FILED

JUN 26 1996

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

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RE:	)	
	)	GENERAL ORDER NO. 323
ADOPTION OF CRIMINAL	)	
JUSTICE ACT PLAN	)	
	)	

Pursuant to the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A, the attached Criminal Justice Act Plan was adopted by the judges of the Eastern District of California and approved by the Judicial Council of the Ninth Circuit on January 31, 1996.

IT IS SO ORDERED.

DATED: June 26, 1996.

FOR THE COURT:

WILLIAM B. SHUBB, Chief Judge
Eastern District of California

CRIMINAL JUSTICE ACT PLAN

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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, and the Guidelines for the Administration of the Criminal Justice Act, Volume II, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the Eastern District of California, adopt this Plan in accordance with the CJA for furnishing 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. Therefore, this 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.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at

section 848(q) of title 21, United States Code), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance

1. The Court, its clerk, the Federal Public Defender Organization and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the Federal Public Defender Office with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the CJA Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Federal Public Defender Office shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITION

A. "Representations" includes counsel and investigative, expert, and other services.

B. "Appointed attorney" includes private attorneys, the federal public defender and staff attorneys of the Federal Public Defender Organization.

IV. PROVISION OF REPRESENTATION

A. Circumstance

1. **Mandatory**. Representation shall 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 section 5031 Title 18, United States Code;

   c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);

   d. is under arrest, when representation is required by law;

   e. is entitled to appointment of counsel in parole proceedings;

   f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

   g. is subject to a mental condition hearing under chapter 313 of Title 18, United States Code;

   h. is in custody as a material witness;

i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28, United States Code;

j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of Title 18, United States Code;

k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution or by statute; or

l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. **Discretionary**. Whenever a district judge or United States magistrate judge determines that the interest 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, or an infraction) for which a sentence to confinement is authorized;

b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of Title 28, United States Code;

c. is charged with civil or criminal contempt who 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, a civil or criminal contempt proceeding, or face loss of liberty;

e. is proposed by the United States attorney for processing under a pretrial diversion program;

f. is notified by the United States Attorney of the likelihood that criminal charges may be filed or the person is a target of a grand jury investigation;

g. is held for international extradition under chapter 209 of Title 18, United States Code

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. <u>When Counsel Shall Be Provided</u>

Counsel shall be provided pursuant to this Plan to eligible persons as soon as feasible after they are taken into custody, when they appear before a judicial officer, when they are formally charged or notified of charges if

formal charges are sealed, or when a judicial officer otherwise considers appointment of counsel appropriate under the CJA or this Plan, whichever occurs earliest.

C. **Number and Qualifications of Counsel**

1. **Number**. More than one attorney may be appointed in any case determined by the Court to be extremely complex or difficult. In a capital case, at least two attorneys should be appointed.

2. **Qualifications**. Except as provided by section 848(q)(7) of Title 21, United States Code, at least one attorney appointed in a capital case shall meet the qualifications requirements set forth in sections 848(q)(5)(6) of Title 21, United States Code. Pursuant to section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under sections 848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case.

D. **Eligibility for Representation**

1. **Factfinding**. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judicial officer after making appropriate inquiries concerning the person's financial condition.

2. **Disclosure of Change in Eligibility**. 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 his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

3. **Partial Payment or Reimbursement**. If at the time of appointment or at any time thereafter the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of a person furnished representation, the court shall take appropriate action, which may include terminating the appointment of counsel, ordering partial payment by the person furnished representation, or permitting assigned counsel to continue to represent the party with part or all of the cost of representation paid by the person furnished representation.

   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 a person who previously did not have counsel appointed under the Act 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.

V. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The existing, previously established Sacramento and Fresno panels of attorneys (CJA Panels) who are eligible and willing to be appointed to provide representation under the CJA are hereby recognized.

B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act, which governs CJA panel matters, is found at Appendix I of this CJA Plan.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases to which the accused is determined to be financially eligible

for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under CJA annually throughout the district.

VI. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

1. The Federal Public Defender Organization of the Eastern District of California, previously established in the district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.
2. The Federal Public Defender Organization shall be capable of providing legal services throughout the district and shall maintain full time staffed offices in Sacramento and Fresno, and a seasonally staffed office in Yosemite National Park.

