



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

Table of Contents

- I. Authority
- II. Statement of Policy
 - A. Objectives
 - B. Compliance
- III. Definitions
 - A. Representation
 - B. Appointed Attorney
- IV. Provision of Representation
 - A. Circumstance
 - 1. Mandatory
 - 2. Discretionary
 - B. Timely Appointment of Counsel
 - C. Number and Qualifications of Counsel
 - 1. Number
 - 2. Qualifications
 - D. Eligibility for Representation
 - 1. Factfinding
 - 2. Disclosure of Change in Eligibility
- V. Federal Defender Organization
 - A. Establishment
 - B. Supervision of Defender Organization
 - C. Management of CJA Panel

- VI. Private Attorneys
 - A. Establishment of CJA Panel
 - B. Organization
 - C. Ratio of Appointments

- VII. Duties of Appointed Counsel
 - A. Standards
 - B. Professional Conduct
 - C. No Receipt of Other Payment
 - D. Continuing Representation

- VIII. Duties of Law Enforcement And Related Agencies
 - A. Presentation of Accused for Appointment of Counsel
 - B. Pretrial Services Interview
 - C. Notice of Indictment or Criminal Information.

- IX. Supersession and Effective Date

Appendices

- A. Current Bylaws of the Federal Defenders of Montana

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

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

I. Authority.

Pursuant to the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (“the Act”), and the Guidelines for Administering the CJA and Related Statutes (“CJA Guidelines”), *7A Guide to Judiciary Policy* Parts A and B, this Plan is adopted to furnish representation in federal court for any person 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.
2. The Plan must be construed and administered so that financial inability to pay for adequate representation will not deprive those eligible under the Act of any element of representation necessary to an adequate defense.
3. This Plan implements the requirements of the Act, 18 U.S.C. §§ 3005 and 3599, and the CJA Guidelines in accordance with the needs of this District.

B. Compliance.

1. The Court, the Federal Defenders of Montana, and private attorneys appointed under the Act must comply with the CJA Guidelines and with this Plan.
2. This Plan and the CJA Guidelines are available on the Court’s website.

III. Definitions.

- A. “Representation” includes counsel and investigative, expert, and other services.
- B. “Appointed attorney” includes private attorneys appointed to the CJA Panel or those appointed pro hac vice and attorneys employed by the Federal Defenders of Montana,

Inc.

- C. “Judge” includes district and magistrate judges.
- D. “The Federal Defender” means the Executive Director of the Federal Defenders of Montana, Inc.

IV. Provision of Representation.

A. Circumstance.

- 1. Mandatory. Representation must 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 18 U.S.C. § 5031;
 - c. is charged with a violation of probation or supervised release, or faces a change of a term or condition of probation or supervision, 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, *see* CJA Guidelines § 210.20.10(a)(5);
 - f. is subject to a mental condition hearing under 18 U.S.C. ch. 313;
 - g. is in custody as a material witness;
 - h. is seeking relief under 28 U.S.C. §§ 2254 or 2255, provided:
 - (i) the underlying matter is a capital offense, or
 - (ii) an evidentiary hearing is required;
 - i. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under section 18 U.S.C. § 4109;

- j. is entitled to appointment of counsel under the Sixth Amendment to the Constitution, *see* CJA Guidelines § 210.20.10(a)(9); or
 - k. faces loss of liberty in a case and federal law requires the appointment of counsel, *see* CJA Guidelines § 210.20.10(a)(9).
2. **Discretionary.** Whenever a judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- a. is charged with a petty offense (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 a non-capital matter 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 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 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 18 U.S.C. ch. 209.
3. **Ancillary Matters.** Pursuant to 18 U.S.C. § 3006A(c) and CJA Guidelines § 210.20.30, representation may also be furnished for financially eligible persons in ancillary matters as appropriate to the proceedings.

B. Timely Appointment of Counsel.

Counsel must be provided to eligible persons at the earliest of the following times:

- 1. as soon as feasible after they are taken into custody;
- 2. when they are formally charged or notified of charges if formal charges are sealed;
- 3. when they appear before a judge;

4. when a judge considers appointment of counsel appropriate under the Act.

