

FILED

UNITED STATES DISTRICT COURT

APR 27 1972

EASTERN DISTRICT OF CALIFORNIA

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

By _____
Deputy Clerk

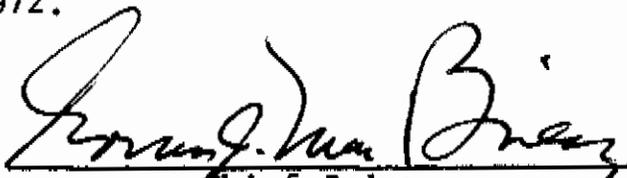
RE:)
ORDER FOR ADOPTION OF FEDERAL)
DEFENDER PLAN EASTERN DISTRICT)
OF CALIFORNIA)

GENERAL ORDER NO. 42

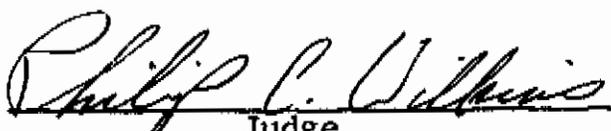
A final Plan to implement the provisions of the Criminal Justice Act of 1964, as amended by Act of October 14, 1970 (P.L. 91-447, 91st Cong., 84 Stat. 916) which Plan provides for the establishment of a Federal Public Defender office in said Eastern District of California with headquarters in Sacramento, California, was adopted by the judges of this court on the 29th day of January 1971, and was approved by the Ninth Circuit Judicial Council on February 24, 1971.

The said Plan shall hereinafter be designated General Order No. 42 of this court.

Dated: April 19, 1972.


Chief Judge


Judge


Judge

P L A N

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

Pursuant to the provisions of Criminal Justice Act of 1964 (18 U.S.C. 3006A) as amended by the Act of October 14, 1970 (P.L. 91-447, 91st Cong., 84 Stat. 916), the judges of the United States District Court for the Eastern District of California have adopted the following amended Plan for the adequate representation of any person otherwise financially unable to obtain adequate representation,

(1) who is charged with a felony or misdemeanor (other than a petty offense as defined in 18 U.S.C. 1(3)), or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, or

(2) who is under arrest, when such representation is required by law, or

(3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, subject to the conditions of 18 U.S.C. 3006A(g) as amended, or

(4) 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. Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

I. Provision for Furnishing Counsel

A. This plan provides for the furnishing of legal services by a Federal Public Defender Organization when and if appointed by the Judicial Council of the Ninth Judicial Circuit under the terms of 18 U.S.C. 3006(h)(2)(A) as amended by P.L. 91-447. In addition this plan provides for the continued appointment and compensation of private counsel in a substantial proportion of cases.

B. The Court in its discretion will determine whether any party entitled to representation will be represented by an organization as described in A, or by a private attorney. Insofar as practicable private attorney appointments will be made in at least 25 percent of the cases. For the sole purpose of allocation of cases as between private attorneys on the one hand, and the federal public defender organization on the other, a "case" shall be deemed to be each separate appointment of counsel made by the court, magistrate, or commissioner, pursuant to this Act, each "new trial" as defined in 18 U.S.C. 3006A(d)(5), and each appeal docketed in the United States Court of Appeals.

II. Establishment of the Federal Public Defender Organization

The Court has determined that the use of a Federal Public Defender Organization as defined in 18 U.S.C. 3006A(h)(2)(A) will facilitate the representation of persons entitled to the appointment of counsel under the Criminal Justice Act of 1964, as amended, and that the Eastern District of California is a district in which at least two hundred persons annually require the appointment of counsel pursuant to 18 U.S.C. 3006(h)(1) as amended, pertaining to the qualifications necessary to establish such an organization.

The Court has submitted its recommendation to the Judicial Council of the Ninth Circuit pursuant to 18 U.S.C. 3006A(h)(2)(A) for the establishment of a Federal Public Defender's Office with headquarters in Sacramento, California, capable of rendering legal services on appointment throughout the district. On the appointment of a Federal Public Defender by the Judicial Council, and the organization of his office as provided by the Act, the said Public Defender will be available for appointment as provided in the Act (18 U.S.C. 3006A(a)(2)). Neither the Federal Public Defender nor any staff attorney appointed by him may engage in the private practice of law.

The Public 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. Copies of such reports shall be furnished to this Court and to the Judicial Council of the Ninth Circuit.

Therefore, subject to the approval of this Plan by the Judicial Council, this Court designates the Federal Public Defender Organization to act in this district when the Federal Public Defender is appointed by the Judicial Council and notifies this Court that his office is organized and ready to accept appointments under this Plan.

III. Sources of Names

A. Panel of Attorneys

The bar association of the several cities and counties within the district have prepared and certified to this Court, a list of attorneys who, in the opinion of each certifying bar association, are competent to give adequate representation to parties under the Act, and who are willing to serve. The Court has on the basis of such lists and its own inquiry, established and approved a panel of attorneys. The Court ratifies such existing panel and such existing procedures.

Additions to and deletions from the panel of attorneys may be made from time to time by the Court, so that there shall be sufficient names on the list to provide adequate

representation to persons financially unable to obtain adequate representation; and to distribute the work fairly among the members of the Bar. In making such additions and deletions, the Court shall not be limited to the lists furnished by the several bar associations, but may act on suggestions of Judges, United States Magistrates and the Federal Public Defender of this Court as well as from other sources.

B. List of Personnel of the Federal Public Defender Organization

The Federal Public Defender shall furnish to this Court the initial roster of the personnel of his office and shall thereafter report any changes therein.

C. Management of Lists of Attorneys

The clerk of this Court shall maintain a current roster of all attorneys included on the panel approved by the Court with current office addresses and telephone numbers. He shall also maintain a public record of assignments of cases to the Public Defender, as well as assignments to private counsel, and current statistical data reflecting the proration of appointments as between staff attorneys of the Federal Public Defender Organization on the one hand, and private attorneys on the other, according to the formula described in Subtitle B of Title I of this Plan.

The organization will make such arrangements with Federal, State, and local investigative and police agencies as will adequately assure that at the earliest practicable stage, persons arrested under circumstances where such representation is required by Federal law may promptly have counsel furnished them by the organization. In communities where an organization attorney is not available, such investigative and police agencies shall have access to the name, address and telephone number of an attorney from the roster of attorneys approved by the Court.

IV. Determination of Need for Counsel

A. When Appearing Before a Magistrate or Court in a Criminal Case

In every criminal case in which the party is charged with a felony or misdemeanor (other than a petty offense), or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor, or with a violation of probation, and appears without counsel, the magistrate or the court shall advise the party that he has the right to be represented by counsel throughout the case and that counsel will be appointed to represent him if he so desires and if he is financially unable to obtain counsel.

Whenever the party states that he is financially unable to obtain counsel and desires the appointment of counsel, if the case is then pending before a magistrate, it shall be the duty of the magistrate to inquire into and to make a finding as to whether the defendant is financially able to obtain counsel. If the case is not pending before a magistrate, it shall be the duty of a judge to conduct such inquiry and to make such finding [unless the court by separate written order delegates the function to the magistrate of making all appointments under the Criminal Justice Act program]. An appointment may be made retroactive to include any representation furnished prior to such appointment as is otherwise explained in Subtitle B infra. The court or the magistrate shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

All statements made by a defendant in such an inquiry shall be either (a) by affidavit sworn to before a judge, a court clerk, or his deputy, a magistrate, or a notary public, or (b) under oath in open court before a magistrate or a judge.

B. Counsel for Person Arrested when Representation Is Required by Law

Where a person arrested has been represented by counsel before his presentation before a judicial officer under circumstances where such representation is required by law, his

counsel may subsequently apply to the court or a magistrate for approval of compensation. If such application is made to a magistrate, the magistrate shall submit his recommendation to a judge of this Court for final approval. If the court or magistrate finds such person has been and is then financially unable to obtain an adequate defense, and that such representation was required by law, compensation will be made retroactive to cover out-of-court time expended by the attorney during the arrest period, and in addition cover compensation for services rendered from the time of his initial presentation before a magistrate, or the court, as the case may be. The court or magistrate may make retroactive appointment of counsel where such attorney will continue to represent such party in criminal proceedings in this court. If the person represented is unavailable at the time counsel applies to the court for approval of compensation for services rendered during the arrest period, the attorney may nevertheless submit his claim to the court for approval based on the arrestee's financial condition and a showing that such representation was required by law.

