

GENERAL ORDER #21

FEB 11 1981

CRIMINAL JUSTICE ACT PLAN FOR THE
DISTRICT OF IDAHO

JERRY L. STAPP, Clerk
By: EB Deputy

I. GENERAL

Pursuant to the provisions of the Criminal Justice Act of 1964 (18 USC 3006A) as amended by the Act of October 14, 1970, (P.L. 91-447, 91st Congress, 84 Statute 916), the Judges of the United States District Court for the District of Idaho 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 USC Section 1) 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 or is in custody as a material witness or seeking relief subject to the conditions set forth in 18 USC 3006A(g), as amended, or (4) who is a person for whom the 6th Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he faces loss of liberty, federal law requires the appointment, or (5) who is facing a parole termination hearing pursuant to Section 4211(c), Title 18 of the United States Code. Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

Cases or proceedings which are not covered by or compensable under the Act include: (1) petty offense cases unless, in the opinion of the Judge or Magistrate, the defendant faces the likelihood of loss of liberty if convicted, (2) corporate defendant cases, (3) prisoners bringing civil rights actions under 42 USC 1983, (4) civil actions to protect federal jurors' employment, and (5) administrative deportation proceedings before the Immigration and Naturalization Service.

Attorneys who participate in this Plan will do so in fulfillment of their professional responsibility as officers of the Court and the compensation provided for in the Act in no respect diminishes that

responsibility.

II. PANEL OF ATTORNEYS

A. SOURCE OF NAMES. On or before January 15 of each year following the presidential election, each Magistrate in the District of Idaho shall submit a separate roster of attorneys to the Clerk of Court, which shall serve, after approval of the Judges of this Court, as the panel of attorneys for indigent appointments as specified in the Criminal Justice Act of 1964, as amended.

The District of Idaho shall be divided into three divisions for purposes of this Plan and there shall be a separate panel of attorneys for each of these divisions as follows:

Southern Division, consisting of the counties of:

Ada	Cassia	Minikoka
Adams	Elmore	Owyhee
Blaine	Gem	Payette
Boise	Gooding	Twin Falls
Camas	Jerome	Valley
Canyon	Lincoln	Washington

Northern Division, consisting of the counties of:

Benewah	Kootenai
Bonner	Latah
Boundary	Lewis
Clearwater	Nez Perce
Idaho	Shoshone

Eastern Division, consisting of the counties of:

Bannock	Caribou	Jefferson
Bear Lake	Clark	Lemhi
Bingham	Custer	Madison
Bonneville	Franklin	Oneida
Butte	Fremont	Power
		Teton

Said panels shall contain attorneys who shall be members in good standing of the bar of this State, shall have practiced law for at least two years, and are residents of this State. In preparing and submitting these lists, each Magistrate shall seek the advice and assistance of the Idaho State Bar and of other local bar associations.

The panels of attorneys which are submitted shall be sufficiently large to ensure that one person or law firm does not receive a disproportionate share of the CJA appointments. After approval by the Judges of this Court, the Clerk and Magistrates shall each maintain a rotating list, or similar system, which insures that the appointments are divided equally among the persons on said lists.

Once the Magistrates have submitted their proposed panel of attorneys, the Clerk shall check the lists to insure that the attorneys are members in good standing of this Court. Thereafter, the Clerk may supplement the lists, provided that the parties have requested in writing to be on said lists and that they have qualified under the provisions of this Plan. The Clerk will then prepare three alphabetical lists of attorneys according to the three geographic divisions within the District of Idaho. Thereafter, the Clerk of Court shall submit said rosters of attorneys to the Chief Judge of this Court for approval or modification. Any Judge of this Court may, after examination, delete or supplement said lists. Once the three divisional panels have been approved by the Judges of this Court, the Clerk shall record the lists and shall forward a certified copy of the appropriate panel to each Magistrate in the District of Idaho. These rosters shall then be used by the Judges of this Court, the Magistrates, and the Clerk as the source lists for all indigent appointments under the Criminal Justice Act of 1964, as amended.

