

RULE CR44.1
REPRESENTATION OF INDIGENT DEFENDANTS

Pursuant to the provisions of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (“CJA”), the court has adopted the Criminal Justice Act Plan for the District of Kansas following plan is adopted (“CJA Plan”) for the representation of any person otherwise financially unable to obtain adequate representation. Representation ~~shall include~~s counsel and investigative, expert, and other service necessary for an adequate defense. Additional information may be found in the CJA Plan’s Appendix I. Both the CJA Plan and Appendix I are available on the Federal Public Defender Organization website, <http://www.kansasfpd.org/>, or the District of Kansas website, <http://www.ksd.uscourts.gov/>. The District of Kansas has designated the Federal Public Defender Organization of the District of Kansas to administer the CJA Plan.

(a) Applicability.

- ~~(1) This rule shall apply to any person:~~
- ~~(A) who is charged with a felony, or a Class A misdemeanor, or with juvenile delinquency (see 18 U.S.C. § 5031), or with a violation of~~
 - ~~probation;~~
 - ~~(B) who is under arrest, when such representation is required by law;~~
 - ~~(C) who 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;~~
 - ~~(D) whose mental condition is the subject of a hearing pursuant to Chapter 313 of Title 18, U.S.C.;~~
 - ~~(E) who is in custody as a material witness (see subsection (a)(1)(g) of the CJA and 18 U.S.C §§3142(f), 3144);~~
 - ~~(F) for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he or she faces loss of liberty, any federal law requires the appointment of counsel; or~~
 - ~~(G) who is entitled to the appointment of counsel under 18 U.S.C. § 4109.~~

- ~~(2) This rule also applies when the interests of justice so require to any person:~~
- ~~(A) who is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or~~
 - ~~(B) who is seeking collateral relief, as provided in subsection (a)(2)(B) of the CJA.~~

(b) Provisions for Furnishing Counsel.

- ~~(1) This rule provides for the furnishing of legal services by a Federal Public Defender Organization, supervised by a Federal Public Defender, and serving the United States District Court for the District of Kansas. In addition, this rule provides for the appointment and compensation of private counsel (hereinafter referred to as the “CJA Panel”).~~
- ~~(2) The determination of whether a party entitled to representation will be represented by the Federal Public Defender Organization or by panel counsel is within the discretion of the appointing judge or magistrate judge. Insofar as practicable, the distribution of appointments shall be 75% of all appointments to the Federal Public Defender and 25% of all appointments to CJA Panel attorneys.~~

(ea) Federal Public Defender Organization.

- ~~(1) The Federal Public Defender Organization for the District of Kansas was established in 1973, in accordance with the provisions of subsections (g)(1) and (g)(2)(A) of the CJA. The Federal Public Defender Organization shall maintain offices in Topeka, Wichita, and~~

~~Kansas City, Kansas, and shall be headquartered at such of those locations as the Federal Public Defender determines, unless otherwise ordered by the court.~~

~~_____ (12) The Federal Public Defender Organization shall must operate pursuant to the provisions of subsection (g)(2)(A) of the CJA, as well as the Guidelines for the Administration of the Criminal Justice Act 118 Administering the CJA and Related Statutes (Volume 7VII, Guide to Judiciary Policies and Procedures), promulgated by the United States Judicial Conference pursuant to subsection (hi) of the CJA.~~

~~(23) Neither the Federal Public Defender nor any appointed staff attorney may engage in the private practice of law.~~

~~(34) The Federal Public Defender shall must submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by the Director, reports of the organization's activities, its financial position, and proposed budget.~~

~~(45) The Federal Public Defender shall must furnish to this court the current roster of staff attorneys and shall report any changes thereto to the court.~~

~~(6) To ensure the effective supervision and management of the Federal Public Defender Organization, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in that office. Accordingly, the court will assign cases in the name of the Federal Public Defender Organization rather than in the name of individual staff attorneys.~~

(bd) Composition of Panel of Private Attorneys.

~~_____ (1) Composition and Size. The court shall establish a panel of private attorneys called the "CJA Panel" who are eligible and willing to be appointed to provide representation under the CJA. The CJA 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.~~

~~(2) Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district and must have knowledge of the Federal Criminal Law, Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines.~~

~~Specific information about the composition of the panel of private attorneys is set forth in the CJA Plan and Appendix I. The _____ (3) Application. A application forms for membership to on the CJA Panel is available on the Federal Public Defender Organization website, <http://www.kansasfpd.org/>, and the District of Kansas website, <https://www.ksd.uscourts.gov/>. Completed forms are submitted online and will be forwarded to the appropriate Panel Selection Committee. shall be made available, upon request, by the offices of the full time magistrate judges sitting in Wichita, Topeka, and Kansas City. Completed applications should be submitted to the magistrate judge's office, which will transmit the application to the Panel Selection Committee.~~

~~_____ (4) Approval. The A Panel Selection Committee must shall approve all applicants prior to their membership on the CJA Panel.~~

(ec) The Panel Selection Committees.

~~_____ The description and responsibilities of the Panel Selection Committees are set forth in the CJA Plan and Appendix I.~~

~~(1) *Composition.* There shall be a total of five panels sitting in Wichita, Topeka, Kansas City, Ft. Leavenworth, and Ft. Riley areas. Each panel in Wichita, Topeka, and Kansas City shall consist of a district court judge, a full time magistrate judge, the Federal Public Defender or one of his designated assistants, and a member of the existing CJA Panel. The panel in the Ft. Leavenworth area and the Ft. Riley area shall consist of the magistrate judge assigned to handle the docket within that particular area, a district court judge, the Federal Public Defender or one of his designated assistants, and a member of the existing CJA Panel.~~

~~(2) *Responsibilities.* The committees shall meet at least once each year to review the preceding year's operation and administration of this rule and to recommend appropriate changes in the rule. The committees shall consider applications for membership on the CJA Panel, shall approve for membership those attorneys who appear best qualified, and shall inquire as to the continued availability and willingness of each CJA Panel member to accept appointment. In the event that it becomes necessary to consider removal of a panel member, the committee shall consider and determine such removal. The committees shall fix the minimum size for the panel. If at any time the panel membership decreases below the minimum size, the committees shall invite further applications for membership, convene a special meeting to review the qualifications of the applicants, and select new members. The committees shall also provide orientation and training to members or prospective members of the panel, as the committees deem necessary.~~

(fd) Assigning Appointments to CJA Panel Attorneys.

The Federal Public Defender Organization has been designated by the District Court of Kansas to administer and manage the CJA Panel, as set forth in the CJA Plan and Appendix I. The assignment of CJA Panel attorneys is described in the CJA Plan and Appendix I.

~~(1) *Roster.* Each magistrate judge's office shall maintain a current roster of all attorneys who are approved members of the CJA Panel for their particular area of the District of Kansas. The rosters shall include the attorneys' current office addresses and telephone numbers as well as a statement of their qualifications and experience, including any foreign language skill.~~

~~(2) *Selection Method.* Appointments from the CJA Panel rosters are to be made on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, the attorney's experience, and language and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel and in quality representation for each CJA defendant.~~

~~When a judge or magistrate judge determines that a CJA defendant needs an attorney, the judge or magistrate judge shall notify the magistrate judge's office of the need and of any geographic or qualification preferences. The magistrate judge's office shall determine the name of the next panel member who is available for appointment on the roster in that magistrate judge's area of the District of Kansas and shall provide the name to the appointing judge or magistrate judge.~~

~~Nothing in this rule is intended to impinge upon the authority of a presiding judge or magistrate judge to appoint an attorney who is not next in sequence or who is not a member of the CJA Panel, in appropriate cases, to ensure adequate representation.~~

