

U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT PLAN TO IMPLEMENT THE CRIMINAL JUSTICE ACT OF 1964

Effective July 1, 1991

**As Amended April 8, 1996; October 23, 1996; March 19, 1998; January 3, 2005;
June 26, 2007; September 4, 2020**

I. AUTHORITY

Pursuant to approval of the Judicial Council for the District of Columbia Circuit (Judicial Council), the United States Court of Appeals for the District of Columbia Circuit hereby adopts the following revised plan for furnishing representation for persons financially unable to obtain adequate representation in the cases and situations defined in 18 U.S.C. § 3006A, as amended (hereinafter, "the Act" or "the CJA"). This plan supplements the plan of the United States District Court for the District of Columbia, unless otherwise specified herein. The Court's CJA Plan is available on the court's website.

II. PROVISION FOR FURNISHING COUNSEL

A. Purpose

This plan provides for the furnishing of legal services on appeal by the Office of the Federal Public Defender for the District of District of Columbia, established in accordance with the November 8, 1988, amendment to the CJA Plan for the United States District Court for the District of Columbia, which was approved by the Judicial Council on December 15, 1988. In addition, this plan provides for the appointment and compensation of appellate counsel from the panel of attorneys established and maintained in accordance with the remainder of this section.

B. Establishment of the CJA Panel

The Court shall establish a CJA Panel of attorneys who are members of the Bar of the Court and who have demonstrated experience in appellate litigation. No attorney with less than one year's active membership in the District of Columbia or a state bar shall be included on the Panel. Completion of an appellate litigation training course may substitute for demonstrated experience. Insofar as practicable, attorney appointments from the Panel will be made in at least 25 percent of the cases in which counsel is appointed under the Act.

C. Applying to the CJA Panel

Attorneys who wish to be included on the CJA Panel may submit an application to the Office of the Federal Public Defender, stating their eligibility as defined in subsection (B) above. The Court or the Office of the Federal Public Defender may add any attorney when satisfied of his or her eligibility.

D. Establishment of the CJA Panel Committee

The Chief Judge shall appoint a CJA Panel Committee to evaluate attorneys' eligibility for the CJA Panel. This Committee shall consist of two active Circuit Judges, the Federal Public Defender, one experienced criminal law practitioner who is on the Panel, and one who is not on the Panel. The attorney members shall serve staggered three-year terms and shall be eligible for reappointment to an additional term.

E. Maintaining the CJA Panel

The CJA Panel Committee shall re-examine annually the list of CJA Panel attorneys to ensure that it is current and that its members are qualified. The Committee shall 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 regarding the appointment process and panel management.

F. Removal from the CJA Panel

Attorneys may petition the Court in writing to be removed from the CJA Panel and the Court may so direct the Clerk. A panel of judges, on its own motion, may also recommend to the CJA Panel Committee that an attorney be removed from the Panel, and the Committee may remove an attorney on such a motion or on its own motion.

G. Training

Attorneys on the CJA Panel are encouraged to avail themselves of opportunities for training and continuing legal education in federal criminal appellate law, practice, and procedure, including programs sponsored by the Office of the Federal Public Defender or the Defender Services Office.

III. DETERMINATION OF NEED FOR APPOINTMENT OR CONTINUANCE OF COUNSEL

A. Acceptance of District Court's Prior Determination of Need

In cases where appointment of counsel was first made by the District Court, this Court will accept the District Court's determination that the party is financially unable to obtain counsel and will appoint counsel without further inquiry.

B. Determination of Need in the First Instance on Appeal

In cases where a party for the first time seeks appointment of CJA counsel on appeal, the Clerk of this Court shall advise the party that he or she must complete the appropriate form and file it with the District Court. The District Court will rule on the

application in the first instance. If the District Court determines that the party is financially unable to obtain counsel, this Court will accept the District Court's determination and appoint counsel without further inquiry. If the District Court determines that the party is not financially eligible for representation, the request for representation may be renewed before the Court of Appeals without filing a new notice of appeal. The Chief Judge, an active Circuit Judge to whom the Chief Judge has delegated review authority, or a panel of judges will review the statement of financial need.

