



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS


HONORABLE ROSLYNN R. MAUSKOPF  
Director


WASHINGTON, D.C. 20544

March 29, 2021

MEMORANDUM

To: Judges, United States Court of Appeals  
Judges, United States District Courts  
United States Magistrate Judges  
Circuit Executives  
Federal Public/Community Defenders  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts  
Chief Probation Officers  
Chief Pretrial Services Officers  
Senior Staff Attorneys  
Circuit CJA Case-Budgeting Attorneys  
Circuit Librarians

From: Judge Micaela Alvarez   
Chair, Judicial Conference Committee on Defender Services

Judge Roslynn R. Mauskopf 

RE: REVISED CJA 23 FINANCIAL AFFIDAVIT FORM **(INFORMATION)**

The Criminal Justice Act, 18 U.S.C. § 3006A (“CJA”), requires each district court, with the approval of the judicial council of the circuit, to place in operation a plan for providing representation and other defense services to any financially eligible person. 18 U.S.C. § 3006A(a). A person is “financially unable to obtain counsel” within the meaning of 18 U.S.C. § 3006A(b) if the person’s net financial resources and income are insufficient to obtain qualified counsel. *Guide to Judiciary Policy*, Vol. 7A, Chapter 2, § 210.40.30(a). The CJA 23 Financial Affidavit assists courts throughout the country in determining an individual’s financial eligibility for the appointment of counsel under the CJA.

At its December 2020 meeting, the Defender Services Committee approved revisions to the CJA 23 Financial Affidavit, consistent with its responsibility to review and modify forms used by courts in administering the CJA and related statutes. The revisions were prompted by the need to better support the collection of information about an applicant's financial resources, (consistent with the *Guide to Judiciary Policy* regarding what may or may not be taken into consideration as part of the inquiry about financial eligibility), and to simplify the form by using plain language and removing unnecessary questions.

The Committee also approved a new set of instructions to accompany the CJA 23 Financial Affidavit. While other CJA forms contain thorough instructions for their use, the previous version of the CJA 23 Financial Affidavit did not. The new instructions contain pertinent policies from the *Guide to Judiciary Policy* for determining financial eligibility, and provides guidance to courts for how to resolve conflicts between an individual's Fifth and Sixth Amendment rights when a person presents a colorable claim that disclosure to the government of a completed financial affidavit would be self-incriminating.

Attachment

cc: CJA Panel Attorney District Representatives

# FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT, OR OTHER SERVICES WITHOUT PAYMENT OF FEE

IN THE UNITED STATES ☐ DISTRICT COURT ☐ COURT OF APPEALS ☐ OTHER (Specify Below)

IN THE CASE OF

\_\_\_\_\_ V. \_\_\_\_\_

FOR  
AT

LOCATION  
NUMBER

PERSON REPRESENTED (Show your full name)

CHARGE/OFFENSE (Describe if applicable & check box→) ☐ Felony ☐ Misdemeanor

- 1 ☐ Defendant - Adult  
2 ☐ Defendant - Juvenile  
3 ☐ Appellant  
4 ☐ Probation Violator  
5 ☐ Supervised Release Violator  
6 ☐ Habeas Petitioner  
7 ☐ 2255 Petitioner  
8 ☐ Material Witness  
9 ☐ Other (Specify) \_\_\_\_\_

