

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

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of Title 18, United States Code, the Guide to Judiciary Policy, the Guidelines for Administering the Criminal Justice Act, Vol. 7A, § 230.33.10, (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 to 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 Criminal Justice Act shall comply with its terms and objectives, the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services, and with this 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 Office of 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 Office of the Federal Public Defender for the District of Colorado. Accordingly, the Federal Public Defender shall be appointed in all cases accepted by its office and assigned to staff attorneys at the discretion of the Federal Public Defender.

C. Management of the CJA Panel

A CJA Supervisory Attorney, employed by the Office of the Federal Public Defender, shall be the CJA Panel Administrator responsible for the systematic distribution of cases to and for the management of the CJA Panel attorneys subject to the provisions of this Plan. See *generally*, Guide to Judiciary Policy, Vol. 7A, Appx, 2A. The Federal Public Defender shall be solely responsible for the selection, compensation, and supervision of the CJA Supervising Attorney and any other panel training and administrative staff. The CJA Supervisory Attorney shall be responsible for processing all new CJA appointments and the administration of paneled cases through the eVoucher case management and voucher review program.

1. Administration of the eVoucher case management and voucher review program will include prompt review of claims for compensation, requests for experts or other professional services, expenses, mathematical errors, work performed but not compensable, work not undertaken or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task. Guide to Judiciary Policy, Vol. 7A, §230.33.10.

2. Upon completion of the review process, the CJA Supervisory Attorney shall forward to the appropriate judicial officer, requests for experts or other professional services, requests to exceed statutory limits on fees, and claims for compensation and reimbursement of expenses.

3. Except for requests for co-counsel, panel attorneys shall submit all requests for professional services through eVoucher. Appointed co-counsel shall file an

Entry of Appearance and shall separately submit claims for compensation and expenses through eVoucher.

D. Coordination of Training

At the direction of the Federal Public Defender, the CJA Supervisory Attorney training staff shall assist in the planning and administration of Continuing Legal Education, use of the eVoucher case management and voucher review program, and other training programs offered by the Office of the Federal Public Defender, in conjunction with the CJA Standing Committee.

E. Roster of Appointments

The CJA Supervisory Attorney shall maintain a master list of CJA appointments. The 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 Supervisory Attorney determines that a CJA Panel attorney has passed on three assignments during the applicable term of membership, the CJA Supervisory 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 Supervisory Attorney and may make such further inquiry and take 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

The CJA Supervisory Attorney shall provide a copy of this Plan to each member of the Panel.

IV. THE CJA STANDING COMMITTEE

A. Membership

The CJA Standing Committee ("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

reappointed 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 establishment of special programs and procedures consistent with this Plan. If approved by the Court, special programs and procedures not specifically provided by 18 U.S.C. §3006A, or the eVoucher case management and voucher review program, shall be included in an Appendix to this Plan.

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.

V. THE CJA SELECTION COMMITTEE

A. Membership

1. The Selection Committee shall consist of seven members who will serve three-year terms. 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 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.

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 through the Chief Judge.

VI. THE CJA PANEL

A. The Existing Panel

The existing CJA Panel is hereby recognized. Ongoing organization and administration of the CJA Panel shall be governed by this Plan.

B. Membership Terms

Panel attorneys shall be appointed to serve three-year terms.

C. Size of the Panel

The Standing Committee shall consult with the Selection Committee as to the optimal size of the Panel. In making recommendations as to the size of the CJA Panel, the Standing Committee shall be guided by the need for the 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 provide a high quality of representation.

With each set of renewal recommendations, the Standing Committee shall update its advice as to the Panel's size. The Court shall consider the recommendations of the Standing Committee.

D. Membership and Eligibility

1. All qualified attorneys are encouraged to apply for membership on the CJA Panel, 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 certify that he or she:

a. is a member in good standing of the bar of the Court;

b. has a working knowledge of this 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. is competent to try the type of federal criminal case, *i.e.*, felony, misdemeanor, petty offense, for which application is made;

d. 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. is willing to accept at least three appointments each year; and

f. will meet the Continuing Legal Education requirements set forth in section VI (G).

E. 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 Supervisory Attorney. To be considered for renewal, the CJA Panel attorney shall submit an application for renewal before the expiration of the applicable deadline.

2. Renewal applications shall be made available on the website of the Court and at www.cocja.org.

F. Approval

1. The Court may approve attorneys for membership on the CJA Panel after receiving recommendations from the Standing Committee or on its own initiative.
2. Renewal is discretionary with the Court.
3. If the application for renewal of a CJA Panel attorney is not granted, any existing CJA appointment shall continue until representation is concluded.
4. Deliberations of the Selection Committee, the Standing Committee, and the Court shall be confidential.