C. Determination of Need During Pending Appeal

If at any stage of an appeal the party claims and the Court, on appropriate inquiry, finds that the party is financially unable to pay counsel whom the party has retained, the Court may make such appointment of counsel or the Federal Public Defender as the interests of justice dictate.

D. Determination of Available Funds During Pending Appeal

The Court may at any time examine or re-examine the financial status of a party for whom counsel has been appointed, and if it determines that any funds are available for payment from or on behalf of the party, it may authorize or direct that such funds be paid to the appointed attorney in lieu of compensation under the Act or to the Court for deposit in the Treasury.

E. Duties of Counsel

It shall be the duty of counsel appointed under the Act to notify the Court of any information coming to counsel's attention indicating that funds may be available for payment from or on behalf of the party, unless the source of the attorney's information is protected as a privileged communication. Counsel may not request or accept from anyone a promise or a payment of any nature in relation to representation of the party, except as authorized or directed by the Court.

IV. APPOINTMENT OF COUNSEL

A. Continuation of District Court Counsel

In all cases on appeal where a party was represented in the District Court by appointed counsel, and such counsel is a member of this court's CJA Panel, such counsel shall continue to represent the party on appeal, except as otherwise provided in this section. In the event the party files a written notice with the United States District Court that he or she does not desire to appeal, there shall be no further obligation on counsel to proceed.

B. Application for Removal as Counsel

Application by District Court counsel to be relieved of further obligation to represent the party, or by a party to no longer be represented by District Court counsel, shall be in writing and shall state the reason for the request. Counsel shall state in the application that his or her client has been advised of counsel's desire to be relieved. Counsel shall continue to represent the defendant until relieved by this Court. Where appointed District Court counsel is relieved from further representation, a party who is eligible under the Act is entitled to be represented by appointed counsel on appeal. If the party does not desire the appointment of new counsel, the party may so advise the Clerk of the Court of Appeals, by filing with the Clerk a signed statement to that effect.

C. Application to Continue Discretionary Appointment

In situations where counsel is appointed by the District Court under the discretionary power conferred by the Act in petty offenses or other instances, counsel shall advise his or her client of the right to appeal and, if requested to do so, shall file a notice of appeal. Thereafter, application shall be made to this Court for appointment of counsel, and this Court shall determine whether an appointment is appropriate.

D. Procedure for Selection of Appellate Counsel

1. The Court of Appeals will appoint the Office of the Federal Public Defender if that Office so requests; otherwise, the Court will appoint counsel selected from the Panel of attorneys defined in subsection II(B). In order to ensure the effective supervision and management of the Office of the Federal Public Defender, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in that office.
2. Upon the determination of a need for counsel, the Clerk shall notify the Federal Public Defender of that need and the nature of the case. The Office of the Federal Public Defender shall either provide the representation or select as counsel the next attorney on the CJA Panel list who has handled or assisted in a case of equal or greater complexity and who is available to accept the appointment. In making the decision whether to provide the representation or to select an attorney from the Panel, the Office of the Federal Public Defender must take into account the requirement of subsection II(B) that, insofar as practicable, Panel attorney appointments be made in at least 25 percent of the cases in which counsel is appointed under the Act.
3. Selections from the CJA Panel should be made on a rotational basis, subject to the Court's or the Federal Public Defender's discretion to

make exceptions in unusual cases due to the nature and complexity of the case and attorney availability. This procedure should result in a balanced distribution of appointments and compensation among the members of the Panel, and quality representation for each person for whom counsel is appointed.

4. A party is not entitled to have a particular attorney appointed. Appointed counsel shall serve until further order of the Court. Applications to withdraw shall be governed by subsection IV(B).

