 18 U.S.C. chapter 313;
- h. In custody as a material witness;
- i. Entitled to appointment of counsel under the Sixth Amendment to the Constitution, or faces loss of liberty in a case and federal law requires the appointment of counsel;
- j. Seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255;
- k. Entitled to appointment of counsel in connection with prisoner transfer proceedings under 18 U.S.C. § 4109.

2. Discretionary Appointments

Whenever the court or a United States magistrate judge determines that the interests of justice so require, representation **may** be provided for any financially eligible person who is:

- a. Charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. Seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. §§ 2241, 2254, or 2255;
- c. 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;

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- e. Proposed by the United States Attorney for processing under a “pretrial diversion” program;
- f. Held for international extradition under 18 U.S.C. chapter 209.

3. Ancillary Matters

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

4. Civil Forfeiture Proceedings

Under 18 U.S.C. § 983(b)(1), if a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under 18 U.S.C. § 3006A in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

B. Timely Appointment of Counsel

A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before the court or United States magistrate judge, when formally charged, or when otherwise entitled to counsel 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

Under 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one whom must be learned in the law applicable to capital cases. Under 18 U.S.C. § 3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

b. Habeas Corpus Proceedings

Under 18 U.S.C. § 3599(a)(2), 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

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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 attorneys.

If qualified under paragraph 2 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. Qualifications

Qualifications for appointed counsel will be determined by the court. In capital cases the following also applies:

a. Appointment of Counsel Before Judgment

Under 18 U.S.C. § 3599(b), 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. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Under 18 U.S.C. § 3005, in appointing counsel in federal death penalty cases, the court should 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 effective representation. In evaluating the qualifications of counsel considered for appointment, the Federal Public Defender Organization should consider:

- (1) the minimum experience standards set forth 18 U.S.C. § 3599(b)-(d), 18 U.S.C. § 3005, and other applicable laws or rules;

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- (2) the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;
- (3) the recommendations of other federal public and community defender organizations, and local and national criminal defense organizations;
- (4) the proposed counsel's commitment to the defense of capital cases; and
- (5) the availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

b. Appointment of Counsel After Judgment

Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been appointed 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

Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), 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.

3. 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 2, when the case enters the federal system.
- b. Title 18 U.S.C. § 3599(e), provides that "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

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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.”

D. Waiver of Counsel

1. In every case in which a person entitled to representation under this Plan appears without counsel, the court or United States magistrate judge will 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 financially unable to obtain counsel, will appoint counsel to represent the defendant.

E. 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 court or United States magistrate judge may find it necessary to appoint “standby” counsel to be available to assist a *pro se* defendant in that defendant’s defense and also to protect the integrity and ensure the continuity of the judicial proceedings. While the court has inherent authority to appoint standby counsel, such appointments may not be made and counsel may not be compensated under the CJA unless the defendant qualifies for appointed counsel and representation is actually rendered by counsel.

2. For a Financially Ineligible Defendant

In circumstances in which standby counsel is appointed 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 will be in the capacity of an “expert or consultant” under 5 U.S.C. § 3109. An appointment under 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 according to 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 under 5 U.S.C. § 3109 will be terminated.

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F. Eligibility for Representation

1. Factfinding

- a. The determination of eligibility for representation under the CJA is a judicial function to be performed by the court or a United States magistrate judge after making appropriate inquiries concerning the person's financial condition.
- b. 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.
- c. 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.
- d. All statements made by a person requesting appointed counsel or during the inquiry into eligibility should be either:
 - (1) reflected on Form CJA 23 (Financial Affidavit) and the form should be completed and executed before a judicial officer or employee; or
 - (2) under oath in open court.
- e. 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.

2. Standards for Eligibility

- a. A person is "financially unable to obtain counsel" within the meaning of this Plan if the person's net financial resources and income are insufficient to enable him or her to obtain qualified counsel.
- b. Any doubts as to a person's eligibility should be resolved in the person's favor.
- c. At the time of determining eligibility, the court or United States magistrate judge should inform the person of the penalties for

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making a false statement, and of the obligation to inform the court and the appointed attorney of any change in financial status.

3. Partial Eligibility

- a. If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide that person's 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 the person to pay the available excess funds to the clerk of court at the time of such appointment or from time to time thereafter.
- b. 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.
- c. Funds collected pursuant to this subsection are held and disposed pursuant to 18 U.S.C. § 3006A(f).

G. Appointment Alternatives

1. Counsel furnishing representation under this Plan will be selected from:
 - a. the Federal Public Defender's Office (see section IV below); or
 - b. the CJA panel of attorneys designated or approved by the court.
2. If 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 the attorney's appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant.

IV. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

1. The Federal Public Defender Organization of the Western District of Arkansas, previously established in the district under the provisions of the CJA, is hereby recognized as the federal public defender organization for this district.

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2. The Federal Public Defender Organization will be capable of providing legal services throughout the district and will maintain a headquarters office in Fayetteville, a staffed branch office in Texarkana, and an unstaffed branch office in Fort Smith, Arkansas.

B. Ratio of Appointments

Where practical and cost effective, the Federal Public Defender Organization should 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 should be appointed in approximately 25% of the appointments under the CJA annually throughout the district.

C. Capital Habeas Representations

Capital habeas appointments will be assigned to the Federal Public Defender Organization for the Eastern District of Arkansas, or other attorney who qualifies for appointment under 18 U.S.C. § 3599.

