

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

CRIMINAL JUSTICE ACT PANEL PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the district judges of the United States District Court for the District of Colorado (the Court), adopt this Plan (the Plan) for the composition, administration, and management of the Panel of Private Attorneys under the Criminal Justice Act, (CJA Panel).

II. STATEMENT OF POLICY

A. Objectives

1. The objective of the Plan is to attain the ideal of equality before the law for all persons. Therefore, the Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

2. The further objective of the 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 the District of Colorado.

B. Compliance

The Office of the Federal Public Defender and private attorneys appointed under the CJA shall comply with the terms and objectives of the Criminal Justice Act, the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services, and with the Plan.

III. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Recognition

The Office of the Federal Public Defender for the District of Colorado is recognized as the federal public defender organization for this district. The Federal Public Defender shall be capable of providing legal services throughout the district and shall maintain its primary office in Denver, Colorado.

B. Supervision of Defender Organization

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

C. Management of the CJA Panel

A CJA Coordinating Attorney, employed by the Office of the Federal Public Defender, shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel attorneys subject to the provisions of the Plan. The Federal Public Defender shall be solely responsible for the selection, compensation, and supervision of the CJA Coordinating Attorney.

1. The CJA Coordinating Attorney shall be responsible for opening and processing all new CJA appointments, and, in every case, shall review claims for payment and reimbursement and requests for services under the CJA for mathematical and technical accuracy, for conformity with the Guidelines for the Administration of the Criminal Justice Act (Vol. VII, Guide to Judiciary Policies and Procedures) and shall determine whether the claims are reasonably incurred.

2. The CJA Coordinating Attorney shall promptly review claims for reimbursement and other services, and, on certifying completion of that review for accuracy, conformity, and reasonableness, shall forward the claim form or service request for consideration of approval to the appropriate judicial officer.

3. The CJA forms and/or electronic filing and processing approved by the Court shall be used by Office of the Federal Public Defender, CJA Panel attorneys, and all other attorneys appointed under the CJA.

D. Coordination of Training

At the direction of the Federal Public Defender, the CJA Coordinating Attorney shall assist in the planning and administration of Continuing Legal Education and other training programs offered by the Office of the Federal Public Defender, in conjunction with the CJA Standing Committee.

IV. THE CJA STANDING COMMITTEE

A. Membership

The Standing Committee on the Criminal Justice Act (“Standing Committee”) shall consist of seven members. The Court shall appoint six current or former CJA Panel attorneys to sit on the Standing Committee. These members shall serve for a term of three years and may be re-appointed for one additional term of three years. The Federal Public Defender shall be a permanent member of the Standing Committee. The Standing Committee shall select a chairperson who shall serve for a term of not more than three years.

B. Duties

1. The Standing Committee shall review the operation and administration of the Panel and recommend changes to this Plan deemed necessary or appropriate. The Standing Committee may also inquire periodically as to the continued availability and willingness of each CJA Panel attorney to accept appointments.

2. The Standing Committee shall also investigate complaints made against a CJA Panel attorney and may recommend removal, suspension, or corrective action in a confidential written communication to the Court through the Chief Judge.

3. The Standing Committee may recommend special programs and procedures consistent with this Plan, which recommendations if approved by the Court shall be included in an Appendix for the Implementation and Management of the Criminal Justice Act Panel.

V. THE CJA SELECTION COMMITTEE

A. Membership

1. The Selection Committee shall consist of seven members. The Selection Committee shall include the chairperson and two other members of the Standing Committee, three current or former CJA Panel attorneys, who are not members

of the Standing Committee (chosen by the Standing Committee from nominees or volunteers from the CJA Panel), and the Federal Public Defender or his or her designee.

2. The members of the Selection Committee shall select a chairperson who shall serve for a term of not more than three years.

3. Except for members of the Standing Committee and the Federal Public Defender, or his or her designee, the three CJA Panel attorneys on the Selection Committee shall serve staggered terms. Initially, the Standing Committee shall appoint CJA Panel attorneys for a term of one, two, or three years. Thereafter, the CJA Panel attorneys shall serve for terms of three years.

