

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 29 2014

at 12 o'clock and 30 min. A.M.
SUE BEITIA, CLERK

IN THE MATTER OF ADOPTING
THE AMENDED CRIMINAL
JUSTICE ACT PLAN.

ORDER

The U.S. District Court, District of Hawaii hereby adopts the amended
Criminal Justice Act Plan.

DATED at Honolulu, Hawaii, September 29, 2014.



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

/s/ J. Michael Seabright
J. Michael Seabright
United States District Judge

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

/s/ Derrick K. Watson
Derrick K Watson
United States District Judge

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

I. AUTHORITY

Under the Criminal Justice Act of 1964, as amended (CJA), section 3006A of title 18, United States Code, and the *Guidelines for Administering the CJA and Related Statutes (CJA Guidelines)*, Volume 7A of the *Guide to Judiciary Policy*, the judges of the United States District Court for the District of Hawaii adopt this Plan for furnishing representation in federal court to 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 crimes, or otherwise eligible for services under 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, 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. When an attorney is first appointed under the CJA or designated as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel), such attorney will be notified by the Clerk of Court that a current copy of this CJA Plan is maintained and available on the Court's website (www.hid.uscourts.gov). At such time the attorney will also be notified that a current copy of the CJA Guidelines is maintained and available on the federal judiciary's main public website (www.uscourts.gov). All CJA Panel attorneys are required to read and be thoroughly familiar with the CJA Guidelines.

III. DEFINITIONS

A. Representation

“Representation” includes counsel and investigative, expert, and other services.

B. Appointed Attorney

“Appointed attorney” includes private attorneys, the Federal Public Defender and staff attorneys of the Federal Public Defender Organization.

C. Judicial Officer

“Judicial Officer” means a United States District Judge or a United States Magistrate Judge.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation *shall* be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings (Guide, Vol. 7A, § 210.20.10(a)(5));
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement

of a condition, or extension or revocation of a term of supervised release;

- g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under section 2254 or 2255 of title 28, United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution (see: Guide, Vol. 7A, § 210.20.10(a)(9)); or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel (see: Guide § 210.20.10(a)(9)).
2. Discretionary. Whenever a judicial officer determines that the interests of justice so require, representation *may* be provided for any financially eligible person who:
- a. is charged with a petty offence (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief under 28 U.S.C. § 2241 or in non capital matters under 28 U.S.C. §§ 2254 or 2255;

- c. is charged with civil or criminal contempt and 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 that 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, or to a civil or criminal contempt proceeding, or could face loss of liberty;
- e. is proposed by the United States Attorney for processing under a pretrial diversion program;
- f. is held for international extradition under chapter 209 of title 18, United States Code.

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

B. Timely Appointment of Counsel.

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

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, 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 of 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. Absent exceptional circumstances, one of the two counsel appointed in a federal capital prosecution shall be a member of the Hawaii bar.
 - 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 one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.
2. Qualifications. Qualifications for appointed counsel shall be determined by the Court. In capital cases the following also applies:
 - a. Appointment of Counsel Prior to 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 capital prosecutions, the Court shall consider the recommendation of the Federal Public Defender.

- b. **Appointment of Counsel After Judgment.** Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the Court of Appeals for not less than five years, and must have had not less than three years' experience in the handling of appeals in felony cases in 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.

D. Eligibility for Representation.

- 1. **Factfinding.** The determination of eligibility for representation under the CJA is a judicial function to be performed by a judicial officer after making appropriate inquiries concerning the person's financial condition.
- 2. **Disclosure of Change in Eligibility.** If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his

or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment.

1. The Federal Public Defender Organization of the District of Hawaii, previously established in this District pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this District.
2. The Federal Public Defender Organization will be capable of providing legal services throughout the District and will maintain an office in Honolulu, Hawaii.

B. 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.

VI. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under

the Criminal Justice Act is found at Appendix I of this CJA Plan.

- C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel will 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” will usually be defined as approximately 25% of the appointments under the CJA annually throughout the District.

