

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Oct 29 8 41 AM '85

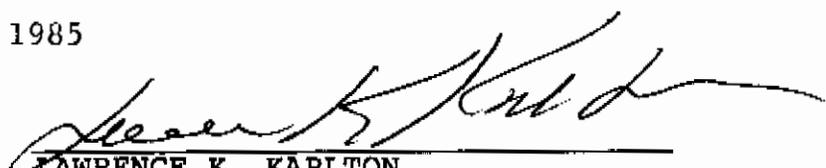
CLERK, U.S. DIST. COURT
EASTERN DIST. OF CALIF.
AT SACRAMENTO

RE: AMENDMENT OF FEDERAL DEFENDER PLAN)
EASTERN DISTRICT OF CALIFORNIA) GENERAL ORDER NO. 186
(General Order No. 42))

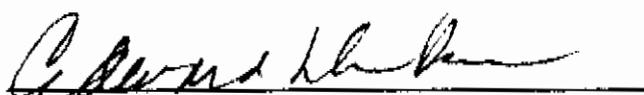
General Order No. 42 of this Court is an Order for the Adoption of a Federal Defender Plan for the Eastern District of California, which Plan became effective on February 24, 1971. the Plan was amended by the Judges of this Court on October 29, 1985, to take effect when approved by the Judicial Council of the Ninth Circuit. At its regular meeting on September 17, 1985, the Judicial Council of the Ninth Circuit approved the amended Plan and on September 17, 1985 a copy of said Plan as approved was sent to Director, Administrative Office of the United States Courts, by William E. Davis, Executive for said Circuit Court.

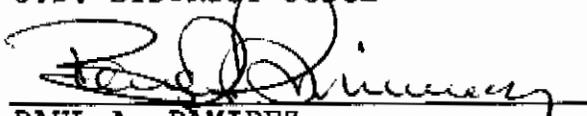
The amended Plan, now being in effect, shall hereinafter be designated General Order No. 186 of this Court.

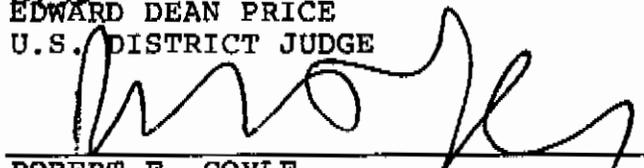
DATED: October 29, 1985

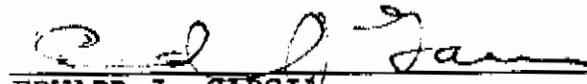

LAWRENCE K. KARLTON
Chief, U.S. DISTRICT JUDGE


MILTON L. SCHWARTZ
U.S. DISTRICT JUDGE


EDWARD DEAN PRICE
U.S. DISTRICT JUDGE


RAUL A. RAMIREZ
U.S. DISTRICT JUDGE


ROBERT E. COYLE
U.S. DISTRICT JUDGE


EDWARD J. GARCIA
U.S. DISTRICT JUDGE

PLAN

OF THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA PURSUANT TO THE
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

I. PERSONS ENTITLED TO REPRESENTATION BY APPOINTED COUNSEL

To implement the provisions of the Criminal Justice Act (CJA) of 1964 (Title 18 U.S.C. § 3006A), as amended, the following Plan is adopted for the adequate representation of any person otherwise financially unable to obtain adequate representation,

(A) who is charged with a felony or misdemeanor (other than a petty offense as defined in Title 18 U.S.C. § 1(3) unless the defendant faces the likelihood of loss of liberty), or with the juvenile delinquency, or with a violation or modification of probation, or

(B) who is under arrest, or

(C) who is seeking collateral relief, subject to the conditions of Title 18 U.S.C. § 3006A(g) as amended, or

(D) who is a person for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel, or

(E) who is entitled to appointment of counsel in parole proceedings under Chapter 311 of Title 18, United States Code, or

(F) who is a material witness in custody (see Title 18 U.S.C. § 3144 and § 3142(f), or

(G) whose mental condition is the subject of a hearing pursuant to Chapter 313 of Title 18, United States Code.

Representation shall include counsel and investigative, expert, and other services necessary for an adequate representation.