B. Duties

1. The Selection Committee shall meet as necessary to consider applications for vacancies created by expired terms, removals, or attrition.

2. The CJA Selection Committee shall review the qualifications of applicants, conduct further necessary inquiries and recommend attorneys for placement on the CJA Panel to the Standing Committee, which shall make its recommendation to the Court, which recommendation may include additional applicants.

VI. THE CJA PANEL

A. Recognition of the Existing Panel

1. The existing, previously established CJA Panel is hereby recognized. Ongoing organization and administration of the CJA Panel shall be governed by the Plan.

B. Capital Prosecutions

1. In every criminal action in which an indigent defendant is charged with a crime which may be punishable by death or in any post-conviction proceeding brought under 28 U.S.C. §§ 2254 or 2255 seeking to set aside a death sentence for an indigent defendant, the district judge to whom the case is assigned may appoint the Federal Public Defender or one or more qualified CJA Panel attorneys, consistent with 18 U.S.C. § 3599. In assigning counsel under 18 U.S.C. § 3005, the presiding district judge shall consider the recommendations of the Federal Public Defender.

2. The Standing Committee shall assemble for approval of the Court a special panel of attorneys who are learned in the law applicable to capital cases to represent persons charged with a crime which may be punishable by death.

3. Notwithstanding any other provision of the Plan, assignment of counsel under 18 U.S.C. § 3005, shall be made by the presiding district judge.

C. Specialty Panels

1. With approval of the Court, the Standing Committee may establish other specialty panels of attorneys to accept appointments in misdemeanors, petty offenses, non-capital habeas cases, or remote areas in the District.

D. Size

Within 60 days of the adoption of this Plan, the Standing Committee shall make a recommendation to the Court as to the optimal size of the CJA Panel and shall, upon its formation and from time to time thereafter, share such recommendation with the Selection Committee. Thereafter, with each set of renewal recommendations, the Standing Committee shall advise the Court of its recommendation as to panel size and as to the extent to which the recommendation meets or differs from one-third of such recommended panel size. The Court shall consider the recommendations of the Standing Committee as to panel size, but will not fix or establish a firm size for the CJA Panel. In making recommendations as to the size of the CJA Panel, the Standing Committee shall be guided by the need for the CJA Panel to be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and, thereby, provide a high quality of representation.

E. Eligibility

1. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, and shall be considered without regard to race, color, religion, sex, age, national origin, sexual orientation, or disabling condition.

2. CJA Panel attorneys shall be selected on the basis of demonstrated commitment, qualification, and skill in federal criminal practice.

3. Not every qualified applicant will necessarily be selected for membership on the CJA Panel.

4. To be eligible for service on the Panel, an attorney shall:

a. certify that the attorney is a member in good standing of the bar of the court;

b. certify that the attorney has a working knowledge of the Plan, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of Practice of the United States District Court for the District of Colorado, the individual practice standards of the judges of the Court, and the United States Sentencing Commission Guidelines Manual;

c. certify that the attorney is competent to try the type of federal criminal case, *i.e.*, felony, misdemeanor, petty offense, for which application is made;

d. certify that the attorney is proficient with the technology, *e.g.*, CM/ECF, computerized legal research, electronic preparation and filing of required CJA forms, necessary to discharge the duties imposed by the Plan;

e. certify the willingness of the attorney to accept at least three appointments each year; and

f. meet the Continuing Legal Education requirements set forth below.

5. The Court may approve attorneys for membership on the CJA Panel after receiving recommendations from the Standing Committee or on its own initiative.

6. Deliberations of the Selection Committee, the Standing Committee, and the Court shall be confidential.

F. Continuing Legal Education Requirements

1. During each year of a three-year term, a CJA Panel attorney shall attend at least six hours of continuing legal education instruction presented by either the Federal Public Defender or the Standing Committee.

2. The CJA Coordinating Attorney shall implement a monitoring process to ensure compliance with this requirement and shall inform the Standing Committee, as necessary, of those CJA Panel attorneys who are not in compliance with the CLE requirements above.