G. 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 presented by either the Federal Public Defender or the Standing Committee.
2. Before any appointment is assigned to a new Panel attorney, the attorney shall attend and complete CJA Panel attorney orientation.
3. The CJA Supervisory Attorney shall implement a monitoring process to ensure compliance with education requirements and shall inform the Standing Committee, as necessary, of those CJA Panel attorneys who are not in compliance.

H. Maintaining the Panel List

1. The CJA Supervisory Attorney shall maintain the list of CJA Panel attorneys, including current names, business addresses, email, and telephone numbers.
2. A CJA Panel attorney is solely responsible for promptly notifying the CJA Supervisory Attorney of any change of firm association, business address, taxpayer identification number, W-9 identifying information, email, or telephone number, and for promptly recording and updating any changes in the eVoucher User Profile.

I. Capital Prosecutions

1. In every criminal action in which a defendant unable to afford counsel 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 to set aside a death sentence, the district judge to whom the case is assigned shall appoint the Federal Public Defender or

one or more qualified CJA Panel attorneys, consistent with 18 U.S.C. §3599.

2. A special panel of attorneys who are learned in the law shall be assembled by the Standing Committee for approval by the Court.

3. In assigning counsel under 18 U.S.C. §3005 and §3559, the presiding district judge shall solicit and consider the recommendations of the Federal Public Defender. Notwithstanding any other provision of this Plan, assignment of counsel under 18 U.S.C. §3005, shall be made by the presiding district judge.

J. 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 a 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 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 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 Panel should be granted. A CJA Panel attorney who is suspended or subject to corrective action shall be reinstated to the 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.

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 percent (25%) of annual appointments under this Plan.

B. Appointments

Appointments under the CJA shall be ordered generally by a judicial officer and forwarded to the Office of the Federal Public Defender and the CJA Supervisory Attorney. The CJA Supervisory Attorney shall be responsible for overseeing the assignment of cases to CJA Panel attorneys. This responsibility shall include the obligation to contact CJA Panel attorneys for assignment, secure the representation agreement, and commitment to attend the initial appearance.

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 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), this Plan, and use of the eVoucher program. To preserve the integrity of the panel selection process, special appointments under this provision should be made only in exceptional circumstances.

VIII. PROFESSIONAL RESPONSIBILITIES OF PANEL ATTORNEYS

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 or reimbursement by panel attorneys or experts shall be submitted through the eVoucher program. To ensure compliance, all new Panel attorneys shall attend eVoucher training scheduled by the CJA Supervisory Attorney as part of new Panel Attorney orientation.

2. The CJA Supervisory Attorney shall promptly review all claims, reject any claims not in compliance with the Guidelines for the Administration of the Criminal Justice Act or provision of this Plan, and forward claims to the appropriate judicial officer. Where representation was furnished exclusively before a United States Magistrate Judge, and unless otherwise ordered by the Court, the United States Magistrate Judge will be the appropriate judicial officer. In all other cases, the claim shall be submitted by the CJA Supervisory Attorney to the presiding district judge.

3. When requested by an eVoucher user, the CJA Supervisory Attorney shall promptly inform the user of the status of that claim. The CJA Supervisory Attorney and the presiding judicial officer shall exert reasonable efforts to avoid delays in processing claims.

B. Authorization of Payments in Excess of Statutory Case Compensation Maximums

Payments in excess of statutory compensation limits may be approved to provide fair compensation where deemed appropriate 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), and in accordance with Circuit review protocol. Requests for compensation in excess of the CJA case compensation limits shall be made through the eVoucher case management and voucher review program and pursuant to the Guide to Judiciary Policy, Vol. 7A, §230.23.

C. Disallowance or Reduction of a Claim

The disallowance or reduction of a claim shall be governed by the standards adopted by the Judicial Conference on September 13, 2018 and incorporated into the *Guide* on May 21, 2019. Panel attorneys who wish to challenge any reduction to vouchers that have been made by the presiding judge, may do so in a written justification submitted to the Chief Judge. If the presiding judge is the Chief Judge, the written challenge shall be submitted to the next most senior active district judge.

X. IMPLEMENTATION AND AMENDMENT OF THE PLAN

A. Enabling Local Rules and Orders

The Court may adopt local rules, enter orders, or implement projects necessary to further facilitate this Plan.

B. Amendment of the Plan by the Court

The Plan may be amended, corrected, revised, or supplemented by the Court at any time, with the approval of the 10th Circuit Judicial Council.

APPROVED BY THE COURT in Denver, Colorado this 2nd day of October 2019 with an effective date of January 1, 2020.

**MINUTES OF THE JUDICIAL COUNCIL
OF THE TENTH CIRCUIT**

December 3, 2019

The Judicial Council has approved the proposed amendments to the CJA Plan of the United States District Court for the District of Colorado. The court may choose the effective date of the new plan and shall notify the Administrative Office of the United States Courts of the modifications to the plan pursuant to 18 U.S.C. § 3006A.

The Judicial Council

By:



David Tighe
Circuit Executive and Secretary to the
Judicial Council of the Tenth Circuit