II. PROVISION FOR FURNISHING COUNSEL

A. This Plan provides for the furnishing of legal services by a Federal Defender organization as provided in Title 18 U.S.C. § 3006(h)(2)(A). This Plan provides for the appointment and operation of a Criminal Justice Act panel of attorneys (hereinafter referred to as "CJA panel attorneys"). Insofar as practicable, the Criminal Justice Act panel shall represent 25 percent of all cases.

B. The Court in its discretion will determine whether any party is entitled to representation by the Office of the Federal Defender or by an attorney who is a member of the panel. In a unique case and under special circumstances, the Court may appoint an attorney who is not a member of the CJA panel to represent a defendant.

In allocating cases between the Office of the Federal Defender and the CJA panel or other attorneys, a "case" shall be deemed to be each separate appointment of counsel made by the district court or magistrate pursuant to this Act, each "new trial" as defined in Title 18 U.S.C. § 3006A(d)(5), and each appeal docketed in the United States Court of Appeals.

III. ESTABLISHMENT OF THE FEDERAL DEFENDER ORGANIZATION

The offices of the Federal Defender shall be located by the Federal Defender in places in the District as duly authorized. The Federal Defender or any staff attorney appointed by him may not engage in the private practice of law.

The Federal Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of his activities and the financial position and proposed budget of his office.

IV. COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

A. PURPOSE

The Criminal Justice Act Plan for the Eastern District provides that the Office of the Federal Defender will represent up to 75 percent of all persons who qualify for representation under the Act, and the remaining persons will be represented by attorneys who are members of the Criminal Justice Act panel for the Eastern District.

B. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

1. CJA PANEL

(a) Approval. The Court shall establish a separate panel of private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act for the Court sitting in Fresno and Sacramento. The Court may establish separate CJA panels of attorneys to be appointed by magistrates sitting in areas other than Sacramento or Fresno. The Court shall approve attorneys for membership on the CJA panels after receiving recommendations from the "Panel Selection Committee," established

pursuant to paragraph IV-B-2 of this Plan.

(b) Size. The Court shall fix, periodically, the size of the CJA panel. The CJA panel shall be large enough to provide a sufficient number of experienced attorneys to satisfy the caseload needs under the Criminal Justice Act, yet small enough so that CJA 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.

(c) Eligibility. Attorneys who serve on the CJA panel shall be members in good standing of the California State Bar and a member of the Eastern District of California. Attorneys must also have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence as well as the Local Rules. Preference for CJA panel membership shall be given to attorneys who have been in practice at least three years with experience in the field of criminal law. When a judge finds special circumstances to exist, an attorney other than a CJA panel attorney may be appointed to represent a defendant on an ad hoc basis.

(d) Term. Attorneys shall serve as a member of the CJA panel for three years. Attorneys shall be eligible for unlimited additional three year appointments. Removal from the CJA panel shall be by voluntary resignation, failure to be in good standing with the Bar, or removal for cause.

(e) Application. Application forms for membership on the CJA panel shall be made available, upon request, from the Office of the Federal Defender in Fresno and Sacramento. Completed applications shall be submitted to the Office of the Federal Defender located in the area where the Court sits.

2. PANEL SELECTION COMMITTEE

(a) Membership. A Panel Selection Committee shall be established by the Court for Fresno and Sacramento, respectively. The Committee shall consist of two experienced members of the CJA panel, two experienced criminal law practitioners who are not members of the CJA panel, and the Federal Defender or his designee from the Office of the Federal Defender. The attorney from the Office of the Federal Defender shall serve as permanent secretary. One of the other four attorney members shall serve as the chairperson. Three members shall constitute a quorum to conduct business.

(b) Term. Members of the Panel Selection Committee shall be appointed for a term of three years except as hereinafter provided.

Initial appointment to the Panel Selection Committee shall be one CJA panel attorney and one non-CJA panel attorney for a period of one year and one CJA panel attorney and one non-CJA panel attorney for a period of three years to achieve staggered terms. Members may be reappointed for successive terms. Members may be removed from the Committee for cause. All terms shall be, except for the initial terms as heretofore provided, for three years.

