



CRIMINAL JUSTICE ACT PLAN

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Ninth Circuit Court of Appeals, with the approval of the Judicial Council, adopts this Plan for furnishing representation for any person financially unable to obtain adequate representation as required by the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A ("the Act"). This Plan supplements the CJA plans of the districts of the circuit concerning provisions for representation on appeal and the *Guidelines for Administering the CJA and Related Statutes*, Volume 7A, Guide to Judiciary Policy ("CJA Guidelines").¹

a) **Objective**

The objectives of this Plan are to attain the goal of equal justice under the law by providing all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, to ensure that services are cost-effective without compromising the quality of representation, to promote 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), CJA Guidelines, Ninth Circuit CJA Policies and Procedures, and Local Rules of the Ninth Circuit in a manner that meets the needs of this Court.

This Plan must be administered so that those accused of a crime, or otherwise eligible for services under the Act, 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.

b) **Relation to District Court Plans**

The provisions of the plans of the various district courts within the Ninth Circuit shall also be applicable on appeals from such courts except insofar as they may be inconsistent with some provision of this Plan, in which case, this Plan shall govern.

¹ [Criminal Justice Act Guidelines](#) (See Volume 7, Guide to Judiciary Policy, Appointment and Payment of Counsel, Part A.)

c) **Appointment of Counsel**

(1) Appointment and continuation of counsel under the Act will be governed generally by the CJA Guidelines and pursuant to Ninth Circuit Rule 4-1.²

(2) Pursuant to subsection (b) of the Act, counsel furnishing representation under this Plan shall be selected from the panels of attorneys designated or approved by the district courts within the Ninth Circuit.

(3) In accordance with Ninth Circuit Rule 4-1 (a)(2), if a party was represented in the district court by counsel appointed under the Act, counsel must continue to represent the defendant or petitioner on appeal unless and until counsel is relieved and replaced by substitute retained counsel, appointed counsel, or by the defendant or petitioner pro se. Counsel's appointment continues on appeal until counsel is relieved by this Court.

(4) A person for whom counsel was appointed by the district court under the Act may appeal to this Court without prepayment of fees and costs or security therefor and without filing the affidavit required by 28 U.S.C. § 1915(a). Appointment of counsel on appeal in the first instance may be requested in this Court by filing an appropriate motion supported by a financial affidavit.³

(5) Any financially eligible person who is entitled to appellate representation by appointed counsel under 18 U.S.C. § 3006A(a)(1), or who seeks to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255, shall be represented on appeal by appointed counsel regardless of their representation status in the district court and regardless of whether counsel filed the notice of appeal on their behalf, unless the Court of Appeals grants permission to proceed pro se.

(6) Any financially eligible person who in the district court sought relief for a type of case designated in 18 U.S.C. § 3006A(a)(2) may apply to this Court for discretionary appointment of counsel under the Act. The Court may approve such representation on a determination that the interest of justice so requires.

(7) A defendant does not have the right to self-representation in a direct criminal appeal, even if the defendant proceeded pro se in the district court. Self-representation will not be permitted in direct criminal appeals except in the unusual case where the court determines that allowing the defendant to proceed pro se is in the best interests of the defendant, and would not undermine a just and orderly resolution of the appeal. Any motion seeking permission to proceed pro se on appeal must explain how these interests would be served. This court does not appoint standby counsel.

² [Rule 4-1](#) applies to appeals in categories of cases listed in 18 U.S.C. § 3006A.

³ [CJA Form 23](#)

(8) If at any stage of the proceedings on appeal the Court finds the defendant becomes financially unable to continue to pay retained counsel, the Court may appoint counsel as provided in subsection (b) of the Act and authorize payment as provided in subsection (d) of the Act, pursuant to subsection (c) of the Act.

(9) If at any stage of the proceedings on appeal a previously financially eligible defendant represented under the Act retains counsel, or the Court finds that a defendant becomes financially able to obtain counsel or make partial payment for the defendant's representation, the appointment may be terminated and/or partial payment may be ordered.

(10) If at any time after appointment, counsel has reason to believe that a party is financially able to obtain counsel, or make partial payment for counsel, and the source of counsel's information is not protected as a privileged communication, counsel will advise the court.

(11) When the Court determines that the appointment of an attorney who is not a member of a CJA panel is appropriate in the interest of justice, judicial economy, or some other compelling circumstance warranting such appointment, the attorney may be appointed to represent the CJA client.

(12) The Court may at its discretion, and where circumstances warrant, make appointments of counsel retroactive to include representation furnished prior to appointment, and it may authorize compensation therefor pursuant to subsections (c) and (d) of the Act.

(13) The appointment of co-counsel or associate counsel on appeal must be approved by the CJA Administrative Attorney prior to services being rendered. Counsel must use the "Request For Advance Authorization of Additional Counsel or Co-Counsel" form.⁴

(d) Withdrawal of Counsel

(1) Withdrawal of counsel is governed by Ninth Circuit Rule 4-1(c). As stated in Rule 4-1(a)(2) and in section (c)(3) of this Plan, counsel appointed under the Act to represent a party in district court must continue to represent the defendant or petitioner on appeal unless and until counsel is relieved and replaced by substitute retained counsel, appointed counsel, or by the defendant pro se. Counsel's appointment continues on appeal until counsel is relieved by this Court.