B. **Supervision of Defender Organization.** The federal public defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the federal public defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the federal public defender.

C. **Management of CJA Panel.** The federal public defender shall be responsible for the systematic distribution of cases to and for the management and training of the private

attorneys appointed pursuant to the CJA (hereinafter 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 I of this CJA Plan.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254

A. **FPD Death Penalty Representation.** The Federal Public Defender organization is designated to provide representation in death penalty federal habeas corpus cases. In this regard, the primary goal of the Federal Public Defender will be to assist the court in ensuring that adequate representation is provided to persons under death sentence who seek federal habeas corpus relief. Toward that end, the Federal Public Defender shall be appointed as counsel of record in cases where there is no conflict of interest up to a fixed number each year consistent with funding and staffing levels of the Federal Public Defender related to these types of cases. The Federal Public Defender also shall monitor federal capital litigation in the Eastern District of California and advise the court periodically concerning the anticipated inflow of such cases into the district.

B. **Additional FPD Death Penalty Habeas Corpus Responsibilities.** The Federal Public Defender is authorized to:

1. coordinate resources with other state and national organizations providing legal assistance to death-sentenced inmates.
2. maintain a brief bank and clearinghouse of materials to assist lawyers in death penalty habeas corpus cases in federal courts.
3. perform such other tasks, including the preparation and filing of amicus briefs, as may be necessary to ensure that adequate representation is provided to financially eligible persons in death penalty federal habeas corpus proceedings.

C. **Death Penalty Habeas Corpus Selection Board**. The court shall appoint a death penalty habeas corpus selection board to recruit and screen lawyers qualified to provide representation in death penalty habeas corpus matters. The selection board shall maintain a panel of lawyers qualified to provide representation in death penalty habeas cases, and, upon request, provide the court with the names of qualified lawyers on the list.

D. **Appointment of Private Counsel**. Where the appointment of private counsel is appropriate to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of Title 28, United States Code, the Court shall appoint private

attorneys who are qualified for appointment pursuant to section 848(q) of Title 21, United States Code.

VIII. DUTIES OF APPOINTED COUNSEL

A. **Standards**. 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.

B. **Professional Conduct**. Attorneys 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, the American Bar Association's Model Code of Professional Conduct and the American Bar Association's Standards for the Defense Function.

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 shall continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. **Presentation of Accused for Appointment of Counsel.** Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender Office, which shall assign a lawyer to 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 (CJA Form 23) and arrange to have the person promptly presented before a magistrate judge of this Court for determination of financial eligibility and appointment of counsel.

B. **Pretrial Services Interview.** At its March 1988 proceedings, the Judicial Conference of the United States approved the following resolution:

> "The Judicial Conference recognizes the importance of the advise of counsel for persons subject to proceedings under 18 U.S.C § 3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the Conference encourages districts to take the steps necessary to permit the

> furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing."

Consistent with the above resolution, the Federal Public Defender Office shall be given a reasonable period of time within which to establish contact with a person subject to proceedings under 18 U.S.C. Section 3142. During this period of time the pretrial services office shall not make contact with such person.

C. **Notice of Indictment or Criminal Information.** Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation or supervised release, the United States attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on the defendant's bond papers or to the jail in which the defendant is incarcerated.

X. MISCELLANEOUS

A. **Forms.** Standard forms, pertaining to CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and

prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

B. **Claims**. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the Office of the Federal Public Defender, which will review the claims according to Appendix I, Paragraph F. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. **Supersession**. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

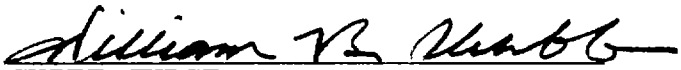
XI. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Ninth Circuit.

APPENDICE:

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

ENTER FOR THE COURT on June 6 1996.



CHIEF JUDGE
EASTERN DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT on Jan. 31, 1996.
executed on June 21, 1996.