(c) Duties. The Panel Selection Committee shall meet at least four times a year to consider applicants for the CJA panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants found qualified. The Committee shall perform such other duties and functions as assigned to it by the court from time to time. For purposes of this paragraph, the Committee may meet in person, or by telephonic communication or by circulating CJA panel applications for appropriate action.

Annually, in the first quarter of each year, the Committee shall also review the operation and administration of the CJA Panel over the preceding year and recommend to the Court any changes deemed necessary or appropriate by the Committee in regard to the appointment process and CJA panel management. This report shall be in writing and prepared by the Secretary.

The Committee shall inquire periodically as to the continued availability and willingness of each CJA panel member to accept appointments. The Committee may adopt such rules and regulations as it deems necessary to carry out the business of the Committee.

(d) Removal of CJA Panel Members for Cause. Allegations of impropriety or unethical conduct on the part of any CJA panel member shall be investigated by the Panel Selection Committee. The Panel Selection Committee shall call a special meeting for this purpose. The CJA member against whom the allegations are made shall have written notification of the charges and be given the opportunity to attend the special meeting and present written and verbal evidence. The Panel Selection Committee shall vote to determine whether or not to recommend that the CJA panel member remain on the CJA panel. A written report, including the recommendation of the Panel Selection Committee, shall be forwarded to the Chief Judge of the District for action by the Court.

C. SELECTION FOR APPOINTMENT

1. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Office of the Federal Defender shall maintain a current list of all attorneys included on the CJA panel, with current office addresses and telephone numbers, as well as the original application forms submitted by the attorneys. The Federal Defender shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between the Federal Defender's Office and private attorneys, according to the formula described in the CJA Plan for the District.

2. METHOD OF SELECTION

Appointments from the list of private attorneys shall be made, to the extent practicable, on a rotational basis, consistent with the nature and complexity of the case, the attorney's experience, and geographical considerations. Members of the Federal Defender's Office shall recommend appointment of counsel either from the CJA panel or the Office of the Federal Defender.

Initial interview of persons who may qualify for appointment of counsel shall be performed by the Office of the Federal Defender in Sacramento, Fresno and Yosemite National Park. If members of the Federal Defender's Office are unavailable, the magistrate shall perform the initial qualification interview in Yosemite National Park. Duly authorized attorney appointment forms shall be prepared by the Federal Defender's Office and submitted to the appropriate judicial officer for signature.

Part-time magistrates in other areas of the District shall perform all duties under the Criminal Justice Act with the full cooperation and assistance of the Federal Defender's Office.

V. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on appropriate CJA forms, to the Office of the Federal Defender after completion of representation by the CJA panel attorney. The Office of the Federal Defender shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judicial policies and Procedures) and, if correct, shall forward the claim form for consideration of the appropriate judge or magistrate. All claims for compensation shall be filed within fifteen (15) days after comple-

tion of the case. Claims for CJA panel attorneys appointed on appeals to the United States Court of Appeals for the Ninth Circuit shall be submitted in accordance with procedures adopted by the Court of Appeals.

Different processing procedures may be established for part-time magistrates by the part-time magistrates with the cooperation and assistance of the Federal Defender's Office.

VI. DETERMINATION OF NEED FOR COUNSEL

A. ADVICE OF RIGHT, FINANCIAL INQUIRY, APPOINTMENT PROCEDURE

In every criminal case in which a person is entitled to representation as provided in the preamble of this Plan and is not represented by counsel, the Court shall advise or cause the person to be advised of the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford adequate representation. Unless the person waives representation by counsel in writing, the Court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the person.

In appointing counsel, the Court shall select the Federal Defender's Office or an attorney from the CJA panel of private attorneys approved by the Court, except in extraordinary circumstances where it becomes necessary to make another selection of a member of the bar of this Court.

Appointment of counsel may be made retroactive to include representation furnished pursuant to this Plan prior to appointment.

The Court shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown. When special circumstances exist, two counsel may be appointed.

B. CONTINUITY AND DURATION OF APPOINTMENT

A person for whom counsel is appointed shall be represented at every stage of the proceedings including appeal and ancillary matters appropriate to the proceedings. Once appointment is made, counsel shall remain counsel of record until relieved by court order.