If subsequent requests for inclusion on any of these lists are presented to a Judge or Magistrate, and said names are found to be qualified under the provisions of this Plan, the names shall be automatically included on the appropriate divisional panel of attorneys, provided that notice of such inclusion is forwarded to the Clerk of Court in Boise. Said lists shall be periodically reexamined to insure that they are current at all times.

B. SPECIFICS - PANEL ATTORNEYS. Each name on said lists (cards) shall include the attorney's social security number, a brief description of their experience, and their address and telephone number.

If the Court appoints a panel attorney, the person so appointed and not an associate shall represent the defendant at all stages of the proceeding, unless upon petition to the Court a substitute appointment is granted.

Panel attorneys will be expected to take all cases assigned to them unless, upon petition to the Court in writing and for good cause shown, they are excused.

All attorneys who are presently included in said panels of

attorneys and who do not wish to be assigned cases for representation of indigent defendants, shall so state in writing to the Clerk's Office in Boise. Upon receipt of such request, their names shall be removed from the panel of attorneys.

III. DETERMINATION OF NEED FOR COUNSEL

Any person who is unable to obtain adequate representation and falls within the provisions of 18 USC 3006A(a) shall be advised at the earliest practicable stage of the proceedings of his right to counsel and shall be asked whether he is financially able to obtain counsel in his defense. Counsel should be provided as soon as feasible after the accused is taken into custody, when he appears before a committing Magistrate, or when he is formally charged, whichever occurs first. Whenever such a person 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 Magistrate, as the case may be, to inquire into and make a finding as to whether such person is financially able to obtain counsel. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he is financially unable to retain counsel, the Magistrate or District Judge may appoint counsel as soon thereafter as is practicable.

All statements made by a defendant in such an inquiry shall be either (a) by affidavits sworn to before a Judge or Magistrate, or (b) under oath in open Court before a Magistrate or a Judge.

A. STANDARDS OF ELIGIBILITY. A person is "financially unable to obtain counsel" within the meaning of the Act, if his net financial resources and income are insufficient to enable him to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to (a) the cost of providing the person and his dependants with the necessities of life, and (b) the cost of a defendant's bail bond if financial conditions are imposed, or the amount of the cash deposit defendant is required to make to secure his release on bond. Any doubts as to a person's eligibility should be resolved in his favor. Erroneous determinations of eligibility may be

corrected at a later time.

B. COUNSEL FOR PERSONS 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 (Magistrate) for approval of compensation. If the Court (Magistrate) finds such person has been and is then financially unable to obtain a lawyer, 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. In addition, compensation shall cover services rendered from the time of his initial presentation before a Magistrate or the Court, as the case may be. The Court (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 submit his claim to the Court for approval based upon the arrestee's financial condition and a showing that such representation was required by law.

C. OTHER APPOINTMENTS AS OF RIGHT. The Court (Magistrate) may proceed to make an appointment of counsel as specified in this Plan for a person (1) for whom the 6th Amendment to the Constitution requires the appointment of counsel, or (2) for whom in a case in which he faces loss of liberty, any 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 USC Sections 2241, 2254, or 2255 or 18 USC 4245 may apply to the Court (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 verified 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 (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 (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.

IV. APPOINTMENT OF COUNSEL

A. 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 inform the party of his right to counsel throughout the case, but also to promptly 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 appoint counsel from the panel of attorneys giving due consideration to the residence of the attorney, the place of hearing, and the residence of the accused.

Counsel appointed by a Magistrate shall, unless excused by order of the 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 shall inform 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 proceedings 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 USC 3006A(f).

If at any stage of the trial proceedings, the Magistrate finds that the party is financially unable to pay counsel whom he has retained or is financially unable to obtain other counsel, the Magistrate may appoint counsel and authorize payment in accordance with the general procedures set forth in this Plan.

A claim for compensation and reimbursement of expenses of counsel appointed in a case tried before the Magistrate shall be submitted on the prescribed CJA form. If the proceedings were exclusively held before the Magistrate, the Magistrate shall examine each such claim and fix compensation in accordance with the statute and this Plan.

If a party having a right to counsel, in cases 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 waives the right to 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 U.S. Attorney, from the party himself, or otherwise, that a party having a right to counsel desires to have counsel appointed for him, then: (1) if no affidavit of financial inability to employ counsel has been filed with the Clerk or Magistrate (CJA 23) he shall promptly send to the party a financial affidavit, to be filled out by the party and returned to the Clerk (this affidavit shall not be public record and will be kept under seal by the Clerk of the Court), or (2) if the notice to the Clerk includes an affidavit of such financial inability to employ counsel, the Clerk shall promptly communicate with a Magis-

trate or Judge of this Court to arrange for the appointment of counsel in the manner provided in this Plan.

C. PROCEEDINGS BEFORE THE DISTRICT JUDGE. The District Judge shall make his own findings as to the need to appoint counsel for any defendant but he may base such findings upon the affidavit made by the defendant before the Magistrate or upon the record, if any is made, before the Magistrate.

The District Judge in his discretion may appoint the attorney appointed by the Magistrate or he may appoint another attorney. If the District Judge does not appoint another attorney, the attorney appointed by the Magistrate shall continue to represent the defendant, unless he is permitted to withdraw from such representation or is otherwise relieved of the assignment.

Counsel appointed by the District Judge shall continue to act for the defendant throughout the proceedings in this Court and through appeal, unless or until he is relieved either by the District Judge or by the Court of Appeals.

Whenever it shall appear to a Judge 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 from the panel of attorneys. In appointing such counsel, the District Judge shall give due consideration to the residence of the attorney, the place of hearing, and the residence of the accused. 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 list of attorneys or otherwise.

In the event that a criminal defendant is convicted following trial, counsel shall inform 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.

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 is financially unable to pay counsel whom he has retained, the District Judge or Magistrate may appoint counsel as previously described in this Plan.

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 this Court.

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 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 inform the Court. The Court will then take appropriate action, which may include termination of the appointment or 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 accordance with the provisions of 18 USC Section 3006A(f).

E. CONFLICT OF INTEREST - JOINT REPRESENTATION. Any attorney appointed in a case for more than one defendant shall, at the earliest time, ascertain whether there is any conflict of interest or other good cause which might require or render advisable the appointment of separate counsel in the case. If he concludes that such conflict or other good cause exists, counsel shall promptly call the matter to the attention of the appointing Magistrate or District Judge for determination as to whether separate counsel shall be appointed. In addition, when two or more defendants have been jointly charged pursuant to Rule 8(B) or have joined for trial pursuant to Rule 13 and are represented by the same assigned counsel, the Court (Magistrate) shall promptly inquire with respect to such joint representation and shall periodically advise each defendant of his right to separate representation, if it appears that a conflict of interest is likely to arise.

F. DISCRETIONARY APPOINTMENTS. Any person subject to revocation of parole, in custody as a material witness, or seeking relief under Section 2241, 2254, 2255 of Title 28, or Section 4245 of Title 18 may be furnished representation pursuant to the Plan whenever the United

States Magistrate or the Court determines that the interests of justice so require and such person is financially unable to obtain representation.

V. SERVICES OTHER THAN COUNSEL

A. UPON REQUEST. Counsel (whether or not appointed under the CJA 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 United States Magistrate, if the services are required in connection with a matter over which the Magistrate has jurisdiction (or if the Judge otherwise refers the application to a Magistrate for findings and a 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 (Magistrate) shall authorize counsel to obtain the services. The Judge may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by 18 USC 3006A(e)(3).

B. WITHOUT PRIOR REQUEST. Counsel appointed under the Criminal Justice Act 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 without prior authorization, however, may not exceed the maximum provided by section 3006A(e) of Title 18, U.S.C. 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 a Judge or Magistrate for ratification of such expenses. Such expenditures without prior 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 statement made by or on behalf of the party in support of the request under subtitles A or B of this section

shall be made either by affidavit sworn to before the Clerk or other appropriate officer, or under oath in open Court.