(2) A motion to withdraw as counsel on appeal filed by appointed trial counsel who does not wish to represent the client on appeal shall be filed with the Clerk of this Court within fourteen (14) days after the filing of the notice of appeal and must be accompanied by one of the following:

⁴ [Request for Co-Counsel/Associate Form](#)

- (A) A motion by appointed counsel to withdraw, in a direct criminal appeal, and to appoint substitute counsel; or
- (B) A motion by retained counsel to appoint counsel under the Criminal Justice Act, supported by a completed financial affidavit (CJA Form 23); or
- (C) A notice of appearance that indicates new counsel has been retained; or
- (D) A motion by retained or appointed counsel to withdraw and, in a direct criminal appeal, to permit defendant to proceed pro se.

Any motion or notice under this rule must include proof of service on the defendant or petitioner, including the inmate registration number and mailing address. If the client is not in custody, counsel may instead provide a declaration under penalty of perjury that counsel served the motion on the client at the client's home address.

Alternatively, if the defendant no longer wishes to prosecute the appeal, counsel may move for voluntary dismissal of the appeal. Under Circuit Rule 27-9.1, any such motion in a criminal appeal must include the defendant's written consent or an explanation why consent was not obtained.

(3) Pursuant to Rule 4-1(c)(2), if after conscientious review of the record, appointed counsel concludes the appeal is frivolous, on or before the due date for filing the opening brief, counsel must file an opening brief that presents the strongest arguments in the defendant's favor, supported by citations to the record and to applicable legal authority. See *Anders v. California*, 386 U.S. 738 (1967); *United States v. Griffy*, 895 F.2d 561 (9th Cir. 1990).

The cover of the opening brief must state that the brief is being filed pursuant to *Anders v. California* and must be accompanied by a separate motion to withdraw. Counsel must attach to both the motion and the brief proof of service on the defendant that includes the inmate registration number and mailing address. If the client is not in custody, counsel may instead provide a declaration under penalty of perjury that counsel served the brief and motion on the client at the client's home address.

To facilitate this court's independent review of the district court proceedings, counsel must designate all reporter's transcripts necessary to the court's review of the judgment on appeal, including but not limited to complete transcripts for the plea hearing and sentencing hearing, and shall include them in the excerpts of record. Counsel must also file under seal the final presentence investigation report and, if available, probation's sentencing recommendation. Counsel should consult Circuit Rules 27-13(d) and 30-1.

Anders briefs in jury-trial or bench-trial cases are disfavored and may only be filed if, following a full review of all pre-trial, trial, and post-trial proceedings, including sentencing, as

well as any motions filed in the district court, counsel cannot identify an arguable issue for appeal.

The filing of the motion to withdraw and *Anders* brief vacates the existing briefing schedule.

(e) Duties of Appointed Counsel

(1) Panel members and others appointed under the Act must provide high quality representation consistent with the legal profession's best practices. Attorneys appointed under the Act must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and other standards for professional conduct adopted by this Court. Attorneys must be admitted to practice before this Court, registered for electronic filing in this Court, and must be familiar with, and comply with, all Federal Rules of Appellate Procedure and Ninth Circuit Rules. Attorneys are expected to have practical knowledge of CJA forms and instructions, the CJA Guidelines, and the Ninth Circuit CJA Billing Guidelines.

(2) CJA panel members must immediately notify the relevant appointing authority, in writing, if they are disbarred, suspended, sanctioned, or reprimanded by any licensing authority, grievance committee, or administrative body. CJA panel members must also notify the relevant appointing authority, in writing, within 30 days, if they are sanctioned or found in contempt by any state or federal court judge.

(3) Appointed counsel shall furnish the party represented, upon written request, with a copy of motion papers and briefs filed for the party on the appeal and shall send the party a copy of the Court's decision when issued.

(4) Pursuant to Rule 4-1(e), counsel, whether appointed or retained, must promptly transmit the decision of this court to the client. If the decision is adverse to the client, counsel must inform the client of the right to file a petition for writ of certiorari in the United States Supreme Court and must advise the client whether any reasonable ground exists for filing a petition.

Appointed counsel must file a petition for writ of certiorari if the client so requests and, in counsel's considered judgment, there are grounds that are not frivolous and are consistent with the standards for filing a petition under the applicable rules and case law.

If appointed counsel concludes that there are not sufficient grounds and the client nevertheless insists on seeking further review, counsel must file a motion to withdraw that explains why withdrawal is warranted; a cursory statement of frivolousness is insufficient.

In the event the client wants to seek certiorari, the motion to withdraw must: (i) be filed as soon as practicable and (ii) attest that counsel has advised the client on how to file a timely pro se petition for writ of certiorari.

Counsel must attach to any motion to withdraw proof of service on the client that includes the inmate registration number and mailing address. If the client is not in custody, counsel may instead provide a declaration under penalty of perjury that counsel served the motion on the client at the client's home address. If a motion to withdraw is granted, counsel must notify the client in writing within seven days or inform the court that counsel is unable to notify the client.