VII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel will be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the standards for professional conduct adopted by the Court.
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit CJA Plan provisions concerning representation on appeal), 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.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. **Presentation of Accused for Appointment of Counsel.** Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this District, and those acting on their behalf, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender who will discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly presented before a judicial officer of this Court for determination of financial eligibility and appointment of counsel.
- B. **Notice of Indictment or Criminal Information.** Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney or the probation officer, as appropriate, must immediately mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

IX. MISCELLANEOUS

- A. **Forms.** Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of

the United States Courts, must be used, when applicable, in all proceedings under this Plan.

- B. **Claims.** Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form, along with itemized receipts, invoices, and/or supporting documentation, to the office of the Clerk of the Court. That office will review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, will forward the claim form for review by the “Voucher Review Committee,” consisting of a magistrate judge and the Federal Public Defender (or the First Assistant Federal Public Defender as an alternate). The Voucher Review Committee will review the voucher, determine whether it is appropriate for payment (or recommend any reduction or adjustment) and forward the voucher for further consideration by the appropriate judicial officer(s). The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing. Failure to submit appropriate supporting documentation with CJA forms may cause significant processing and payment delays.
- C. **Supersession.** This Plan supersedes all prior Criminal Justice Act Plans of this court.

X. EFFECTIVE DATE

This plan will become effective when approved by the Judicial Council of the Ninth Circuit.

Appendix or Appendices:

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

APPENDIX 1: PLAN FOR THE COMPOSITION, ADMINISTRATION AND
MANAGEMENT OF THE CJA PANEL

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 Court approves attorneys for membership on the panel after receiving recommendations from the “Panel Selection Committee,” established under paragraph B of this Plan. Members of the CJA Panel will serve at the pleasure of the Court.
2. Size. The Court will fix, annually, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a

bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the judicial officer presiding over the case determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. 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 the attorney for admission to the District's CJA Panel in the ordinary course of panel selection.

4. Equal Opportunity. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases. Appointments to the CJA Panel are made without regard to race, color, religion, gender, sexual orientation, age, national origin, and/or disability.
5. Application. Application for membership on the CJA Panel shall be made by submission of a letter containing a statement of interest and qualifications to the Panel Selection Committee, in care of the Clerk of the Court.

B. Panel Selection Committee

1. Membership. A Panel Selection Committee will be established by the Court. The Committee will consist of one United States magistrate judge, the CJA representative for the District of Hawaii, and the Federal Public Defender. The Committee will be chaired by the magistrate judge. The Committee will recommend to the Court an attorney to serve as the CJA representative. The CJA representative will serve for a term of three years.

2. Duties.

a. The Panel Selection Committee will meet from time to time, but at least once a year, to consider applications to join the CJA Panel. The Committee will review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to be members of the CJA Panel. The appointment or reappointment of attorneys to or removal of attorneys from the CJA Panel is within the sole discretion of the Court.

At its annual meeting, the Committee will also review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee to the appointment process and panel management. The Committee will also inquire annually as to the continued availability and willingness of each panel member to be reappointed to the Panel.

b. If, at any time during the course of a year, due to resignation, removal, or death, the size of the panel significantly decreases, the Committee will solicit applications for prospective members, convene a special meeting to review the

qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

- c. When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee will furnish information to the Court on recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.4. 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 I.A.4 of this Plan.

C. CJA Panel Training

The Federal Public Defender shall sponsor regular training programs for Panel members and assist Panel members in staying current on changes in the law and on administrative issues. New members on the Panel are required to participate in training programs run by the Federal Public Defender. Attorneys continuing on the Panel and new Panel members with experience in federal criminal representations are encouraged to participate in training programs run by the Federal Public Defender and to assist the Federal Public Defender in providing mentoring to new and inexperienced Panel members.

II. Selection for Appointment

A. Maintenance of List and Distribution of Appointments

The Clerk of the Court will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience. The Clerk will furnish a copy of this list to each judicial officer in the District. The Clerk will also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender office and private attorneys, according to the formula described in the CJA Plan for the District.

B. Method of Selection

Appointments from the list 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, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation of each CJA defendant.

The Clerk will advise the judicial officer as to the status of distribution of cases, when appropriate, as between the Federal Public Defender and the panel of private attorneys. If the judicial officer decides to appoint an attorney from the Panel, the judicial officer will determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment.