

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
CRIMINAL JUSTICE ACT PLAN**

Effective: March 9, 2022

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the [Guide to Judiciary Policy, Volume 7A](#), the United States Court of Appeals for the Second Circuit adopts this Plan for furnishing representation in the Court of Appeals for any person financially unable to obtain adequate representation consistent with the CJA.

**I. STATEMENT OF POLICY**

The objectives of this Plan are to attain the goal of equal justice under the law for all persons; to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the Guide, Vol. 7A, in a way that meets the needs of this Court.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

To ensure compliance with this Plan, the Court, the Clerk of Court, all federal public defender or community defender organizations, attorneys provided by a bar association or legal aid agency, and private attorneys appointed under the CJA must comply with the Guide, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan. The Court will also ensure that a current copy of this Plan is made available on the Court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys ("CJA panel").

**II. PREPARATION AND MAINTENANCE OF CJA PANEL**

**A. Appointment to the CJA Panel**

1. The Court administers this Plan with the assistance of the Court's CJA Committee and the Court-appointed CJA Attorney Advisory Group ("AAG"). The AAG primarily reviews applications for membership on the CJA panel and otherwise promotes the furnishing of representation pursuant

to this Plan. The AAG consists of the Attorney-in-Charge of the Appeals Bureau of the Federal Defenders of New York and twelve other attorneys selected by the Court for terms not to exceed three years who will collectively represent all the districts in the Circuit. The members of the AAG must be admitted to practice in this Court and may not be members of the CJA panel.

2. In death penalty appeals, the Chair of the CJA Committee must consult with the Chair of the AAG and either the relevant district's Federal Public Defender organization or the Defender Services Office of the Administrative Office of the United States Courts (AO) regarding the appointment of learned counsel and additional counsel.
3. A private attorney seeking to be included on the CJA panel must apply for membership on the panel. When seeking applications to the panel, the Court publishes an announcement on the Second Circuit Court of Appeals website with application instructions. Applicants must be members in good standing of the bar of the Court, and must have demonstrated experience in and knowledge of Title 18 and the habeas corpus provisions of Title 28 of the United States Code, the Federal Rules of Appellate Procedure (FRAP), the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the [Court's Local Rules](#) (LRs) and Internal Operating Procedures (IOPs), the United States Sentencing Guidelines, and other relevant federal law.
4. The Court appoints attorneys to the CJA panel upon appropriate recommendation from the Committee, after consultation with the AAG. Panel members are selected based on demonstrated qualification, skill, and dedication. One factor in selection is whether the applicant maintains an office within the Circuit.
5. CJA panel members serve for a term not to exceed three years, but may be removed by the Court prior to the expiration of their term. Terms are staggered so that the terms of approximately one-third of panel members expire each year. Upon expiration of his or her term, a CJA panel member must reapply for membership to continue as a member of the CJA panel.
6. The Clerk of Court maintains a list of CJA panel members. Attorneys appointed to the CJA panel must notify the Clerk of Court within 48 hours of any changes in business address, business telephone number, e-mail address, or employment.

#### **B. Removal from the CJA Panel**

1. The Court may remove a CJA panel member from the CJA panel if it

determines that the member has failed to satisfactorily fulfill the obligations of panel membership, including the duty to afford competent counsel, or that the member has engaged in other conduct that renders inappropriate the attorney's continued service on the CJA panel.

2. The Court may remove a CJA panel member for refusing to serve as appointed counsel for three separate cases during the membership term.
  3. A CJA panel member is suspended automatically if the member is disbarred or suspended by any state or federal bar, or is arrested for, charged with, or convicted of a crime. A CJA panel member must notify the Clerk of Court in writing within 24 hours of any such suspension, disbarment, arrest, or filing of criminal charges or conviction. *See also* LR 46.2. Disbarment or suspension by any state or federal bar or conviction of a crime also constitutes grounds for automatic removal from the CJA panel.
- C. Complaints concerning the conduct of CJA panel members should be submitted to the Clerk of Court. If the CJA Committee determines that a complaint alleges facts that, if true, would warrant consideration of removal of the CJA panel member, or that other facts exist potentially warranting removal of a panel member, the CJA Committee may direct the AAG to review the complaint, or make such other inquiry as it deems appropriate, and to issue a report of its findings and recommendations to the Committee.
- D. CJA panel members may select, with acquiescence from the Chief Judge, a member of the CJA panel to serve as the CJA panel representative to the Court.

### **III. DETERMINATION OF NEED FOR APPOINTED COUNSEL**

- A. In all cases in which the district court found the defendant to be financially unable to obtain adequate representation, the Court may accept this finding and appoint or continue an attorney without further proof, except as noted in FRAP 24(a)(3). If the defendant appears pro se, the Clerk of Court must notify the defendant that he or she has a right to the appointment of an attorney under the CJA.
- B. When a request for the appointment of an attorney under the CJA is made for the first time on appeal, the Court must find that the CJA applicant is financially unable to retain counsel consistent with the Guide, Vol. 7A § 210.40.
- C. The Court may, at any time after the appointment of counsel, re-examine the

financial status of a CJA client<sup>1</sup>. If the Court finds that a CJA client is financially able to obtain counsel or make partial payment for the CJA client's representation, the appointment should be terminated, or partial payment required. If a CJA attorney learns any information indicating that a CJA client can make payment in whole or in part for legal services, the CJA attorney must report such information promptly to the Clerk of Court so that appropriate action may be taken.

#### **IV. APPOINTMENT OF COUNSEL**

- A.** Counsel appointed under the CJA to represent a CJA client in the district court must continue such representation on appeal unless relieved by order of the Court. *See* LR 4.1.
- B.** In all cases on appeal in which the CJA requires appointment of an attorney, the Court must appoint a CJA panel member to represent the defendant within a reasonable time after the appeal is docketed.
- C.** When the Court determines that the appointment of an attorney who is not a member of the CJA panel is appropriate, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA client.
- D.** Retained counsel, regardless of membership on the CJA panel, may seek to be appointed under the CJA but must provide financial documentation as specified in Section III.
- E.** In appeals involving more than one defendant entitled to representation under the CJA, the Court should normally appoint separate CJA counsel to represent each defendant unless the circumstances do not so warrant.
- F.** The Court may, at any point in the appellate proceedings, substitute one appointed counsel for another. Total compensation to all counsel is subject to the maximum permitted by the CJA. Appointed counsel replaced by such substitution must, absent the Court's approval of interim payment, await the final disposition of the appeal before submitting a claim for compensation.

#### **V. DUTIES OF APPOINTED COUNSEL**

- A.** CJA trial counsel must advise a defendant of the right to appeal and of the obligation to file a timely notice of appeal. CJA trial counsel must file such notice of appeal, unless the CJA client states that a notice of appeal should not be filed. When appropriate, CJA trial counsel must also file [CJA Form 24](#) with the district court for the furnishing of the reporter's transcript at the

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<sup>1</sup> "CJA client" is used throughout this Plan to refer to a person for whom counsel has been appointed under the CJA.

expense of the United States.

- B.** A CJA attorney must file an [Oral Argument Statement Form](#) in compliance with LR 34.1(a). It is expected that a CJA attorney will request oral argument in most criminal appeals. A CJA attorney must appear for any scheduled oral argument unless excused by the Court.
- C.** A CJA attorney must furnish all papers relating to the CJA client's appeal to the client, including all the Court's opinions and orders.
- D.** A CJA attorney may use and claim compensation for the services of other attorneys as follows:
  - 1. In non-capital cases, a CJA attorney may use and claim compensation for the services of an associate or partner. A CJA attorney may use and claim compensation for the services of an unaffiliated attorney only with prior Court authorization. The CJA attorney is expected to serve as the lead attorney throughout the representation. Claims for compensation must not exceed the maximum compensation allowed by the CJA.
  - 2. In capital cases, a CJA attorney may use and claim compensation for the services of attorneys who work in association with them, with prior Court authorization, provided that the use of such additional counsel diminishes the total cost of representation or is required to meet time limits. *See* Guide, Vol. 7A § 620.10.
- E.** In the event of a decision adverse to a CJA client in this Court, the CJA attorney must: promptly transmit to the CJA client a copy of the Court's decision; advise the CJA client in writing of the right to file a petition for panel rehearing or rehearing en banc in this Court and a petition for a writ of certiorari with the United States Supreme Court; inform the CJA client of the CJA attorney's opinion as to the merit and likelihood of success of such petitions; and if requested to do so, file such petitions. A CJA attorney who has reasonable grounds to believe that a petition would have no likelihood of success may file a motion to withdraw under LR 4.1. In the event the CJA attorney moves to withdraw after the CJA client has requested that a petition for rehearing or rehearing en banc be filed, the attorney must include in the motion to withdraw a request on behalf of the CJA client for an extension of time of 30 days for the CJA client to petition pro se for rehearing or rehearing en banc. If the Court relieves the CJA attorney, he or she must, within 48 hours after such motion is granted, so advise the CJA client in writing and inform the CJA client concerning the procedures for filing a petition for panel rehearing, rehearing en banc, and a writ of certiorari pro se.
- F.** If an adverse party petitions for panel rehearing, rehearing en banc, or a writ

of certiorari to review a judgment of this Court, the CJA attorney must take all necessary steps to oppose the petition. Unless the Court requests, no response to a petition for panel rehearing or rehearing en banc is permitted to be filed. FRAP 35(e), 40(a)(3).

- G. A CJA attorney must continue to represent a CJA client in the district court upon remand unless relieved.

## **VI. WITHDRAWAL OR RELEASE OF APPOINTED COUNSEL**

- A. A CJA attorney who represented a CJA client in the district court and who wishes to be relieved from representing the CJA client on appeal must follow the requirements of LR 4.1. The district court may also relieve counsel appointed under the CJA by substituting new counsel. Once the notice of appeal is filed, only the Court of Appeals may assign or relieve counsel.
- B. A CJA attorney who seeks to be relieved on the grounds that there is no nonfrivolous issue to be raised on appeal must follow the procedures of *Anders v. California*, 386 U.S. 738 (1967).
- C. A CJA attorney seeking to withdraw following an adverse decision of this Court and to be relieved of the obligation to file a petition for a writ of certiorari with the U.S. Supreme Court based upon reasonable grounds to believe that the petition would have no likelihood of success must follow the requirements of LR 4.1(c).
- D. A CJA client seeking to have a CJA attorney relieved or to have substitute CJA counsel appointed must file a motion setting forth compelling reasons for the requested action and giving a detailed account of the facts justifying the request. The Court will deny the motion absent compelling circumstances.

## **VII. PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES**

- A. A CJA attorney may request or accept payment from or on behalf of a CJA client for representation in this Court only upon prior authorization of the Court and pursuant to the requirements of the Act. *See* 28 U.S.C. § 3006A(f).
- B. A CJA attorney seeking compensation for the representation of a CJA client in this Court must submit the relevant CJA eVoucher in accordance with the rules, regulations, and forms promulgated by the AO. Unless a judge otherwise orders, a claim for compensation and reimbursement of expenses must be submitted no later than 45 days after [i] a mandate has issued; [ii] termination of the case in the district court or in the Court of Appeals if the appeal is from an interlocutory order

or results in remand to the district court; or [iii] termination of the representation if the representation is terminated before issuance of the mandate or termination of the case and a motion for interim payment is filed. The Clerk of Court must forward all approved statements to the AO for payment.

- C.** The maximum hourly rate must not exceed the amount provided by statute and Judicial Conference policy.
- D.** The maximum payment for counsel per case must not exceed the amount provided by statute and Judicial Conference policy unless authorized by the Court as described in Section VII(E) of this Plan.
- E.** Upon application, a judge of this Court may certify compensation in excess of the compensation maximums set by statute and Judicial Conference policy. A CJA attorney submitting a voucher in excess of the compensation maximum must submit [CJA Form 27](#). The certifying judge must forward the application for excess compensation to the Chief Judge or Chief Judge’s designee along with a recommendation for approval or denial.
- F.** On motion of a CJA attorney, a judge of this Court may authorize interim payments when necessary and appropriate in a specific case. The Chief Judge or the Chief Judge’s designee must approve the interim payment.
- G.** A judge reviewing a pending voucher who intends to reduce a claim for compensation will provide the CJA attorney prior notice of the proposed reduction with a statement of reasons. Reductions in claimed compensation should be limited to: mathematical errors; instances in which work billed was not compensable; instances in which work was not undertaken or completed; and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task. CJA counsel may submit a response within 10 days of the notice. CJA counsel may appeal a voucher reduction determination to the Court’s CJA Independent Review Committee (“IRC”). The IRC will consist of a senior circuit judge, the Chair of the AAG, and two other members of the AAG selected by the AAG Chair in consultation with the senior judge. The CJA case-budgeting attorney will serve ex officio to act as an administrative coordinator. The IRC establishes procedures for reviewing vouchers consistent with the *Guide*, Vol. 7A § 230.33.40 and the requirements under 18 U.S.C. § 3006(A)(d). The IRC files a report and recommendation to the Chief Judge, and the Chief Judge’s determination is final.
- H.** Only an appointed attorney may claim compensation under the CJA. An appointed attorney may claim compensation for an affiliated or unaffiliated attorney, consistent with the *Guide*, Vol. 7A §§ 230.53.10, 620.10 and Section V(D) of this Plan. The total compensation provided for the representation of the CJA client must remain within the maximum compensation allowed by

the CJA.

- I. When expert services are required, a CJA attorney must consult with the Second Circuit's case budgeting attorney.
- J. Reasonable out-of-pocket expenses may be claimed if itemized and suitably documented. Supporting documentation is required for single item expenses of \$50 or more.
- K. CJA counsel is entitled to reimbursement for expenses reasonably incurred for travel consistent with the Guide, Vol. 7A § 230.60 and § 230.63.40.

### **VIII. MISCELLANEOUS**

- A. The forms prepared and furnished by the AO must be used, where applicable, in all proceedings under this Plan.
- B. The Court will make such reports on the implementation of the CJA as prescribed by the Judicial Conference of the United States or a committee thereof.
- C. This Plan is intended only as a description of the procedures this Court will follow; it does not create any rights as against any individual or institution.
- D. The Court may make amendments to this Plan as needed.