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TO: Chief Judge Frances Tydingco-Gatewood, District of Guam
Jeanne Quintana, Clerk of Court, District of Guam

FROM: Robert E. Rucker, Ph.D., Assistant Circuit Executive

DATE: June 22, 2012

RE: District of Guam's Amended CJA Plan

This is to notify you that the amended version of the District of Guam's Criminal Justice Act Plan has been approved by the Judicial Council of the Ninth Circuit at its June meeting. If you have not done so, please send a copy of the newly approved amended plan to the Office of Defender Services at the Administrative Office.

Please feel free to contact me if you have any questions.

cc: Charles B. White, Chief Deputy Clerk, District of Guam



District Court of Guam

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JEANNE G. QUINATA

Clerk of Court

CHARLES B. WHITE
Chief Deputy Clerk

Memorandum

To: Robert E. Rucker
From: Charles B. White
Re: Updated CJA Plan for District of Guam
Date: May 25, 2012

As Chief Judge Tydingco-Gatewood mentioned, we used the current model CJA plan offered by the AO as the basis for our updated plan. Here is a summary of the changes we made to the model plan, as well as the redline version of our updated plan.

- The plan for the composition, administration, and management of the panel has been put into an appendix.
- Investigative, expert, and other services are now included in the term “Representation” and there are no special paragraphs dealing with these services.
- The new plan includes requirements of the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599)
- The new plan includes an Equal Opportunity clause in the Administration appendix
- The new plan reflects the reality that the FPD office on Guam is no longer an extension of the FPD office in Honolulu.
- The new plan has an enhanced list of circumstances for mandatory representation of financially eligible defendants.
- The old plan allowed each panel attorney three “passes”. It has not been our practice to track passes and there are times when more than three passes may be justified.
- The old plan called for a panel of approximately 10-15 members. This has been removed. Instead, the new plan’s language allows the court flexibility with respect to the size of the panel. The panel currently consists of 9 private attorneys.
- The terms of the panel members are no longer staggered. Most of the current panel members have been on the panel for many years and while we do add new members occasionally, there is no indication that there will be a major turnover of members in the future.
- Language and references to the Public Defender Service Corporation of Guam have been removed since they no longer provide defender services to our court.
- The model plan suggests that the Standing Committee be chaired by a Judge, but we thought it best to retain the current structure of our CJA Standing Committee.
- The Federal Public Defender handles all applications for membership on the CJA Panel.
- Clauses on Suspensions and Removals from the old plan are retained, but updated to reflect current local rules.



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FRANCES M. TYDINGCO-GATEWOOD
Chief Judge

JEANNE G. QUINATA
Clerk of Court

May 24, 2012

Mr. Robert E. Rucker
United States Court of Appeals
Post Office Box 193939
San Francisco, CA 94119-3939

Dear Bob,

Pursuant to 18 USC 3006A(a), we wish to submit the attached revised Criminal Justice Act Plan for approval by the Judicial Council of the Ninth Circuit.

This revised plan is based on the most current Model CJA Plan offered by the Administrative Office, but retains some specific procedures that we have found to work well in our small district.

Thank you for your help in facilitating the approval of this plan for the District of Guam.

Sincerely,

Hon. Frances Tydingco-Gatewood
Chief District Judge

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

Criminal Justice Act Plan for the District Court of Guam

District Court of Guam Criminal Justice Act Plan

I. Authority

Under the Criminal Justice Act of 1964 as amended (CJA), 18 U.S.C. §3006A, and the *Guidelines for Administering the CJA and Related Statutes (CJA Guidelines)*, Volume 7A of the *Guide to Judiciary Policy*, the judges of the District Court of Guam adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

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 will be administered so that those accused of crime, or otherwise eligible for services under 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 USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), 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 must 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 will be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk will maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and will make known to such attorneys its availability.

Criminal Justice Act Plan for the District Court of Guam

III. Definitions

A. Representation.

“Representation” includes counsel and investigative, expert, and other services.

B. Appointed Attorney.

“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 18 U.S.C. §5031;
 - 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 such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings (**See:** Guide, Vol 7A, § 210.20.10(a)(5));
 - 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 18 U.S.C. Chapter 313;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under 18 U.S.C. §2254 or 18 U.S.C. §2255;
 - j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. §4109;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution (**see:** Guide, Vol. 7A, § 210.20.10(a)(9)); or

Criminal Justice Act Plan for the District Court of Guam

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 difficult. In a capital case, the following applies:
 - a. *Federal Capital Prosecutions.* Under 18 U.S.C. § 3005, a person charged with a federal capital offense is **entitled** to the appointment of two attorneys, at least one of whom must be learned in the law applicable to capital cases. Under 18 U.S.C. § 3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
 - b. *Habeas Corpus Proceedings.* Under 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is **entitled** to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.
2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases the following also applies:
 - a. *Appointment of Counsel Prior to Judgment.* Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the District Court of Guam for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in this court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Under 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the Federal Public Defender.
 - b. *Appointment of Counsel after Judgment.* Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the appellate court.