E. Counsel for Multiple Appellants

In cases of multiple parties who have been tried together, the Court may appoint one or more attorneys to represent all parties, except that it shall appoint separate counsel for parties who have such conflicting interests that they cannot properly be represented by the same attorney, or when other good cause is shown.

F. Substitution of Counsel

The Court may, in the interests of justice, substitute one appointed counsel for another at any stage of the appeal proceedings.

G. Appointment of a Non-Panel Member

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 Chief Judge, or a Circuit Judge designated by the Chief Judge to act on his or her behalf, 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 party. 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 this district, should possess such qualities as would qualify him or her for admission to this Court's CJA Panel in the ordinary course of panel selection.

H. Duties of the Federal Public Defender

1. The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers. The Federal Public Defender shall also maintain a record of qualifications and experience of each attorney on the Panel.
2. The Federal Public Defender shall maintain a public record of assignments to private counsel, as well as statistical data reflecting the proration of appointments between the Office of the Federal Public Defender and private attorneys, according to the formula described in subsection II(B).
3. Every effort shall be made to ensure that counsel is selected as expeditiously as possible, that selections are equitably distributed, and that information on availability of counsel is maintained.

V. DUTIES OF COUNSEL AS TO CERTIORARI

A. Duty to Advise Client

The duties of representation by counsel on appeal, where the appeal has been unsuccessful, shall extend to advising the party of the right to file a petition for a writ of *certiorari* in the Supreme Court of the United States and counsel's opinion on the merits and likelihood of success in obtaining the writ.

B. Duty to File Non-Frivolous Petition

If the party asks counsel to file a petition for a writ of *certiorari* and there are non-frivolous grounds for doing so, counsel shall prepare and file a petition.

C. Duties Where There Are No Non-Frivolous Grounds for Petition

If counsel determines that there are no non-frivolous grounds for seeking a writ of *certiorari*, counsel shall, within twenty days of judgment, notify the client in writing that counsel will not file a petition, briefly explaining why. Counsel shall also inform the client about the procedures both for filing a petition for *certiorari* pro se and for asking the Court of Appeals to appoint new counsel to prepare a petition for *certiorari*. Counsel should caution the party that the Court is unlikely to appoint new counsel and that the party should be prepared to file a petition for *certiorari* pro se within the prescribed time. Once counsel has provided this notice to the party, counsel shall notify the Court that his or her representation has ceased. The Clerk shall notify the party in writing of the effective date of the termination of counsel's appointment.

D. Noncompliance with Duties

Failure to comply with these procedures may result in the Court's refusal to approve counsel's voucher.

VI. PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

A. Non-Applicability of Fees and Costs

A person for whom counsel is appointed under the Act is not required to pay filing fees and costs to the court.

B. Rates for Appointed Counsel

An attorney appointed by the Court pursuant to this Plan shall be compensated for services and reimbursed for expenses reasonably incurred within the limitations and subject to the conditions of the Act. The hourly rates of compensation established in accordance with the Act are intended to be maximum rates only and shall be treated as such.

C. Rates in Capital Cases

The presumptive rate of compensation in a capital case in which the death sentence was imposed shall be the same as the current CJA capital rate. Cases in which the client was eligible for a death sentence, but it was not imposed, shall be treated as non-capital cases for the purpose of determining the rate of compensation for counsel on appeal. Counsel in such cases may file a motion for a higher rate should this be necessary to ensure fair compensation.

D. Expenses

Each counsel appointed pursuant to this CJA Plan shall be entitled to reimbursement for expenses reasonably incurred in accordance with standards established by the United States Judicial Conference.

E. Petition for Writ of Certiorari

Counsel's time and expenses involved in the preparation of a petition for a writ of *certiorari*, as required by Section V of these rules, shall be treated as part of his or her representation before this Court.