VI. ADMINISTRATION: PAYMENT FOR COUNSEL FEES AND OTHER SERVICES

A. To the degree it deems advisable, the Court may delegate to the Clerk or to any Magistrate, such administrative duties and details as may be necessary or beneficial to effect the purposes of this Plan.

B. Payment of fees and expenses to counsel appointed under this Plan and payment for investigative, expert, and other services incurred pursuant to this Plan shall be made in accordance with such rules, regulations, and guidelines as have been or may be prescribed by the Judicial Conference of the United States. (Expenses reasonably incurred are limited to out of pocket expenses and shall not include any allocation for general office overhead, such as rent, telephone services, or secretarial help.)

C. Application under paragraph B of this Article shall be made ex parte to a District Judge or to a United States Magistrate (if the proceedings were held exclusively before the Magistrate) upon appropriate CJA Forms within the time periods specified in 28 USC 2006A. Each such application shall contain a statement of the services rendered, the amount of time spent by counsel, and an itemized list of the expenses reasonably incurred or applications incurred which have been authorized for payment or reimbursement. Any such application may be referred to the District Judge (Magistrate) who presided at the trial or to the District Judge (Magistrate) who appointed the applicant or who authorized or ratified the incurring of services. The Judge or Magistrate shall examine each claim and fix compensation in accordance with the statute and this Plan.

Upon approval of any such application by a District Judge or Magistrate, it shall be forwarded by the Clerk to the Administrative Office for payment, except in those circumstances in which an application is approved in an amount in excess of the limits provided in 18 USC 3006A. Under these circumstances, the CJA forms shall be forwarded by the Clerk to the Chief Judge of the United States Court of Appeals for the Ninth Circuit for approval prior to being forwarded to

the Administrative Office.

D. All applications for payment under the CJA must be submitted pursuant to the limits and guidelines promulgated by the Judicial Conference of the United States and within the statutory standards found in 18 USC 3006A.

VII. FORMS

The forms prepared and furnished by the Administrative Office shall be used, whenever applicable, in proceedings under this Plan. Any revisions of said forms or any additional forms that may be prescribed by the Administrative Office under the authority of the Judicial Conference of the United States or of the committee of that Conference to implement the CJA of 1964, as amended, and any forms which may be approved and promulgated by the Judges of this Court, shall likewise be used, where applicable, in all proceedings under this Plan.

A new appointment on CJA forms should be made for each person represented in the following proceedings: (a) new trial after motion, mistrial, reversal, or remand on appeal, (b) probation revocation proceedings, (c) appeals, including interlocutory appeals, (d) bail appeals to a court of appeals, and (e) extraordinary writs.

A. PRORATION OF CLAIMS. When a defendant is charged in one indictment, with several counts, one voucher should be submitted and one maximum applied under the Act, whether or not the counts are severed for trial. When a defendant is charged in two or more indictments, other than a superceding information or indictment, a separate voucher should be submitted for each indictment, whether or not consolidated for trial. In multiple defendant appointments counsel can appropriately file separate vouchers in each case but cannot charge separately for time spent on all cases. He must prorate such time, cross-referencing each case on all vouchers.

VIII. RULES AND REPORTS

The Chief Judge, on behalf of the Court, may promulgate such rules 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 may be

prescribed by the Administrative Office, the Judicial Conference of the United States, or by the committee of that Conference, to implement the Criminal Justice Act of 1964, as amended.

IX. AMENDMENTS

Amendments to this Plan may be made from time to time by the Judges of this Court, subject to the approval of the Judicial Council of the Ninth Circuit Court of Appeals.

X. DATE OF EFFECT

This Plan shall be effective, subject to the approval of the Circuit Council of the Ninth Circuit Court of Appeals, on _____ . The foregoing Plan has been approved and endorsed by the Judges of this Court.

DATED:

February 10, 1981

Ray McNichols
Chief Judge

Marian J. Callister
District Judge