

FILED

SEP 19 1966

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CLERK, U. S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Deputy Clerk

ORDER ADOPTING PLAN FOR REPRESENTATION	)	
OF INDIGENT DEFENDANTS PURSUANT TO	)	GENERAL ORDER NO. 20
CRIMINAL JUSTICE ACT OF 1964.	)	

WHEREAS, Public Law 89-372, 89th Congress, S. 1666, March 18, 1966, created the United States District Court for the Eastern District of California;

IT IS HEREBY ORDERED that the plan attached hereto and made a part hereof is hereby adopted as the plan for the representation of indigent defendants in this Court pursuant to the Criminal Justice Act of 1964, the same to continue in effect until further order of this Court.

Dated: **SEP 19 1966**

*M. D. Crocker*

M. D. Crocker  
Chief United States District Judge

*Sherrill Halbert*

Sherrill Halbert  
United States District Judge

*Thomas J. MacBride*

Thomas J. MacBride  
United States District Judge

FILED

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

SEP 19 1966

CLERK, U. S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY \_\_\_\_\_  
Deputy Clerk

Pursuant to the provisions of Section 2 of the Criminal Justice Act of 1964 (P.L. 88-455, approved August 20, 1964; 18 U.S.C. §3006A), the judges of the United States District Court for the Eastern District of California have adopted the following Plan for the adequate representation, as provided in paragraphs (a), (b), (c) and (d) of Section 2, of defendants charged with felonies or misdemeanors (other than petty offenses as defined in 18 USC §1) who are financially unable to obtain an adequate defense, and for the furnishing of investigative, expert, and other services as provided in paragraph (e) of Section 2.

As provided in Paragraph (a) of Section 2, this Plan combines representation by private attorneys and representation by attorneys furnished by a bar association or a legal aid agency.

The county bar associations of each city and each county within this district are designated as the bar associations and the Legal Aid Society of the City of Fresno and the Legal Aid Society of the City of Sacramento are each designated as the legal aid agencies under this Plan, pursuant to paragraph (a) (2) of Section 2, provided that the names of attorneys furnished by a bar association and by a legal aid agency shall be approved by the Court before being included in the panel of attorneys available for the representation of such defendants.

I. Panel of Attorneys.

The bar associations, the legal aid agencies (with respect to attorneys in their employ) and the United States Commissioners are invited to prepare and certify to the Chief Judge of this Court not later than October 1, 1966, a list of attorneys who are

admitted to practice before this Court and who, in the opinion of the bar association, the legal aid agency or the United States Commissioner, are competent to give adequate representation to defendants under the Act. Each judge of this Court is invited to furnish to the said Chief Judge on or before October 1, 1966, a list of attorneys whom he desires to have included in the panel of attorneys. From the lists so furnished, the said Chief Judge, with the approval of the Court, shall establish a panel of attorneys on or before October 15, 1966. The panel so established shall be designated as the Panel of Attorneys for the Eastern District of California. Additions and deletions to the panel of attorneys may be made from time to time by vote of the judges of the Court, or by such Chief Judge if authorized to do so by the judges of the Court. Copies of the original panel of attorneys, with their office addresses and telephone numbers, arranged by counties, shall be furnished by the Chief Judge to each District Judge and to each United States Commissioner not later than October 15, 1966, and the Chief Judge shall furnish to each District Judge and to each United States Commissioner copies of revised panel of attorneys from time to time, as the Chief Judge shall deem necessary or appropriate.

II. Determination of Need for Counsel.

Each defendant charged with a felony or misdemeanor (other than a petty offense as defined in the Criminal Code) shall be advised at the earliest practicable stage in the proceeding of his right to counsel and shall be asked whether he is financially able to obtain counsel in his defense. Whenever such a defendant states that he is financially

unable to obtain counsel, and applies for the appointment of counsel, it shall be the duty of the District Judge or the United States Commissioner, as the case may be, to inquire into and to make a finding as to whether such defendant is financially able to obtain counsel. All statements made by such defendant in such inquiry shall be either under oath in open court or by affidavit sworn to before a clerk of the District Court, the District Judge, the Commissioner or a Notary Public. If, on the basis of such inquiry or such affidavit, the Judge or the Commissioner finds that such defendant is financially unable to obtain counsel, he shall appoint counsel for such defendant in the manner hereinafter provided in Article III hereof.

III. Appointment of Counsel.

A. In Proceedings Before a United States Commissioner.

1. In all communities wherein a legal aid agency maintains an office, the Commissioner shall designate and appoint from the panel of attorneys an attorney employed by the said legal aid agency and furnished to him for the purpose, as counsel for all defendants whom the Commissioner finds are unable to obtain counsel, unless the Commissioner shall determine that other counsel should be appointed from the panel of attorneys. In communities where a legal aid agency does not maintain an office or where such legal aid agency is unable to furnish counsel because of conflict of interest or other reason, the Commissioner shall designate and appoint from the panel of attorneys an attorney as counsel who has his office in the community or county where the Commissioner is sitting, or a county next

adjoining the county where the Commissioner is sitting, or in which the defendant resides.