F. Services of Non-Appointed Counsel

Compensation for services furnished by a partner, associate, or other attorney who has not been appointed under the Act may be claimed within the maximum compensation allowed by the Act. Prior authorization by the Court is required when such attorney is not part of appointed counsel's firm, and in capital cases. Electronic vouchers must separately

identify the provider of each service.

G. Services of Law Students

In accordance with Circuit Rule 46(g), law school students may provide assistance to appointed counsel. Counsel may claim costs of compensating students for services rendered, but not for expenses incurred by such students.

H. Claim Processing Procedures

1. All claims for compensation and reimbursement for expenses reasonably incurred shall be submitted on the appropriate CJA form through the court's eVoucher system. Claims should be submitted promptly and in any event not more than 45 days after the conclusion of the attorney's representation, unless good cause is shown.
2. Counsel shall identify with specificity the activities for which compensation is claimed. Time claimed for legal research shall be identified by reasonable reference to each issue, whether included or not in the briefs; time claimed for drafting and editing shall be identified by reference to each pleading or section of the brief prepared. Failure to provide sufficient detail to permit meaningful review of a claim may result in delay or denial of approval of the claim. The Clerk of the Court of Appeals, with the approval of the Chief Judge, has promulgated guidelines to assist counsel in meeting this specificity requirement.
3. The Clerk shall review the claim form for mathematical and technical accuracy and for conformity with the Guidelines for Administering the CJA and Related Statutes (Guide to Judiciary Policy, Vol.7, Part A). If the form is correct, the Clerk shall forward it to the appropriate judge for consideration.
4. Any active member of the Court, if designated by the panel of judges hearing the appeal, shall fix the compensation and allow the reimbursement for expenses to be paid to the appropriate counsel as provided in the Act.
5. Vouchers for an attorney's services generally will not be approved until the conclusion of the appeal, unless the Chief Judge directs that interim payment be made in cases where representation is extended or complex. In consolidated cases, the court's practice is not to approve vouchers until each of the CJA attorneys appointed to represent the co-appellants has submitted a final voucher.

I. Substitution of Counsel

If an attorney is substituted for one previously appointed in the same case, the total compensation which may be paid to both attorneys shall not exceed the statutory maximum for one party, unless the case involves extended or complex representation.

J. Excess Compensation

The total compensation for services of counsel, exclusive of expenses, shall not exceed that authorized by law. However, payments in excess of these limitations may be made to provide fair compensation in a case involving extended or complex representation when so certified by a United States Circuit Judge and approved by the Chief Judge of the Court, or an active Circuit Judge to whom the Chief Judge has delegated review authority.

K. Claim Reduction

If the Court proposes to reduce counsel's compensation (other than for mathematical or technical errors), counsel shall be provided prior notice and a brief statement of the reasons for the proposed reduction. Counsel shall also be provided an opportunity to justify the claim and to provide additional information supporting payment of the claimed amount. Additionally, within ten days of receiving notice of the Court's proposed payment reduction, counsel may ask the CJA Panel Committee to prepare an opinion as to whether a reduction would be consistent with the CJA Guidelines. The Committee shall provide counsel a reasonable opportunity to be heard, and shall provide a written opinion to counsel and the Court within 21 days of receiving counsel's request for an opinion, or within 21 days of receiving counsel's additional supporting information, whichever is later. The Court shall consider counsel's submissions, and any opinion issued by the Committee, before making a final decision on the claim.

VII. OPERATION OF THE PLAN

a) This plan incorporates by reference the Guidelines for Administering the CJA and Related Statutes (Guide to Judiciary Policy, Vol. 7, Part A).

b) The Court will comply with all directives of the Judicial Conference of the United States or the Administrative Office of the U.S. Courts regarding operation of this CJA Plan, including allowable reimbursements and the use, preparation, and submission of required forms and reports.

c) This Plan shall be effective on July 1, 1991.

Issued: July 1, 1991

Amended: April 8, 1996, October 23, 1996, March 19, 1998, January 3, 2005, June 26, 2007, September 4, 2020