C. Number and Qualifications of Counsel.

1. The presiding judge may appoint any qualified attorney.
2. Non-Capital Cases. More than one attorney may be appointed only if the judge finds the case to be extremely difficult.
3. Capital Cases. Pursuant to 18 U.S.C. §§ 3005 and 3599:
 - a. In any capital proceeding, the appointing judge:
 - (i) must be satisfied that each appointed attorney is capable of representing the defendant properly in light of the seriousness of the penalty and the unique and complex nature of the litigation;
 - (ii) must appoint at least one attorney who has distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases or distinguished prior experience in the trial, appeal, or postconviction review of state death penalty cases that, in combination with co-counsel, will assure the defendant receives high-quality representation;
 - (iii) must appoint at least one attorney who has been a member of the Bar of this District for at least five years and must have at least three years' experience in felony cases; or, if appointment is made after entry of judgment, at least one attorney must have been a member of the Bar of the Ninth Circuit Court of Appeals for at least five years and must have at least three years' experience in felony appeals to that court;
 - (iv) may, for good cause, appoint another attorney who may not qualify under 18 U.S.C. § 3599(b) or (c) but whose background, knowledge, or experience is substantially equivalent to those of an attorney who meets the criteria set forth in subsection (ii) and/or (iii); and
 - (v) shall not appoint on collateral review any attorney who represented the defendant in the original criminal proceedings.
 - b. In a federal capital prosecution:

- (i) at least two attorneys must be appointed;
- (ii) the judge must consider the recommendation of the Federal Defender.

c. In a capital habeas proceeding under 28 U.S.C. §§ 2254 or 2255,

- (i) the judge will consider appointing two attorneys;
- (ii) the judge will consider the recommendation of the Federal Defender as to the number and selection of counsel.

D. Eligibility for Representation.

1. Factfinding. After appropriate inquiry into the person's financial condition, a judge will determine whether the person qualifies for representation under the Act.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains non-privileged 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, counsel must so advise the court.

V. Community Defender Organization.

- A. Establishment and Continuation. The Federal Defenders of Montana, Inc., a nonprofit Montana corporation previously established in this District under the provisions of the Act, is the Community Defender Organization for the District of Montana and is authorized under 18 U.S.C. § 3006A(g)(2)(B) to furnish attorneys throughout the District and to receive payments under the Act.
- B. Supervision of Defender Organization. The Federal Defender is responsible for the supervision and management of the Federal Defenders of Montana.
- C. Management of CJA Panel. The Federal Defenders of Montana will be responsible for the systematic distribution of cases to counsel and for the management of the CJA Panel subject to the provisions of the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act, found at Appendix B of this Plan.

VI. Private Attorneys.

- A. Established CJA Panel. The previously established panel of private attorneys 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 B 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.

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 under the CJA must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. Attorneys employed by the Federal Defenders of Montana must also conform to the Model CDO Code of Conduct as approved by the Administrative Office of the United States Courts.
- 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:
 - 1. the matter, including appeals or review by certiorari, as governed by the Ninth Circuit Court of Appeals' CJA Plan, is closed;
 - 2. until substitute counsel who is assuming ongoing responsibility for representation in lieu of appointed counsel has filed a notice of appearance;
 - 3. until an order has been entered allowing or requiring the person represented to proceed *pro se*; or
 - 4. until the appointment is terminated by court order.

VIII. Duties of Law Enforcement And Related Agencies.

A. Presentation of Accused for Appointment of Counsel.

1. 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 Criminal Justice Act, whether he or she is financially able to secure representation. If the person indicates he or she is not able to do so, the Federal Defenders of Montana must be promptly notified.
2. The Federal Defenders of Montana 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, Form CJA 23, and arrange to have the person promptly presented before a judge for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview. Counsel must be appointed to represent the accused prior to interview by the pretrial services officer.

C. Notice of Charge or Petition. The United States Attorney's Office or the probation officer, as appropriate, must immediately provide to counsel, or to any defendant who is not or is not yet represented, a copy of:

1. an unsealed indictment;
2. an information; or
3. a petition to modify or revoke probation or supervised release.

IX. Supersession and Effective Date.

This Plan supersedes all prior Criminal Justice Act Plans of this District and is effective on approval by the Judicial Council of the Ninth Circuit Court of Appeals.

Appendices:

- A. Current Bylaws of the Federal Defenders of Montana, Inc.
- B. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.

IT IS SO ORDERED.

DATED this 2nd day of September, 2014.



Dana L. Christensen, Chief Judge
United States District Court

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT COURT OF APPEALS

on the ____ day of _____, 2014.

Alex Kozinski, Chief Judge
Ninth Circuit Court of Appeals