2. To the extent practicable, the Commissioner shall appoint the same attorney as counsel for all such defendants appearing before him on the same day.
3. Counsel shall be designated and appointed by the Commissioner, and no such defendant shall select his own counsel from the panel of attorneys or otherwise.
4. Counsel appointed by a Commissioner shall represent the defendant in proceedings before the Commissioner and thereafter until relieved by order of the District Court.

B. In Proceedings Before a District Judge.

1. The District Judge shall make his own finding of the need to appoint counsel for any defendant, but he may base such finding upon the affidavit made by the defendant before a clerk of the District Court, the District Judge, the Commissioner or a Notary Public, or upon the record, if any, made before the Commissioner.
2. The District Judge may either reappoint counsel appointed by the Commissioner for such defendant, or he may appoint new counsel.
3. Counsel appointed by the District Judge at the defendant's first appearance shall continue to act for the defendant throughout the proceedings in this Court and through appeal, unless or until he is relieved by the District Court, or after notice of appeal is filed, by the Court of Appeals.
4. In all communities wherein a legal aid agency

maintains an office, the District Judge shall designate and appoint from the panel of attorneys an attorney employed by the said legal aid agency and furnished to him for the purpose, as counsel for such defendant, unless the District Judge shall determine that other counsel should be appointed. In communities where a legal aid agency does not maintain an office or where such legal aid agency is unable to furnish counsel because of conflict of interest or other reason, or where the Judge determines that other counsel should be appointed, the District Judge shall appoint counsel from the panel of attorneys listed in the panel of the division in which the case of the defendant is pending, except that if the District Judge shall find that a defendant could be more adequately represented by counsel not on a panel of attorneys, he may request the appropriate Senior Judge to add such counsel to the appropriate panel, stating briefly his reasons therefor, and the District Judge may appoint such counsel if made a member of a panel of attorneys pursuant to Article I hereof.

5. Counsel shall be designated and appointed by the District Judge, and no such defendant shall select his own counsel from the panel of attorneys or otherwise.

C. Duration and Substitution of Appointments.

As provided in paragraph (c) of Section 2, a defendant for whom counsel is appointed hereunder shall be represented at every stage of the proceedings, from his initial appearance before the United States Commissioner or District Judge,

through appeal. If at any time after the appointment of counsel, the District Judge finds that the defendant is financially able to obtain counsel or to make partial payment for his representation, the District Judge may terminate the appointment of counsel or he may direct that payment be made to the appointed counsel or to the bar association which made such appointed counsel available for appointment, or to the legal aid agency, or to the Court for deposit in the Treasury as a reimbursement to the appropriation current at the time of payment, to carry out the provisions of the Criminal Justice Act of 1964.

Such payments shall be strictly controlled by the Court, to the end that payments to appointed counsel or the bar association or the legal aid agency shall not exceed the maximum permitted by the Act.

If at any stage of the proceedings a District Judge shall find that a defendant for whom counsel has not previously be appointed under this Plan is financially unable to pay counsel whom he has retained, the District Judge may appoint counsel in the manner hereinabove provided. The District Judge or the United States Commissioner may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

If an attorney is appointed for more than one defendant in a case, he should at the earliest moment ascertain whether or not there is a conflict of interest in his representation of multiple defendants and if so, call the attention of the

Court or the Commissioner to the matter and ask to be relieved as counsel for one or more of the defendants he is representing.

In the event a defendant is convicted following trial, counsel appointed hereunder shall advise the defendant of his right of appeal and of his right to counsel on appeal. If requested to do so by the defendant, counsel shall file a timely notice of appeal, and shall continue to represent the defendant, unless or until he is relieved by the Court of Appeals.

No counsel appointed hereunder shall seek or accept any fee from the defendant for whom he is appointed. If there should come to the knowledge of such counsel any information indicating that the defendant can make payment in whole or in part for legal services, it shall be his duty to report such information promptly to the Court, so that appropriate action may be taken hereunder.

#### IV. Services Other Than Counsel.

Counsel (whether or not appointed under this Plan) for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request such services in an ex parte application before a District Judge. If, after appropriate inquiry, the District Judge shall find that the services are necessary and that the defendant is financially unable to obtain them, he shall authorize defendant's counsel to obtain such services. The statements made by the defendant upon such inquiry shall be made either by affidavit sworn to before a clerk of the District Court, a District Judge, or by statement, under oath, made in open court. If the District Judge should find that timely procurement of such services could not await prior

authorization, he may, in the interests of justice, ratify such services after they have been obtained, if he shall find that the defendant is financially unable to pay for them, provided that ratification of services previously incurred shall be given only in the most unusual situations.