C. APPEAL

In the event that a criminal defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a

timely Notice of Appeal. Filing the Notice of Appeal concludes the trial representation; nevertheless, to avoid a gap in representation, the attorney shall continue to represent the defendant unless or until relieved by the district court or the court of appeals. Counsel who does not wish to represent a defendant on appeal should request that he be relieved as counsel of record.

D. PARTIAL PAYMENT OR REIMBURSEMENT

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

If the Court finds that the person is financially able to obtain counsel or to make partial payment for the representation, the Court may terminate the appointment of counsel or permit assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such party. If appointment of counsel is to continue, the amount paid or payable by the party shall be considered by the Court in determining the total compensation to be allowed to such attorney.

No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the Court.

If at any stage of the proceedings, including an appeal, the Court finds that the party is financially unable to pay counsel whom he or she had retained, the Court may appoint counsel as provided in the Act, and authorize such payment as therein provided, as the interests of justice may dictate.

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

E. DISCRETIONARY REPRESENTATIONS

Any person in custody as a material witness, or seeking relief under § 2241, § 2254, or § 2255 of Title 28, or § 4245 of Title 18, United States Code, may be furnished representation pursuant to this plan whenever the Court determines that the interests of justice so require and that such person is financially unable to afford adequate representation. Such appointments are discretionary pursuant to subsection (g) of the Act, and payment for

such representation shall be in accordance with the provisions of the Act and this Plan.

VII. INVESTIGATIVE, EXPERT OR OTHER SERVICES

A. UPON REQUEST

Appointed or retained counsel for a party who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request such services in an ex parte application before the judge or before a magistrate if the services are required in connection with a matter over which the magistrate has jurisdiction, or if a judge otherwise refers such application to a magistrate for findings and report. Upon finding, after appropriate inquiry in such ex parte proceedings, that the services are necessary, and that the person is financially unable to obtain them, the judge or the magistrate, as the case may be, shall authorize counsel to obtain the services. The maximum which may be paid to a person or organization for services so authorized shall not exceed \$300 exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the judge, or by the magistrate if the services were rendered in connection with a case disposed of entirely before the magistrate, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Court of Appeals for the Ninth Circuit.

B. WITHOUT PRIOR REQUEST

Counsel, appointed under the Act, may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for adequate representation. However, the total cost for services obtained without prior authorization may not exceed a maximum of \$150 and expenses reasonably incurred, for each person or organization providing the services. Waiver of this provision is not authorized, since the Act prohibits any payment of compensation in excess of \$150 for such services where prior authorization was not secured. Counsel may request ratification for investigative, expert, or other services within the \$150 limit by submitting an application for ex parte review by the judge, or by the magistrate if the services were rendered in connection with a matter over which the magistrate has jurisdiction.

C. EX PARTE APPLICATIONS

Ex parte applications for services other than counsel shall be heard in camera, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial court, subject to further order of the judge or magistrate.

VIII. COMPENSATION FEES

A. INDIVIDUAL PAYMENTS TO COUNSEL APPOINTED UNDER THIS PLAN

Payment of fees and expenses to counsel appointed under this Plan, and payment for investigative, expert, and other services incurred pursuant to paragraph VII hereof, shall be made in accordance with such rules and regulations and guidelines as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts.

B. COUNSEL FEES

The Court shall fix compensation within the hourly rate and case compensation maximums set forth in subsection (d)(1) and (2) of the CJA, and waiver of the case compensation limits shall be as provided under subsection (d)(3). Documentation for payment of fees and forms for submission of payment shall comply with the requirements of the Administrative Office of the United States Courts and the local procedure established by the Court and the Office of the Federal Defender. Claims for attorney fees shall be submitted to the Federal Defender's Office (see paragraph V of this Plan). It shall be the duty of the Federal Defender to promptly process all claims for payment under the Criminal Justice Act.

C. SERVICES OTHER THAN COUNSEL

Compensation for investigative, expert and other services is subject to the limitations set forth in subsection (e) of the CJA (see paragraph VII of this Plan). Documentation for payment of services and forms for submission of services rendered shall comply with the requirements of the Administrative Office of the United States Courts and the local procedure established by the Court and the Office of the Federal Defender. All claims for services rendered shall be submitted to the Federal Defender's Office. It

shall be the duty of the Federal Defender to promptly process all claims for payment under the Criminal Justice Act.