D. Supervision of Defender Organization

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

E. Services Included

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

V. PANEL SELECTION COMMITTEE

A. Membership

A Panel Selection Committee will be established by the court. The Committee will consist of one district judge, the United States magistrate judges, the CJA Panel Representative, the clerk of court, and the Federal Public Defender. The Committee will be chaired by the district judge. The CJA Panel Representative will be appointed by the Chief District Judge and will serve in that position at the Chief Judge's pleasure.

B. Duties

1. The Panel Selection Committee will meet at least once a year to

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consider applications for the vacancies on the current panel. The Committee will 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 will 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 will 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 will 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 will 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 will 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 will 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 will serve at the pleasure of the court.
2. Each panel will consist of attorneys in each division who are eligible, willing, and competent to provide adequate representation under the CJA.
3. The panels will be adequate in number to supply the needs of the district at any given time.

B. Qualifications

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

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Federal Rules of Evidence, and the Sentencing Guidelines, will 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 will 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 will 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, will 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 will 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 will be furnished to each district judge, United States 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. Appointment of Counsel to Represent More Than One Individual in a Case

1. The court or United States magistrate judge will 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 more than one defendant in the same case or in two or more related cases.
3. In such instances, claims for compensation will 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 will 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 will be represented at every stage of the proceedings from his or her initial appearance before the United States magistrate judge or the court through appeal, including

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ancillary matters appropriate to the proceedings.

2. In any criminal case in which the defendant has a right to appeal, counsel appointed under the Plan will advise the defendant of the right to appeal and the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel will file a timely Notice of Appeal.

B. Representation on Appeal

Counsel appointed under the CJA will 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 court or United States magistrate 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 will 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 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.

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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 court or United States magistrate 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 court or United States magistrate 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 will cease, and new counsel will be appointed in the transferee district.

VIII. COMPENSATION AND EXPENSES OF APPOINTED COUNSEL

A. Limitations

1. Counsel providing representation under this Plan will be compensated and reimbursed as provided in 18 U.S.C. § 3006A(d), and compensation and reimbursement will 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 will 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.

B. Expenses

1. Attorneys will be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court or United States magistrate judge.

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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 must 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 United States 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 United States magistrate judge and by the Chief Judge of the Eighth Circuit Court of Appeals, or that judge's designee.
2. In any case in which compensation claimed is in excess of the statutory case compensation maximum, counsel must submit, with the voucher, a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and the excess payment is necessary to provide fair compensation.
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 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; any extraordinary pressure of time or other factors under which services

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were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

5. Upon preliminary approval of such claim, the presiding judicial officer should furnish to the Chief Judge of the Eighth Circuit Court of Appeals, or that judge's designee, a memorandum containing the recommendation and a detailed statement of reasons.

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 Court of Appeals, 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 must 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 must be submitted on a form CJA Form 20 and supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court or United States magistrate judge, and the compensation and reimbursement applied for or received in the same case from any other source.
4. Each claim will be further supported by such documentation as the Administrative Office of the United States Courts may require and itemized on such forms as the Administrative Office may prescribe.

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F. Audit by CJA Liaison

Each claim must 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 Administering the Criminal Justice Act*, Volume 7, Guide to Judiciary Policy, and if correct, will be forwarded to the appropriate district judge or United States magistrate judge for consideration.

G. Approval by District Judge or United States Magistrate Judge

The district judge will 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 will be submitted to the United States 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 will be submitted to the district court to 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 will be deemed to initiate a new case.

J. Time Limits

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

K. Notification of Proposed Reduction

1. If the court determines that a claim should be reduced, appointed counsel should be provided prior notice of the proposed reduction with a brief statement of the reason(s) for it, and an opportunity to address the matter.
2. Notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.
3. Nothing contained in this guideline should be construed as requiring a hearing or as discouraging the court from communicating informally with counsel about questions or concerns in person, telephonically, or electronically, as deemed appropriate or necessary.

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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 the statutory authorized amounts set out in the *CJA Guidelines*.
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 them, the court or United States magistrate judge, if the services are required in connection with a matter over which the United States magistrate judge has jurisdiction, may authorize counsel to obtain the services.
4. *Ex parte* applications for services other than counsel must be heard *in camera*, and must not be revealed without the consent of the person represented. The application must be placed under seal until the final disposition of the case in the trial court, subject to further order of the court.

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 the statutory authorized amounts set out in the *CJA Guidelines*.
2. The limitation for services obtained without prior authorization, may be waived, if the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization.

C. Maximum Amounts

1. 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, must not exceed the statutory authorized amounts set out in the *CJA Guidelines*, 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

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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 Court of Appeals, or that judge's designee.

2. If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the Chief Judge of the Eighth Circuit Court of Appeals, 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, as authorized by 18 U.S.C. § 3006A(e), will 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 should 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 (*e.g.*, 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 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, must promptly ask any person who is in custody, or who otherwise may be entitled to

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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 United States 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 must:

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 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, must 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 will be commensurate with those rendered if counsel were privately employed by the person.

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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 must be used by the court, the clerk of court, counsel, and other claimants in all proceedings under this Plan.

B. **Guidelines for Administering the Criminal Justice Act**

The court, clerk of court, and private attorneys appointed under the CJA and this Plan, must comply with the provisions of the *Guidelines for Administering the Criminal Justice Act*, Volume 7, *Guide to Judiciary Policy*.

XII. **EFFECTIVE DATE**

This Plan supersedes all prior Criminal Justice Act Plans of this court. This Plan will become effective when approval by the Judicial Council of the Eighth Circuit.

Adopted by the United States District Court for the Western District of Arkansas this 9 day of March 2011.



JIMM LARRY HENDREN
CHIEF UNITED STATES DISTRICT JUDGE