Criminal Justice Act Plan for the District Court of Guam

c. **Attorney Qualification Waiver.** Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. **Eligibility for Representation.**

1. **Fact finding.** The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or United States magistrate judge 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 will advise the court.

V. **Federal Public Defender Organization**

A. **Establishment.**

1. The Federal Public Defender Organization of the District of Guam, previously established in this district under the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.

2. The Federal Public Defender Organization will be capable of providing legal services throughout the district and will maintain an office in the district.

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

Criminal Justice Act Plan for the District Court of Guam

VI. Private Attorneys

- A. *Establishment of CJA Panel.* The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. *Organization.* The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.
- C. *Ratio of Appointments.* Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

VII. [Not used in states with no death penalty].

VIII. Duties of Appointed Counsel

- A. *Standards.* The services to be rendered a person represented by appointed counsel will be commensurate with those rendered if counsel were privately employed by the person.
- B. *Professional Conduct.* Attorneys appointed under the CJA must 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* and the *Guam Rules of Professional Conduct*.
- 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 will continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance which has been approved by the court; until an order has been entered allowing or requiring the person

Criminal Justice Act Plan for the District Court of Guam

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, must 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 must, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender who will 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 (Form CJA 23).
- B. *Initial Appearance and Presentation of Complaint.* The Office of the United States Attorney shall notify the office of the Clerk of Court no later than 8:30 a.m. of the first working day following an arrest to inform the Court of the necessity to schedule an initial appearance before the judge or magistrate judge. For persons arrested without the prior issuance of an arrest warrant, a complaint shall be brought before the Court no later than 1:30 p.m. that afternoon. If a warrantless arrest is made on a weekend, and the first working day exceeds forty-eight (48) hours after arrest, the Office of the United States Attorney shall notify the Court to schedule the presentation of a complaint within forty-eight (48) hour of arrest.
- C. *Pretrial Services Interview.* Prior to the initial appearance, the person held in custody shall be interviewed by the pretrial services officer. After the pretrial services officer has had an opportunity to interview the defendant and verify the information, the Court shall proceed with the initial appearance.
- D. *Determination of Financial Eligibility, and Appointment of Counsel.* At the initial appearance, the Court will question the defendant as to his financial ability to secure representation of counsel. If the Defendant is found to be eligible for court appointed counsel, the magistrate judge or judge will appoint counsel at that time.
- E. *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, the United States attorney or the probation officer, as appropriate, must immediately mail or otherwise

Criminal Justice Act Plan for the District Court of Guam

deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

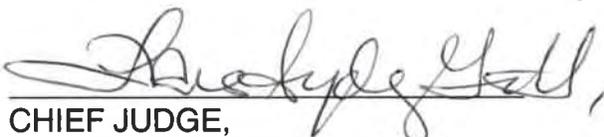
X. Miscellaneous

- A. *Forms.* Standard forms, pertaining to the 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, must be used, where applicable, in all proceedings under this Plan.
- B. *Claims.* Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form, to the office of the Clerk of Court. That office will review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, will forward the claim form for the consideration of the appropriate judge or United States magistrate judge. 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 will become effective when approved by the Judicial Council of the Ninth Circuit.

ENTER FOR THE COURT ON May 25, 2012.



CHIEF JUDGE,
DISTRICT COURT OF GUAM

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT ON _____, 2012.

CHIEF JUDGE, NINTH CIRCUIT COURT OF APPEALS

Criminal Justice Act Plan for the District Court of Guam

Appendix I. Model Plan for the Composition, Administration and Management of the CJA Panel

I. Composition Of Panel Of Private Attorneys

A. CJA Panel

1. *Approval.* The court will establish a panel of private attorneys (hereinafter referred to as the “CJA Panel”) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The court will approve attorneys for membership on the panel after receiving recommendations from the “Standing Committee,” established under paragraph B of this Plan. Members of the CJA Panel will serve at the pleasure of the court.
2. *Size.* The court will fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that 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.
3. *Eligibility.* Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the Plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the magistrate judge or district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her

Criminal Justice Act Plan for the District Court of Guam

appointment, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify the attorney for admission to the district's CJA Panel in the ordinary course of panel selection.

4. *Equal Opportunity.* All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
5. *Terms.* Members of the CJA Panel established under this Plan will each serve for a term of four (4) years.
6. *Reappointment.* A member of the CJA Panel will be eligible for reappointment to the panel for one or more two year terms.
7. *Suspensions.* Attorneys who have been suspended or disbarred from a court of any state, territory, commonwealth or possession of the United States and who are the subject of reciprocal discipline in this court pursuant to the court's Local Rules of Practice, or who are presented for discipline in this court under other provisions of the court's Local Rules of Practice, shall be suspended from the CJA Panel pending disposition of the federal grievance proceedings. If the attorney is counsel of record in a pending case, the assigned trial Judge shall be notified by the Clerk's Office. If the attorney is suspended or disbarred in this court, the attorney shall be removed from the CJA Panel, and will be eligible to reapply only if he or she later becomes a member of the federal bar in good standing.
8. *Removals.*
 - a. Any complaints about the performance or commitment of a panel attorney shall be referred to the standing committee. The standing committee shall also take notice of such deficiencies on its own and make recommendations to the Court for removal from the Panel. At the request of the Court, the Clerk, or individual committee members, the standing committee shall