C. Other Appointments as of Right

The court or magistrate may proceed as under Subtitle A above to make an appointment of counsel for a person (1) whom the Sixth Amendment to the Constitution requires the appointment of counsel or (2) for whom, in a case in which he faces loss of liberty and Federal law requires the appointment of counsel.

D. Discretionary Appointments

Any person subject to revocation of parole, in custody as a material witness, or seeking relief under 28 U.S.C. 2241, 2254, or 2255 of Title 28 or 18 U.S.C. 4245 may apply to the court or magistrate to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially unable to obtain representation. Such application shall be under oath and in such written form as is prescribed by the Judicial Conference of the United States. If the party applicant is not before the court, the court or magistrate may, without requiring the personal appearance of the party for such purpose, act on the basis of the form alone, or the form as supplemented by such information as may be made available by an officer or custodian or other responsible officer, provided that such information is also made available to the party. The court or magistrate may approve such representation on a determination that the interests of justice so require and that such person is financially unable to obtain representation.

V. Appointment of Counsel

A. The Magistrate

In every criminal case in which a party is charged with a felony or misdemeanor other than a petty offense, or with violation of probation, and appears without counsel before a

magistrate, it is the duty of the magistrate not only to advise the party of his right to counsel before the magistrate and throughout the case, but also promptly to appoint counsel to represent the party if the magistrate finds that the party is financially unable to obtain an attorney, unless the party waives his right to be represented by counsel. The magistrate shall similarly proceed in any proceeding as described in Subtitle C of Title IV above.

The magistrate shall in appointing such counsel use the **Federal Public Defender** or a roster of 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. The party shall not have the right to select his appointed counsel from the Federal Public Defender Organization, from the panel of attorneys or otherwise.

Counsel appointed by a magistrate shall, unless excused by order of court, continue to act for the party throughout the proceedings in this Court. In the event that a criminal 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 in a criminal case, counsel shall file a timely Notice of Appeal, and he shall continue to represent the defendant unless, or until, he is relieved by the District

Court or the Court of Appeals. If counsel appointed by a magistrate in any proceeding wishes to be relieved, he shall communicate his wish to the magistrate or judge before whom the case is then pending.

The magistrate before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings before him.

If at any time after the appointment of counsel, the magistrate finds that the party is financially able to obtain counsel or make partial payment for the representation, he may terminate the appointment of counsel or recommend to the court that any funds available to the party be ordered paid as provided in 18 U.S.C. 3006A(f).

If at any stage of the trial proceedings, the magistrate finds that the party is financially unable to pay counsel whom he had retained or to obtain other counsel, the magistrate may make an original appointment of counsel in accordance with the general procedure set forth in this Plan, which counsel may claim compensation for services rendered pursuant to the Act.

A claim for compensation and reimbursement of expenses of counsel appointed in a case tried or hearing held before the magistrate shall be made to the magistrate on the prescribed CJA form. The magistrate shall examine each claim. If the proceeding was concluded before him, he may pass on the claim,

if not, he shall make a recommendation to the court as to the amount which the court should fix in accordance with the statute and this Plan.

Counsel for a defendant charged with a minor offense, other than petty offense, to be tried before the magistrate, may, in an ex parte application to the United States magistrate, request investigative, expert or other services if the defendant is financially unable to obtain them. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the magistrate shall recommend to the court that the Federal Public Defender Organization or counsel be authorized to obtain such services on behalf of the defendant. The magistrate may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, recommend that the court ratify such services after they have been obtained. A claim for any such services shall be reviewed by the magistrate who shall make a recommendation to the judge with respect to the amount to be allowed by the court in accordance with the statute.

If a party having a right to counsel (i.e., where the appointment is not a matter of discretion) is not represented by counsel before the magistrate and waives his right to have appointed counsel, the magistrate shall present to the party a waiver of right to have appointed counsel. If such party

executes the waiver, the magistrate shall certify that fact in the record of the proceedings. If such party waives the right to have appointed counsel but refuses to execute such a waiver, the magistrate shall certify that fact in the record of proceedings. If such party admits or the magistrate finds that such party is financially able to obtain counsel but declines to do so, the magistrate shall certify that fact in the record of proceedings.