V. Administration, Payment of Counsel Fees and Other Services.

- A. To the degree it seems advisable, the Court may delegate to a legal aid agency such administrative duties and details as are needed to effect the purposes of this Plan.
- B. Payment of counsel fees for counsel appointed under this Plan, and for his expenses reasonably incurred, and for expenses for other services incurred pursuant to Article IV hereof, shall be made in accordance with such rules and regulations as may be prescribed from time to time by the Administrative Office of the United States Courts (Administrative Office).
- C. Any counsel appointed under the Plan or the bar association or the legal aid agency, as the case may be, who made him available for appointment, may apply for payment of such counsel fees, and his expenses reasonably incurred, within forty-five (45) days following the conclusion of his services. (Expenses reasonably incurred are limited to out-of-pocket expenses and shall not include any allocations for general office overhead, such as rent, telephone services, usual supplies or secretarial help.)
- D. Any counsel authorized to obtain investigatory, expert or other services pursuant to Article IV hereof (including cases where the obtaining of such services was ratified by the Court), or the bar association or the legal aid agency, as the case may be, who made him available for appointment, may apply

for payment or reimbursement of such expenses within forty-five (45) days following the conclusion of his services as counsel.

- E. Applications under paragraphs C and D of this Article V shall be made ex parte to a District Judge. Each such application shall contain a statement of the services rendered and the amount of time spent by counsel, an itemized list of his expenses reasonably incurred, or, in applications under paragraph D, an itemized list of expenses incurred which have been authorized for payment or reimbursement. Any such application may be referred to the District Judge who presided at the trial, or to the District Judge who appointed the applicant or who authorized or ratified the incurring of the services if the District Judge to whom such application is made so determines. Upon approval of any such application by a District Judge, it shall be forwarded by the Clerk of this Court to the Administrative Office for payment.

VI. Authority of the Administrative Office of the United States Courts.

The authority conferred on the Director of the Administrative Office by the following resolutions of the Judicial Conference of the United States adopted January 13, 1965, is made a part of this Plan:

- A. In his responsibility for supervision of payments from the appropriations under the Act, the Director of the Administrative Office is authorized to adopt and use a system of central disbursement for all appropriated funds, requiring notification to the Administrative Office of every appointment of counsel and authorization for other services as they are made; the transmission of vouchers to the Administrative

Office for payment, containing adequate information as to the nature and extent of services rendered, both in and out of court, and expenses incurred, and with payments to be made directly from the Administrative Office, rather than locally; and

- B. The Director is further authorized under supervision and direction of the Committee to Implement the Criminal Justice Act of 1964, to request any reports from a district court and from a judicial council in such form and at such times as he deems necessary or desirable for statistical information or other purposes under the Act.

VII. Forms.

The forms prepared and furnished by the Administrative Office, copies of which are annexed (CJA Forms 1-12, inclusive), shall be used, where applicable, in all proceedings under the Plan. Any revisions of said forms or any additional forms that may be prescribed by the Administrative Office under authority of the Judicial Conference of the United States or of the Committee of that Conference to Implement the Criminal Justice Act of 1964, shall likewise be used, where applicable, in all proceedings under this Plan.

VIII. Rules and Reports.

The Chief Judge, on behalf of the Court, may promulgate such rules and direct the use of such additional forms as may from time to time be adopted by the Court, and the Chief Judge, on behalf of the Court, shall make such reports as are required under Article VI hereof, or as may be prescribed from time to time by the Judicial Conference of the United States or by the Committee of that Conference to Implement the Criminal Justice Act of 1964.

IX. Amendments.

Amendments to this Plan may be made from time to time

by the District Judges of the Eastern District of California.

X. Effective Date.

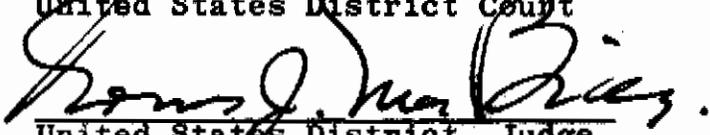
This Plan shall take effect on September 18, 1966, the effective date of the Eastern District of California, provided it shall have been approved by the Judicial Council of this Circuit.

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The foregoing Plan for the United States District Court for the Eastern District of California, formulated pursuant to the Criminal Justice Act of 1964, is this day approved and adopted (subject to the approval of the Judicial Council for the Ninth Judicial Circuit) as the Plan of the United States District Court for the Eastern District of California.

Dated: September 19 1966.

  
Chief Judge  
United States District Court

  
United States District Judge

  
United States District Judge

Provisions for representation on appeal attached hereto as Exhibit A.