(5) The appellate CJA attorney must continue to represent a CJA client in the district court upon remand from the Court of Appeals unless relieved as counsel by this Court or the district court. The fact that a CJA attorney limits his or her practice to appellate work, or that proceedings in the district court on remand will be distant from the CJA attorney's office, will ordinarily be adequate grounds justifying the relief of the appellate CJA attorney upon remand.

(f) Payment of Claims for Compensation and Expenses

(1) An attorney appointed by the Court shall be compensated for services and reimbursed for expenses reasonably incurred as set forth in the Guidelines. All claims for compensation and expenses must be submitted through the eVoucher case management and voucher review system. Every voucher in a non-budgeted case, even those claiming amounts less than the statutory maximum, must be accompanied by a completed Information Summary Form⁵ and adhere to the Ninth Circuit CJA Billing Guidelines.⁶ Vouchers shall be submitted no later than forty-five (45) days after the final disposition in this Court or after the filing of a petition for certiorari, whichever is later. A voucher for work on a petition for a writ of certiorari must be accompanied by a copy of the petition. If the CJA Administrative Attorney certifies payment in excess of the statutory maximum provided by the Act, the Clerk shall forward the voucher to the CJA Unit of the Office of Circuit Executive for review.⁷

(2) Hourly rates for non-capital cases are automatically populated in eVoucher, based on the date the service was rendered. For capital cases, the hourly rate in this Court for attorney services will be the same as that approved in the district court. Compensation at a higher rate, not to exceed the designated capital hourly rate, is discretionary and only available upon separate request to this Court.

(3) All non-capital cases for which CJA counsel may be appointed are subject to a statutory maximum payment unless excess compensation is authorized by the Court. Compensation exceeding the maximum amounts will be authorized only where: (1) the

⁵ [Information Summary Form](#)

⁶ [Ninth Circuit CJA Billing Guidelines](#)

⁷ [Administrative Orders \(uscourts.gov\)](#)

Administrative Attorney certifies that the representation is "extended or complex" and that the excess payment is necessary to compensate counsel fairly; and (2) the amount certified by the Administrative Attorney is approved by the Chief Judge of the Ninth Circuit or his/her designee. For current maximum compensation amounts, see 18 U.S.C. § 3006A and § 230.23.20 of the Guide.

(4) The Clerk shall refer all vouchers, including those requesting payment in excess of the statutory maximum, to the CJA Administrative Attorney, for approval of such compensation as the CJA Administrative Attorney deems reasonable and appropriate under the Act. If the CJA Administrative Attorney concludes that an amount less than that requested by the attorney is appropriate, he or she shall communicate to the attorney the basis for reducing the claim. The CJA Administrative Attorney will offer the attorney an opportunity to respond regarding the propriety and reasonableness of the voucher before approving a reduction in the amount. If the amount requested is reduced, and the attorney seeks reconsideration, the CJA Administrative Attorney shall receive and review the request for reconsideration and may grant it in full or in part. If the CJA Administrative Attorney does not grant a request for reconsideration in full or in part, the request shall be referred to and decided by the Chief Circuit Judge or his/her designee.

(5) Counsel may obtain investigative, expert, and other services necessary for adequate representation. Such services may include law students, paralegals, interpreters, investigators, and experts. Counsel may obtain such services without prior authorization of the Court if the total fees will not exceed \$900. If the total service provider fees are expected to exceed the prior authorization threshold of \$900, counsel must seek advance authorization from the CJA Administrative Attorney by submitting an authorization request through eVoucher.

(6) Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal may be claimed and are not included in the statutory maximum. Receipts are required for all expenses related to meals, lodging, and computer-assisted legal research, regardless of amount. Travel expenses (other than meals and lodging) exceeding \$25 must be accompanied by a receipt. Receipts are also required for any non-travel single expense of \$50 or more, such as postage, shipping, or printing.

(7) Counsel appointed under the Act must make all airline reservations through National Travel Service (NTS) at 1-800-445-0668. The airfare is billed directly to the Court and should not appear as an expense on vouchers. If air travel is required for nonoral argument purposes, counsel must submit a Travel Authorization Request through eVoucher in advance of making travel arrangements. When appeals are scheduled for oral argument, a travel authorization will be generated automatically. Airfare will not be reimbursable on CJA vouchers.

(8) General office overhead, such as administrative help (whether regularly or specially employed), rent, telephone service, and billing are not reimbursable except in

extraordinary circumstances. Routine office tasks such as copying, filing, and serving are not compensable even if performed by the attorney.⁸

(9) Counsel must maintain expense records and contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff. These records may be subject to audit and must be retained for three (3) years after approval of the final voucher.

(10) No appointed representative under this Plan shall accept any payment from or on behalf of the person represented in this Court without prior authorization by a United States circuit judge. All such authorized payments shall be received subject to the directions contained in any such order and pursuant to the provisions of subsection (f) of the Act.

⁸ [Ninth Circuit CJA Compensability Handbook](#)