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JAN 11, 2006
CLERK US DISTRICT COURT
DISTRICT OF ARIZONA
BY s/ D. Lucas DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

In the matter of PLAN FOR COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT **SUPERSEDES GENERAL ORDERS 03-02, 03-10, and 04-12**	GENERAL ORDER 05-32

The Judges of this district having considered and approved a proposed plan for the Composition, Administration and Management of the Panel of Private Attorneys Under the Criminal Justice Act, and the Plan having received the approval of the Ninth Circuit Judicial Council,

IT IS ORDERED that the Criminal Justice Act Plan, attached hereto, is adopted for use in the District of Arizona.

DATED this *11th* day of January, 2006.

s/ Stephen M. McNamee
Stephen M. McNamee
Chief United States District Judge

Proposed Amended

CJA PLAN FOR
THE DISTRICT OF ARIZONA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY.

Pursuant to the Criminal Justice Act of 1964 (CJA), as amended, 18 U.S.C. § 3006A, and Volume VII, *Guide to Judiciary Policies and Procedures* (CJA Guidelines), the judges of the United States District Court for the District of Arizona adopt this CJA Plan for furnishing representation in federal court for any persons financially unable to obtain adequate representation.

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 crime, or who are otherwise eligible for representation or consultation services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any necessary and reasonable element of representation.

2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in 21 U.S.C. § 848 (q)) 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 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. Each private attorney will be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk must maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and will make known its availability to such attorneys.

III. DEFINITIONS.

A. Appointed attorney includes private attorneys and attorneys with the Office of the Federal Public Defender.

B. Court means the United States District Court for the District of Arizona.

C. Eligible person means an individual who establishes, under the CJA Guidelines and the procedures set forth below in Section IV.B.1, financial inability to obtain counsel.

D. Judge means a federal judge, magistrate judge, or a state or local judicial officer as defined at Fed. R. Crim. P., 1(b)(3), 1(b)(4), 1(b)(5) and 1(b)(10).

E. Representation includes representation by and consultation with counsel, as well as investigative, expert, and other services.

IV. PROVISION OF REPRESENTATION.

A. Appointment of Counsel. Representation must be provided for all eligible persons under one or more of the following provisions:

1. Pursuant to 18 U.S.C. § 3005, 18 U.S.C. § 3006A, 21 U.S.C. § 848(q), Fed. R. Crim. P. 5(d) and (e), Fed. R. Crim P. 44, Fed. R. Crim. P. 58(b)(2)(C) and Chapter II of the CJA Guidelines;

2. As required or allowed by the United States Constitution and law.

B. Eligibility for Representation.

1. Any person who has the right to representation must be so advised at the earliest opportunity and a judicial inquiry made as to whether that person is financially able to obtain counsel and, if not financially able, whether counsel should be appointed.

2. The determination of eligibility for representation under the CJA is a judicial function to be performed by a judge after making appropriate inquiries concerning the person's financial condition. Such inquiries can be held *in camera*, *ex parte*, or under seal, at the discretion of the judge.

3. If the need for representation or consultation is immediate, and if the person affirms under oath a financial inability to obtain counsel, counsel may be appointed immediately with a financial inquiry to follow as soon as practicable.

C. Number of Counsel.

1. Capital Cases. For a federal capital trial, the judge will appoint attorneys pursuant to the requirements of 18 U.S.C. § 3005 and 21 U.S.C. § 848(q).

2. Non-Capital Cases. In an exceptional case, the judge, in his or her discretion, may, in the interest of justice, appoint more than one attorney.

V. FEDERAL PUBLIC DEFENDER.

A. The Federal Public Defender of the District of Arizona, previously established in this District pursuant to the provisions of the CJA, is recognized as the defender organization for this district.

B. 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.

VI. PRIVATE ATTORNEYS.

A. CJA Panel Lists. The existing lists of attorneys (CJA Panel Lists) who are eligible and willing to be appointed to provide representation under the CJA are recognized. These lists are contained in General Orders of the Court.

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 which may be amended from time to time by a vote of the District Judges.

VII. REPRESENTATION IN CAPITAL POST-CONVICTION PROCEEDINGS.

A. The Court, after consultation with the Federal Public Defender, will create and maintain a Capital Post-Conviction Panel of attorneys from the private sector of the bar who are qualified pursuant to 21 U.S.C. § 848(q) to represent eligible persons who have been sentenced to death.

B. The Court will appoint the Federal Public Defender or a member or members of the Capital Post-Conviction Panel pursuant to 21 U.S.C. § 848(q) to represent eligible persons seeking Post-Conviction relief in state or federal death penalty proceedings under 28 U.S.C. §§ 2241, 2254, or 2255 (Post-Conviction proceedings).

C. The Federal Public Defender is authorized by this Plan to provide representation to eligible persons and to provide assistance, consultation, information and other related services to eligible persons and appointed attorneys in connection with Post-Conviction proceedings.