G. Membership Terms

Within 60 days after the adoption of the Plan, the initial CJA Panel established under the Plan shall be divided by the Standing Committee, to the extent possible, into three equal groups. Unless removed by the Court, members of the first group shall serve for a term of one year; members of the second group shall serve for a term of two years;

and members of the third group shall serve for a term of three years. Thereafter, attorneys admitted to the CJA Panel shall serve for a term of three years, unless removed by the Court.

H. Renewals

1. A CJA Panel attorney shall be given 60 days advance written notice of the expiration of membership on the CJA Panel by the CJA Coordinating Attorney. To be considered for renewal, the CJA Panel attorney shall submit an application for renewal on the form approved by the Court before the expiration of his or her current term.

2. Renewal applications shall be made available on the web site of the Court and at www.cofpd.org.

3. Renewal is discretionary with the Court.

4. If the application for renewal of a CJA Panel attorney is not granted, any existing CJA appointment shall continue until representation is concluded.

I. Removal, Suspension, and Corrective Action

1. Membership on the CJA Panel is a privilege, not a right. All CJA Panel attorneys serve at the discretion and pleasure of the Court and may be removed, suspended, or subject to corrective action by the Court at any time.

2. The Standing Committee may consider whether CJA Panel attorney should be considered for removal, suspension, or corrective action. In considering removal, suspension, or corrective action, the Standing Committee may consider all relevant facts and circumstances, including, but not limited to, whether the CJA Panel attorney has failed to fulfill the obligations of CJA Panel membership, including the duty to provide competent and effective representation, or has engaged in other conduct that renders inappropriate his or her continued membership on the CJA Panel or has refused appointment three times during his or her term of appointment. If the Standing Committee finds that a CJA Panel attorney should be referred to the Court for removal, suspension, or corrective action, it shall first provide written notice to the CJA Panel attorney and a reasonable opportunity to be heard. If after such notice and hearing, the Standing Committee finds that the CJA Panel attorney should be removed, suspended, or subject to corrective action, it shall forward its confidential recommendation to the Court through the Chief Judge.

3. A CJA Panel attorney who is removed from the CJA Panel may apply for appointment to the CJA Panel during the next opening for applications. In the application, the attorney shall note the earlier removal and explain why appointment to

the CJA Panel should be granted. A CJA Panel attorney who is suspended or subject to corrective action shall be reinstated to the CJA Panel at the conclusion of the term of suspension or on completion of the conditions of corrective action on proof that the CJA Panel attorney has successfully completed all conditions required by the Court.

4. Denial of an application for renewal does not constitute removal.

J. Maintaining the Panel List

The CJA Coordinating Attorney shall maintain the list of CJA Panel attorneys, including their current name and business address, email, mailing address, and telephone number. A CJA Panel attorney shall promptly notify the CJA Coordinating Attorney of any change of business address, email, mailing address, or telephone number. The roster of CJA Panel attorneys shall be public information.

VII. ASSIGNMENT OF CASES TO THE CJA PANEL

A. Apportionment

Unless otherwise ordered, the Federal Public Defender shall be appointed to represent any financially qualified defendant unless there exists a conflict of interest, or the caseload of the Federal Public Defender necessitates declining the case. Where practical and cost-effective, CJA Panel attorneys 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 be defined as not less than twenty-five per cent (25%) of the appointments under the CJA annually throughout the district.

B. Administration

Appointments under the CJA shall be made by a judicial officer and forwarded to the CJA Coordinating Attorney. The CJA Coordinating Attorney shall be responsible for overseeing the assignment of cases to CJA Panel attorneys. The responsibility shall include the obligation to contact CJA Panel attorney regarding assignment, to secure agreement to represent the defendant, and to forward the completed appointment form to the appointing judicial officer for approval.

C. Procedure

Selection of a CJA Panel attorney shall be made on a rotational basis. This procedure should result in a balanced distribution of appointments and compensation among the CJA Panel. This procedure should also facilitate the quality of representation of each CJA defendant by ensuring that CJA Panel attorneys receive enough appointments to remain proficient.