CHIEF JUDGE
NINTH CIRCUIT COURT OF APPEALS

APPENDIX I

PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE EASTERN DISTRICT OF CALIFORNIA PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

A. PURPOSE

The Criminal Justice Act Plan for the Eastern District provides private attorneys who are members of the Criminal Justice Act Panel for the Eastern District (CJA Panel) will represent approximately 25% of all persons who qualify under the Criminal Justice Act, 18 U.S.C. § 3006A (CJA). THE PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE EASTERN DISTRICT OF CALIFORNIA PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT outlines the manner in which the Criminal Justice Act Plan for this District will be implemented.

B. COMPOSITION OF CJA PANEL OF PRIVATE ATTORNEYS

1. **Approval**. A separate panel of private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act shall be established in the Fresno and Sacramento divisions of the court. Separate CJA panels of attorneys to be appointed by magistrate judges sitting in areas other than Sacramento or Fresno may be established. Eligibility for membership on the CJA panels in Sacramento and Fresno shall be determined by CJA Panel Committee, established pursuant to paragraph C of this Plan. Membership on the panels shall be approved by the chief judge or his or her designee or a committee of the court established for that purpose.

2. **Size**. The CJA panels in Sacramento and Fresno 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. The CJA Panel Committee may establish separate panels of attorneys who are qualified for appointment in felony, misdemeanor and appellate cases. Attorneys on the appellate panel also may serve on either the felony or misdemeanor panels.

3. **Eligibility.** Attorneys who serve on the CJA panel shall be members in good standing of the California State Bar, members of the bar of the Eastern District of California and maintain their principal office in this District. Attorneys must also have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, Federal Rules of Evidence, Sentencing Guidelines and 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, provided the attorney has a level of experience and knowledge that otherwise would qualify the attorney for membership on the CJA panel.

4. **Terms.** Attorneys shall serve as a member of the CJA panel for three years. Attorneys may be eligible for unlimited additional three year appointments. Removal from the CJA panel shall be by voluntary resignation, rotation off the panel after serving a

three year term on the panel, failure to be in good standing with the Bar, or removal for cause.

5. **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.

C. **CJA PANEL COMMITTEE**

1. **Membership.** Separate CJA Panel Committees shall be established by the court for the Fresno and Sacramento divisions. Each 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 a 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 attorney members shall serve as the chairperson. Three members shall constitute a quorum to conduct business.

2. **Term.** Members of the CJA Panel Committee shall be appointed for a term of three years.

3. **Duties.** The CJA Panel Committee shall meet at least twice a year to consider applicants for the CJA panel. Subject to the need to add new members to the CJA panel, the Committee shall review the qualifications of applicants and recommend to the court the admission of 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.

4. **Removal of CJA Panel Members for Cause.** Allegations of inadequate representation, impropriety or unethical conduct on the part of any CJA panel member shall be investigated by the CJA Panel Committee. The 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 Committee shall prepare findings and recommendations concerning the CJA panel member's continued membership on the CJA panel. Peer review and counselling by the Committee or a Committee member or another experienced member of the criminal defense bar selected by the Committee may be required as a condition of remaining on the CJA Panel.

Written findings and recommendations shall be forwarded to the Chief Judge of the District for appropriate action by the court.

D. **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's Office shall also maintain a 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 Panel 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. 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 judge 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.

E. CJA TRAINING PANEL

The Federal Defender shall conduct periodic training programs for CJA panel attorneys on topics of relevance to federal criminal defense attorneys. The Federal Defender's Office, in consultation with the CJA Panel Committee shall determine the frequency, subjects and contents of training programs. Such programs may include topics related to the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, Sentencing Guidelines, Local Rules, trial advocacy, substance abuse, legal ethics, law office management, and discrimination. Attendance at training programs is mandatory for CJA panel attorneys.

F. 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 completion 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 magistrate judges by the part-time magistrate judges with the cooperation and assistance of the Federal Defender's Office.

Entered For The Court on June 6 ,1996

WILLIAM B. SHUBB, Chief Judge
Eastern District of California

Approved by the Judicial Council of the Ninth Circuit on January 31 ,1996 ; executed on June 21, 1996

PROCTER HUG, JR., Chief Judge
Ninth Circuit Court of Appeals