B. The Clerk

If counsel has not been appointed by the magistrate or the appointment of such counsel has been terminated by the court, and the clerk learns from the report of the magistrate, from the Public Defender, from the United States Attorney, from the party himself, or otherwise, that a party having a right to counsel desires to have counsel appointed to him, then --

(a) if no affidavit of financial inability to employ counsel has been filed with the clerk, he shall promptly send to the party a form of affidavit, to be filled out by the party and returned to the clerk; or

(b) if the notice to the clerk includes an affidavit of such financial inability to employ counsel and as soon as the clerk receives such an affidavit, the clerk shall promptly communicate with a magistrate or judge of this Court to arrange for the appointment of counsel in the manner provided in this Plan. If a party to a proceeding described in Subtitle D of Title IV of this Plan desires to apply for a discretionary appointment

of counsel, he shall promptly send such party the appropriate CJA forms to be executed and filed in accordance with said Subtitle D of Title IV.

C. The Judge

Whenever the clerk presents to a judge of this court a proposed order for the appointment of counsel for a party entitled as of right to counsel and the judge is satisfied that the party does not elect to waive counsel, and is financially unable to employ counsel, the judge shall appoint counsel for him.

If a judge, the clerk, the United States Attorney, other law enforcement officer, a Parole Board representative, the Public Defender, an appointed attorney, or a representative of a bar association challenges the claimed financial inability of a party to employ a lawyer, the determination of the defendant's right to have appointed counsel shall be made by a judge of this court [or by a magistrate appropriately designated by this court].

Whenever it shall appear to the presiding judge at the time of arraignment or at any other time, that a party entitled as of right to counsel is not represented by counsel and has not voluntarily waived the assistance of counsel, the judge shall determine whether such defendant is financially able

to obtain counsel and, if not, shall appoint counsel for him. The judge may also make a discretionary appointment as provided in Subtitle D of Title IV. If in either situation the judge concludes that counsel should be appointed, he will appoint the Public Defender Organization or make an appointment from the roster, provided however, that in extraordinary situations, in the interest of justice, the judge may appoint any member of the bar of this court to represent such a party.

The appointment of such counsel is the province of the judge. The party shall not have the right to select his appointed counsel from the attorneys of the Public Defender Organization or from the panel of attorneys or otherwise.

Counsel appointed by a judge or the Public Defender Organization attorney shall, unless excused by order of court, continue to act for the party throughout the proceedings in this court. In the event that a criminal 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 such defendant, counsel shall file a timely Notice of Appeal, and he shall continue to represent the defendant unless, or until, he is relieved by the Court of Appeals.

A judge may, in the interest of justice, substitute one appointed counsel for another at any stage of any proceeding in this court.

D. Redetermination of Need

If at any stage of the proceeding, a judge or magistrate shall find that a party for whom counsel has not previously been appointed under this Plan but who has retained his own attorney, is financially unable to provide for his continued representation, the judge or magistrate may appoint counsel for such party. The court will ordinarily not appoint the same attorney.

No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a party, unless such payment is approved by order of court or except under the circumstances set forth in Subtitle B of Title IV, supra.

If at any time after his appointment counsel should have reason to believe that a party is financially able to obtain counsel or to make partial payment for counsel, he shall advise the court. The court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such defendant.

In such event, the amount so paid or payable by the party shall be considered by the court in determining the total compensation to be allowed to such attorney.

VI. Investigative, Expert and Other Services

A. Upon Request

Counsel (whether or not appointed under the Criminal Justice Act) for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his case may request such services in an ex parte application before a judge, or before a magistrate if the services are required in connection with a matter over which the magistrate has jurisdiction or if the 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 court, or the magistrate, as the case may be, shall authorize counsel or the Public Defender Organization to obtain the services. The judge or magistrate may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by 18 U.S.C. 3006A(e)(3).