D. Special Appointments

When the judicial officer presiding over a criminal case determines that justice, judicial economy, continuity of representation, or some other compelling circumstance requires the appointment of a specific attorney who is not a member of the CJA Panel, the judicial officer may make the appointment by an order, stating the reason, and appoint the attorney for that case only. An attorney appointed specially under this provision of the Plan shall comply with the Guidelines for the Administration of the Criminal Justice Act (Vol. VII, Guide to Judiciary Policies and Procedures). To preserve the integrity of the panel selection process, special appointments should be made only in exceptional circumstances.

E. Roster of Appointments

The CJA Coordinating Attorney shall maintain a master list of CJA appointments, which list shall include the date of each appointment, the case number, the name of the defendant, the date of each refusal ("pass") by a CJA Panel attorney, and the reason for each pass.

F. Reporting

1. If the CJA Coordinating Attorney determines that a CJA Panel attorney has passed on three assignments during their term of membership, the CJA Coordinating Attorney shall report the name of the CJA Panel attorney to the Standing Committee. The Standing Committee shall consider the information provided by the CJA Coordinating Attorney and make such further inquiry and take such further action under the Plan as the Standing Committee deems appropriate.

2. Biannually, or, as requested by the Standing Committee or the Court, the Federal Public Defender shall report on the distribution of appointments.

G. Notice of CJA Plan

A copy of the Plan shall be given by the CJA Coordinating Attorney to each CJA Panel attorney on designation to the CJA Panel.

VIII. DUTIES OF APPOINTED COUNSEL

A. Standards

Defendants appointed counsel under the Plan shall be represented in parity with

defendants who are financially able to obtain adequate counsel.

B. Professional Conduct

Counsel appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct. Counsel are obliged to follow the Local Rules of the United States District Court for the District of Colorado and the Local Rules of the United States Circuit Court for the Tenth Circuit.

C. Other Case Compensation Prohibited

Appointed counsel shall not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the presiding judicial officer.

IX. PAYMENT FOR REPRESENTATION

A. Filing of Claims

1. Claims for compensation shall be submitted, on the CJA form approved by the Court, to the office of the CJA Coordinating Attorney, who shall review the claim form for mathematical and technical accuracy, conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), and for reasonableness.

2. The CJA Coordinating Attorney shall promptly review all claims and shall promptly forward the claim form for the consideration and action of the presiding judicial officer.

3. When requested, the CJA Coordinating Attorney shall promptly provide the CJA Panel attorney with the status of a claim. The CJA Coordinating Attorney and the presiding judicial officer shall exert reasonable efforts to avoid delays in processing claims.

B. Requirements

1. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred.

2. Where representation was furnished exclusively before a United States magistrate judge, the claim shall be submitted by the CJA Coordinating Attorney to

that magistrate judge, who shall fix the compensation and reimbursement to be paid.

3. In all other cases, the claim shall be submitted by the CJA Coordinating Attorney to the presiding district judge, who shall fix the compensation and reimbursement to be paid.

C. Waiving Case Compensation Maximums

Payments in excess of CJA case compensation limits may be made to provide fair compensation in cases involving extended or complex representation when so certified by the presiding judicial officer and approved by the chief Judge of the circuit (or by a circuit judge in regular active service to whom excess compensation approval authority has been delegated). Requests for compensation in excess of the CJA case compensation limits shall be made and marshaled under the Guide to Judiciary Policy, Vol. 7A, § 230.23.

D. Disallowance or Reduction of a Claim

The disallowance or reduction of a claim shall be governed by the Guide to Judiciary Policy, Vol. 7A, § 230.36.

XI. IMPLEMENTATION AND AMENDMENT OF THE PLAN

A. Enabling Local Rules and Orders

The Court may adopt the local rules or enter the orders or approve the pilot projects necessary to further facilitate and implement the Plan.

B. Amendment of the Plan by the Court

The Plan may be amended, corrected, revised, or supplemented by the Court at any time.

APPROVED BY THE COURT in Denver, Colorado this 20th day of May, 2016 with an effective date of July 20, 2016.