D. This Plan seeks to ensure that representation is provided to persons under death sentence who seek Post-Conviction relief. Toward that end, the Federal Public Defender will perform the following functions:

1. Monitor and track capital litigation in the state and federal courts in Arizona;

2. Accept appointments, caseloads permitting, as counsel of record;

3. Recommend to the Court qualified members of the bar who are willing to provide representation in Post-Conviction proceedings in federal court for services on the Capital Post-Conviction Panel;

4. Coordinate with other state and national organizations providing legal assistance to death-sentenced individuals and counsel representing such individuals;

5. Provide training to attorneys serving on, or seeking appointment to, the Capital Post-Conviction Panel.

VIII. DUTIES OF APPOINTED COUNSEL.

A. Professional Conduct. Attorneys appointed pursuant to the CJA must conform to the highest standards of professional conduct, including but not limited to the local rules, General Orders, and other standards adopted by this Court.

B. No Receipt of Other Payment. Appointed counsel may not 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. CJA counsel shall not discuss attorneys' fees in any manner, directly or indirectly, with the client who counsel is appointed to represent or the client's family members or other representatives. If the client, family members, or other representatives desire to retain counsel, they may do so but the appointed CJA counsel shall not be eligible for retention on the case to which they were originally appointed. If requested for a recommendation of other counsel, the appointed CJA attorney shall not make a recommendation of a specific attorney, but may recommend three or more attorneys, not from the same law firm.

C. Continuing Representation. Once counsel is appointed under the CJA, counsel must continue the representation until the matter, including appeals or review by certiorari, is closed, until substitute counsel is appointed, or until otherwise relieved of professional responsibility by order of the Court.

D. Acceptance of Appointments. Attorneys on the CJA Panel are expected to make themselves available to accept appointments when called upon to do so.

E. Appearance by Appointed Counsel. Only appointed CJA counsel may appear on the case to which they are appointed. Other counsel may appear only upon prior approval of the Court.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, must promptly ask any person who is detained, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and must, pursuant to Section IV herein, arrange to have the person promptly presented before a judge for determination of financial eligibility and appointment of counsel.

B. Notification of Potential Death Penalty Prosecution.
In any potential death penalty prosecution, and in order for the Federal Public Defender to carry out its responsibilities pursuant to 18 U.S.C. § 3005 and 21 U.S.C. § 848(q), the United States Attorney shall provide prompt notification to the Federal Public Defender of any case where the death penalty may be sought or is a possible statutory sentence. This notification shall be before initial appearance or as soon as a complaint is filed and an accused is arrested.

C. Notice of Indictment or Criminal Information. Upon return of an indictment or filing of a criminal information, the Clerk of the Court must, unless the document is under seal, mail or otherwise make available a copy of the document to current (or previous) counsel, or to the defendant if he or she is without counsel, at the address shown on defendant's release papers or to the defendant at the facility in which the defendant is incarcerated.

X. MISCELLANEOUS.

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, will be used, where applicable, in all proceedings under this Plan.

B. Claims for Compensation. Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form, to the office of the Clerk of the Court. That office will review the claim for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, will forward the claim form for prompt consideration by the appropriate District Judge or United States Magistrate Judge. The procedures for objecting to voucher payment decisions are set forth in Section III of the Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act. (Appendix I)

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

D. General Orders. This Plan may be amended or superseded by General Orders of the Court.

APPENDIX I

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

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS.

A. CJA Panel.

1. Approval. The Court has established a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The CJA Panel is divided into CJA Panel Lists corresponding to geographic area and type of representation. The Court approves attorneys for membership on the CJA Panel and CJA Panel Lists after receiving recommendations from the Panel Selection Committees, established pursuant to Section B below. Members of the CJA Panel shall serve at the pleasure of the Court.

2. Size. The CJA Panel Lists will be large enough to provide a sufficient number of experienced attorneys to handle the CJA case load, yet small enough so that CJA 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.

   The CJA Panel shall be divided, as needed, into three separate lists of attorneys for felonies, misdemeanors and appeals.

3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district; possess prior federal and/or state criminal trial experience; and have knowledge of the Sentencing Guidelines, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence sufficient to demonstrate to the Panel Selection Committee that they will provide competent legal representation. In addition, all CJA Panel members are required to participate annually in at least three (3) hours of continuing legal education per year related to federal criminal defense. CLE must be completed by July 1st of the calendar year. Annual written certification shall be submitted by each panel member to the Federal Public Defender, as Chair of the Panel Selection Committee, by September 15th of each calendar year.

Subsection (b) of the Criminal Justice 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 defender organization furnishing representation pursuant to the Plan.

However, when a district judge or magistrate judge determines that the appointment of an attorney, who is not a member of the CJA Panel, is, in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the district's CJA Panel in the ordinary course of panel selection.

4. Application. Application forms for membership on the CJA Panel and CJA Panel Lists will be made available, upon request, by the Federal Public Defender. Completed applications will be submitted to the Federal Public Defender who will transmit the applications to the appropriate Panel Selection Committee.