DOCKET NUMBERS  
Magistrate Judge  
District Court  
Court of Appeals

## ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

INCOME & ASSETS	EMPLOYMENT	Do you have a job? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, how much do you earn per month? _____ Will you still have a job after this arrest? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown																				
	PROPERTY	Do you own any of the following, and if so, what is it worth? <table><thead><tr><th></th><th>APPROXIMATE VALUE</th><th>DESCRIPTION &amp; AMOUNT OWED</th></tr></thead><tbody><tr><td>Home</td><td>\$ _____</td><td>_____</td></tr><tr><td>Car/Truck/Vehicle</td><td>\$ _____</td><td>_____</td></tr><tr><td>Boat</td><td>\$ _____</td><td>_____</td></tr><tr><td>Stocks/bonds</td><td>\$ _____</td><td>_____</td></tr><tr><td>Other property</td><td>\$ _____</td><td>_____</td></tr></tbody></table>				APPROXIMATE VALUE	DESCRIPTION & AMOUNT OWED	Home	\$ _____	_____	Car/Truck/Vehicle	\$ _____	_____	Boat	\$ _____	_____	Stocks/bonds	\$ _____	_____	Other property	\$ _____	_____
		APPROXIMATE VALUE	DESCRIPTION & AMOUNT OWED																			
Home	\$ _____	_____																				
Car/Truck/Vehicle	\$ _____	_____																				
Boat	\$ _____	_____																				
Stocks/bonds	\$ _____	_____																				
Other property	\$ _____	_____																				
CASH & BANK ACCOUNTS	Do you have any cash, or money in savings or checking accounts? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, give the total approximate amount after monthly expenses \$ _____																					
OBLIGATIONS, EXPENSES, & DEBTS	How many people do you financially support? _____																					
	BILLS & DEBTS	MONTHLY EXPENSE	TOTAL DEBT																			
	Housing	\$ _____	\$ _____																			
	Groceries	\$ _____	\$ _____																			
	Medical expenses	\$ _____	\$ _____																			
	Utilities	\$ _____	\$ _____																			
	Credit cards	\$ _____	\$ _____																			
	Car/Truck/Vehicle	\$ _____	\$ _____																			
	Childcare	\$ _____	\$ _____																			
	Child support	\$ _____	\$ _____																			
	Insurance	\$ _____	\$ _____																			
	Loans	\$ _____	\$ _____																			
	Fines	\$ _____	\$ _____																			
	Other	\$ _____	\$ _____																			

I certify under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF DEFENDANT  
(OR PERSON SEEKING REPRESENTATION)

Date

## Instructions for CJA Form 23 Financial Affidavit

In every type of proceeding where appointment of counsel is authorized under 18 U.S.C. § 3006A(a) and related statutes, the United States magistrate judge or the court shall advise the person of their right to be represented by counsel and that counsel will be appointed if the person is financially unable to obtain counsel. Unless the person waives representation by counsel, the United States magistrate judge or the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the individual.

Determination of eligibility for representation under the CJA is a judicial function, however the court may designate court employees to obtain or verify the facts relevant to the financial eligibility determination. Employees of law enforcement agencies, including the United States Attorney's Office, should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel. When practicable, employees of the federal public defender office should discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in completion of the financial affidavit.

Counsel must be appointed if the person seeking representation is “financially unable to obtain counsel.” 18 U.S.C. §3006A(b). (While courts often use “indigency” as a shorthand expression to describe financial eligibility, indigency is not the standard for appointing counsel under the Criminal Justice Act.) In determining whether a person is “financially unable to obtain counsel,” consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel. The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel, unless their family indicates willingness and ability to do so promptly. Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time. For additional guidance, see the [Guide to Judiciary Policy, Volume 7A, Guidelines for Administering the CJA and Related Statutes \(CJA Guidelines\)](#).

The CJA Form 23 is not a required statutory form. It is an administrative tool used to assist the court in appointing counsel. When a colorable claim is asserted that disclosure to the government of a completed CJA 23 would be self-incriminating, the

court may not adopt an unconditional requirement that the defendant complete the CJA 23 before his application for appointment of counsel will be considered. To do so may place the defendant in the constitutionally untenable position of having to choose between his Sixth Amendment right to counsel and his Fifth Amendment privilege against self-incrimination. Two approaches that courts have taken to resolve these competing concerns are: (i) through *in camera* examination of the financial affidavit, which then would be sealed and not be made available for the purpose of prosecution, or (ii) through an adversarial hearing on the defendant's request for appointment of counsel, during which the court would grant use immunity to the defendant's testimony at the hearing.

Pursuant to Judicial Conference policy, financial affidavits seeking the appointment of counsel should not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access. If the financial affidavit is docketed it should be filed under seal. See, [Guide to Judiciary Policy, Vol. 10, §340, Judicial Conference Policy on Privacy and Public Access to Electronic Case Files \(March 2008\)](#) and [Administrative Office of U.S. Courts Information Bulletin on Revised Judicial Conference Privacy Policy \(May 2008\)](#).

For questions on the use of this form or instructions, please contact the Defender Services Office, Legal and Policy Division at 202-502-3030.