~~(3) *Record of Appointments.* An accurate record shall be kept by the magistrate judge's offices in Wichita, Topeka, Kansas City, Ft. Leavenworth area, and Ft. Riley area of all appointments of CJA Panel attorneys. The record will include the attorney's name, the case name and number, the date of appointment, and any other information deemed necessary by the~~

~~Panel Selection Committee. In all cases in which attorneys appointed under the CJA are not members of the panel or are appointed out of sequence, the appointing judge or magistrate judge shall notify the magistrate judge's office as to the name of the attorney appointed and the date of appointment.~~

~~—The above records of appointment of panel counsel shall be provided to the Federal Public Defender for the District of Kansas and the Clerk of the District Court upon request so that said offices can ensure a distribution of 75 percent of all appointments to the Federal Public Defender and 25 percent of all appointments to CJA Panel counsel insofar as reasonably possible.~~

~~(4) *Sanctions.* Failure of a CJA Panel member to accept an appointment, without good cause, may result in his or her dismissal from the panel or any other appropriate sanctions.~~

~~(5) There is no property right in membership on the CJA Panel. Refusal to accept appointment on three occasions within a one year period shall constitute grounds for immediate removal from the panel. Otherwise removal from the panel shall be in the sole discretion of the panel selection committees.~~

(eg) Compensation and Expenses of Appointed Attorneys.

(1) *Generally.* Compensation to attorneys and payment of other expenses, such as expert witnesses' or investigators' fees, shall must be made in conformity with the CJA, ~~and the Guidelines for the Administration of the CJA~~ Administering the CJA and Related Statutes (Volume 7VII, Guide to Judiciary Policies and Procedures), the CJA Plan, and Appendix I.

(2) *Compensation.* An attorney appointed under the CJA is responsible for submitting properly completed vouchers for services rendered (on CJA Form 20) promptly after the attorney's duties have terminated. Compensation normally cannot exceed the statutory maximum under the CJA. In complex or extended cases, the court, upon application of counsel, may certify that payment in excess of the statutory case compensation maximums is necessary to provide fair compensation and may forward the claim for approval by the chief judge of the Court of Appeals. All vouchers seeking payment in excess of the statutory case compensation maximum must be accompanied by a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case and that excess payment is necessary to provide fair compensation.

(3) *Investigative and Other Expenses.* Investigative, expert, or other services necessary for adequate representation, as authorized by subsection (e) of the CJA, shall beare available to persons who are eligible under the CJA and have had counsel appointed, and also to persons who have retained counsel but who are found by the court to be financially unable to obtain the necessary services.

If the total cost of investigative, expert, or other services reasonably necessary for an adequate defense does not exceed \$800, attorneys appointed under the CJA may incur expenses for these services without prior authorization, subject to later review.

If the total cost of services exceeds \$800, prior authorization must be obtained from the assigned judge or magistrate judge if the expenses for these services are to be paid by the government. The cost of additional services cannot exceed \$2,400 as compensation per individual or organization unless the assigned judge or magistrate judge certifies that excess payment is necessary to provide fair compensation for services of an unusual character or duration and the amount of the excess payment is approved by the chief judge of the Circuit.

Ex parte applications for services other than counsel shall must be heard *in camera* and must shall not be revealed without the consent of the defendant. The application must shall be

placed under seal until the final disposition of the case in the trial court, subject to further order of the court, to prevent improper disclosure of any defenses.

(4) *Duty of Attorney to Advise Court.* If at any time an appointed ~~edment~~ attorney 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, the attorney ~~shall~~ must advise the court.

(5) *Direct Remuneration from Client Prohibited.* Nothing in this rule ~~will be~~ shall ~~be~~ construed as authorizing the appointed attorney to accept any remuneration whatsoever from the client. Any ability of the client to pay for his or her representation ~~shall~~ must be the subject of an appropriate court order to reimburse the United States in whole or in part.

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NOTE: This is a mandated rule.

As amended ~~*/*/14,~~ 3/17/13, 3/17/09, 10/22/98, 2/2/95.