5. Term of Appointment. Members of the CJA Panel will serve continuously until they resign or are removed. The Panel Selection Committee shall meet at least annually to review the continued eligibility of CJA Panel Members. The Panel Selection Committees may recommend removal to the Court of a member from the CJA Panel if the attorney fails to maintain eligibility under this Plan.

   Panel members are expected to accept a minimum of four appointments per year, absent extraordinary circumstances or acceptance of a very large or complicated case.

B. Panel Selection Committee.

- Membership. Two Panel Selection Committees will be established by the Court, one for the Phoenix/Prescott Division and one for the Tucson Division. A sub-panel selection committee shall be established in any location, outside of Phoenix or Tucson, where a full time Magistrate Judge sits. The Federal Public Defender, or his or her designated representative, will be a member and serve as the chair of the Panel Selection Committees.

In addition, each Panel Selection Committee will consist of the following members: 1) a judge of the Superior Court of Arizona who serves within the Division; 2) a county public defender representative from within the Division; 3) a criminal defense attorney from a local county bar association within the Division; 4) a criminal defense attorney from the State Bar of Arizona; 5) a criminal defense attorney from the Federal Bar Association; and 6) a member of the Arizona Attorneys for Criminal Justice. None of the members of the Panel Selection Committees may be on the CJA Panel or associated in the practice of law with any lawyer on the CJA Panel.

2. Duties.

The Panel Selection Committee shall meet at least annually to consider applications for vacancies. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies. The Committee will specify for each applicant whether it is recommending approval for the felony, misdemeanor or appeal list, as needed.

At its annual meeting, the Committee shall also review the operation and administration of the panel, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management, including removal of panel attorneys. The Committee shall also report annually as to the continued availability and willingness of each panel member to accept appointments.

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.

A member of the CJA Panel may be removed from the Panel prior to expiration of his or her term whenever the district judges sitting in Tucson/Phoenix determine that the member has failed to satisfactorily fulfill the obligations of Panel membership or has engaged in other conduct which renders it inappropriate that he or she continue as a Panel member.

II. SELECTION FOR APPOINTMENT.

A. Maintenance of List and Distribution of Appointments.

The Federal Public Defender shall maintain the current list of all attorneys included on the CJA Panel, with current office and e-mail addresses and telephone numbers, as well as a statement of qualifications, experience and proficiency in the Spanish language. The Federal Public Defender shall furnish a copy of this list to each district judge and magistrate judge. The Federal Public Defender shall also maintain a record of assignments to private counsel from each list.

B. Method of Selection.

Upon determination of a need for appointment of counsel, the district judge or magistrate judge shall notify the Federal Public Defender of the nature of the case and of the need to locate counsel. The Federal Public Defender shall either, (1) recommend appointment of counsel from the Federal Public Defender's Office or, (2) locate and recommend for appointment a suitable and available CJA Panel Member. The Court may then make the recommended appointment or, in its discretion, locate and appoint a different lawyer.

Appointments from the lists of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, including whether it is a capital case, an attorney's experience, and geographical considerations. Unless otherwise ordered by the Court, the appointments shall be made from each list, felony, misdemeanor and appeal according to the nature of the case. Each list shall also identify Spanish speaking attorneys and non-Spanish speaking attorneys. 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.

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

The CJA Voucher Review Unit staff may, upon verification with the Federal Public Defender's Office, assign as the date of appointment that date which the Federal Public Defender's Office first contacted the CJA panel attorney to represent the defendant, and the CJA panel attorney agreed to represent the defendant.

III. COMPENSATION -- FILING OF VOUCHERS.

Claims for compensation shall be submitted on the appropriate CJA form to the office of the Clerk of the Court. The Clerk of the 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 district judge or magistrate judge.

In the event a voucher is reduced by the judicial officer, the claimant may seek further payment review either orally or in writing with the approving judicial officer.

Authority to approve vouchers submitted to the court for payment pursuant to 18 U.S.C. § 3006A(d)(5), including those submitted for investigator and interpreter services, is delegated to the district's Voucher Review Analysts, subject to the following restrictions:

- Total amount claimed for counsel's representation must be equal to or less than $1,000.00 per voucher.

- Total amount claimed for expert or other service providers must be equal to or less than $1,000.00 per case.

- Vouchers exceeding case compensation maximums will be sent to the presiding judicial officer for approval, regardless of amount claimed.

- Voucher reviewer as the approving official may not reduce or increase the amount payable for any reason other than to reflect a correction to a mathematical error.

Any voucher submitted in excess of $1,000.00, as well as any voucher for which the reviewer identifies a reasonableness or other question, will be forwarded to the appropriate judicial officer for final review and approval. Any claimant who wishes to object to or otherwise appeal the action taken by the voucher reviewer as approving official may file such objection or appeal with the appropriate judicial officer.