B. Without Prior Request

A counsel, appointed under the Criminal Justice Act or the Public Defender Organization, may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for an adequate defense.

The total cost of services obtained without prior authorization, however, may not exceed a maximum of \$150.00 and expenses reasonably incurred, and no greater amount may be authorized regardless of the number of persons used or the character of services. A sworn application may be made by counsel to the court on the appropriate CJA form for the ex parte review by the judge or magistrate and for ratification of such expenses. Such expenditures without prior court authorization are not favored, and in addition to showing that such expenditures were "necessary for an adequate defense" and that the person was financially unable to obtain them, the application for ratification must show why prior authorization could not have been obtained.

C. Necessity of Affidavit

The statements made by or on behalf of the party in support of the request under Subtitles A or B supra, shall be made either by affidavit sworn to before the clerk, or other appropriate officer, or under oath in open court or before the magistrate.

VII. Compensation

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 Title VI 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. Schedule of Maximum Fees for Counsel and Other Services

The following fees are hereby prescribed for this District:

1. Maximum Hourly Rate for Counsel. The maximum hourly rate for attorneys shall not exceed \$30 per hour for time expended in court or before a United States magistrate, and \$20 per hour for time reasonably expended out of court or a hearing. In addition, however, such attorney or the organization furnishing such attorney shall be reimbursed for expenses reasonably incurred, including the cost of any necessary transcripts authorized by the court or its magistrate.

2. Maximum Amounts for Counsel. For representation of a defendant before a magistrate or this court, or both, the maximum compensation to be paid to an attorney shall not exceed \$1,000 for each attorney in a case in which one or more felonies are charged, and

\$400 for each attorney in a case in which only misdemeanors are charged. Representation of a defendant on a new trial shall be considered a separate case, and fees shall be paid on the same basis as on the original trial.

For representation of a defendant in an appellate court the maximum attorney's fee shall not exceed \$1,000 per attorney.

A maximum of \$250 per attorney is provided by any of the following representations:

- (a) a post-trial motion made after entry of judgment,
- (b) a probation revocation proceeding,
- (c) a parole revocation proceeding,
- (d) representing a material witness,
- (e) representing a person seeking relief under 28 U.S.C. 2241, 2254, or 2255, and 18 U.S.C. 4245.

3. Waiving Maximum Counsel Fees. Payment in excess of any maximum amount provided in Subpart 2 above, may be made for extended or complex representation whenever the court in which the representation was rendered, or the magistrate, if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Ninth Judicial Circuit.

4. Payment for Services Other than Counsel.

(a) Previously Approved Services. Where counsel has received prior authorization for services, the maximum which may be paid per person so authorized shall not exceed \$300 exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the magistrate (if the services were rendered in connection with a case disposed of entirely before him) 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 Ninth Judicial Circuit.

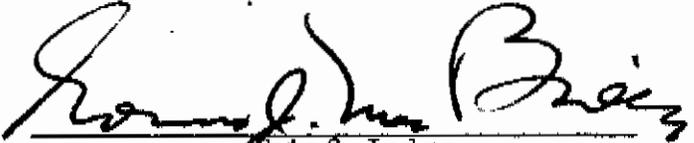
(b) Services Furnished Without Prior Request. The total cost of all services obtained without prior authorization may not exceed a total of \$150 and expenses reasonably incurred. Waiver of such limit is not provided for in this Plan.

VIII. Forms

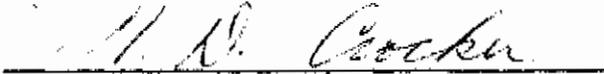
Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the court, the clerk, the magistrates, the Public Defender Service, and counsel.

IX. Effective Date

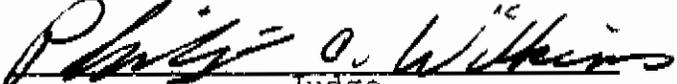
This Plan as amended this 29th day of January, 1971, shall take effect when approved by the Judicial Council of the Ninth Circuit.



Chief Judge



Judge



Judge

Judge

Judge

The above plan was approved by the Ninth Circuit Judicial Council on February 24, 1971, and notice of said approval was forwarded to the Director of the Administrative Office on that date by Chief Judge Chambers.