Criminal Justice Act Plan for the District Court of Guam

review complaints about a panel member. The receipt and handling of complaints will be confidential.

b. The panel attorney shall be notified of any complaint, and shall have the right to request a hearing before the committee. At the hearing, the attorney shall have all due process rights, including representation by counsel, the right to be informed of the nature of the complaint and the right to present testimony on his or her behalf. A recommendation for or against removal shall be by majority vote and forwarded to the active judges for appropriate action. Removal of the attorney from the panel shall be by majority vote of the standing committee.

9. *Application.* Application forms for membership on the CJA Panel will be made available, upon request, by the Federal Public Defender. Completed applications will be submitted to the Federal Public Defender who will transmit the applications to the chairperson of the Standing Committee (see below).

B. Standing Committee

1. *Membership.* A Standing Committee will be established by the court. The Committee will consist of five (5) attorneys, each a voting member, who possesses sufficient experience and interest in the federal criminal justice system to administer the CJA Panel. The Federal Public Defender or his or her representative will be a permanent voting member of the committee. The Clerk of Court or his or her designee shall be an ex officio, non-voting member of the committee. The standing committee will be permitted to use the staff of the Clerk of Court for clerical and record-keeping matters.
2. *Chairperson.* The Standing Committee shall elect from its members who are private attorneys a chairperson, who shall preside over its meetings and serve as the liaison between the CJA Panel, the Court and the community. The Chairperson shall also serve as the District Representative to the National Conference of Criminal Justice Act Panel Attorneys.
3. *Training.* The standing committee shall also coordinate with the Federal Public Defender's Office in providing training for the CJA Panel. Such training shall include correspondence with panel attorneys on substantive and procedural changes in the law, local rules, and

Criminal Justice Act Plan for the District Court of Guam

other matters affecting the panel attorneys, and shall also include regularly scheduled seminars for panel attorneys, and, if possible, the private bar.

4. *Duties.*

- a. The Standing Committee will meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee will review the qualifications of applicants and recommend, for approval by the court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee will also review the operation and administration of the panel over the preceding year, and recommend to the court any changes deemed necessary or appropriate by the Committee on the appointment process and panel management. The Committee will also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

- b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee will solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the court for approval. Members approved by the court to fill mid-term vacancies will serve until the expiration of the term that was vacated, and will be immediately eligible for reappointment notwithstanding the two-year restriction imposed by paragraph A(5) above.
- c. When the Committee submits the names of applicants for panel membership to the court for approval, the Committee will furnish information to the court on recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.4. of this Plan. At least once each year the Committee will provide the court with information on the panel of attorneys in each of the categories listed in paragraph I.A.4 of this Plan.

Criminal Justice Act Plan for the District Court of Guam

C. CJA Training Panel

The Standing Committee may establish a “CJA Training Panel,” consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the court, to assist members of the CJA Panel in a “second chair” capacity. Training Panel members are not eligible to receive appointments independently, and will not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

II. Selection for Appointment

A. Maintenance of List and Distribution Of Appointments

The Clerk of Court will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email address, and telephone numbers, as well as a statement of qualifications and experience. The Clerk will furnish a copy of this list to each United States magistrate judge and judge. The Clerk will also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from Office of the Federal Public Defender and private attorneys, according to the formula described in the CJA Plan for the district.

B. Method of Selection

Appointments from the list of private attorneys should be made on a rotational basis, subject to the court’s discretion to make exceptions due to the nature and complexity of the case, an attorney’s experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation of each CJA defendant.

Upon the determination of a need for the appointment of counsel, the United States magistrate judge or judge will notify the Clerk of Court of the need for counsel and the nature of the case.

The Clerk of Court will advise the United States magistrate judge or judge as to the status of distribution of cases, where appropriate, as between the Office of the Federal Public Defender and the panel of private attorneys. If

Criminal Justice Act Plan for the District Court of Guam

the United States magistrate judge or judge decides to appoint an attorney from the panel, the Clerk will determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and will provide the name to the appointing United States magistrate judge or judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the United States magistrate judge or presiding judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing United States magistrate judge or judge or will notify the Clerk of Court as to the name of the attorney appointed and the date of the appointment.

III. Compensation – Filing Of Vouchers

Claims for compensation must be submitted, on the appropriate CJA form, to the Office of the Clerk of Court. The Clerk of Court will review the claim form for mathematical and technical accuracy and for conformity with the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines) (Guide to Judiciary Policy, Vol. 7A) and, if correct, will forward the claim form for the consideration and action of the United States magistrate judge or presiding judge.