

Guide to Judiciary Policy

Vol 7: Defender Services

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§ 210 Appointment of Counsel

- (a) United States citizens incarcerated abroad and foreign nationals incarcerated within the United States who seek an international prisoner transfer have the right to the advice of counsel. Additionally, an offender who is financially unable to obtain an attorney has the right to the appointment of counsel in proceedings to verify consent to transfer. **See:** [18 U.S.C. § 4109\(a\)](#). Appointed counsel must advise and assist offenders prior to and during the proceedings.
- (b) Offenders who seek a transfer have the right to the advice of counsel in proceedings before the United States Parole Commission, and in an appeal from a determination by this Commission. **See:** [18 U.S.C. §§ 4106A](#) and [4109\(c\)](#). Financially eligible offenders are entitled to the appointment of counsel for such proceedings, under [18 U.S.C. § 3006A](#).

§ 220 Appointment of Guardians Ad Litem

The appointment and compensation of guardians ad litem in prisoner transfer cases are provided for in [18 U.S.C. § 4100\(b\)](#) and [§ 4109\(b\)](#).

- (a) Guardians ad litem may be appointed to act on behalf of financially eligible minor or incompetent offenders in proceedings to verify their consent to transfer to or from the United States. **See:** [18 U.S.C. § 4100\(b\)](#).

- (b) Appointment of a guardian ad litem is independent of the appointment of counsel under [18 U.S.C. § 4109](#).

§ 230 Determining Financial Eligibility

- (a) An offender is "financially eligible" for the appointment of counsel or a guardian ad litem within the meaning of [18 U.S.C. § 4109](#) if his or her net financial resources and income are insufficient to enable the offender to obtain qualified counsel, or to provide for the compensation and travel expenses of a guardian ad litem.
 - (1) In determining whether such insufficiency exists, consideration must be given to the cost of providing the offender and his or her dependents with the necessities of life.
 - (2) The determination of eligibility must be made without regard to the financial ability of the offender's family unless the family indicates willingness and financial ability to retain counsel or to provide a guardian ad litem promptly.
 - (3) Any doubts as to an offender's eligibility must be resolved in his or her favor.
- (b) The determination of whether an offender is eligible for appointment of counsel or a guardian ad litem is a function to be performed by the U.S. magistrate judge. Offenders will normally provide information regarding their financial status on [Form CJA 23 \(Financial Affidavit\)](#). Completed forms should be provided to the designated court. Although the court may obtain additional information, whenever practicable, fact-finding should be done prior to the offender's appearance at the consent verification hearing.
- (c) For a more detailed explanation of determining financial eligibility under the Criminal Justice Act (CJA), **see:** Guide, Vol 7A, § 210.40.

§ 240 Procedures for Appointments

§ 240.10 Transfers from the U.S.

- (a) Appointment of counsel and guardians ad litem in connection with transfer proceedings **from** the U.S. **to** a foreign country under [18 U.S.C. § 4107](#)

are made in accordance with the CJA, [18 U.S.C. § 3006A](#), and the *Guide to Judiciary Policy*. **See:** [18 U.S.C. § 4109\(a\)\(1\)](#).

- (b) [Form CJA 20](#) should be used for the appointment and compensation of counsel and guardians ad litem in International Prisoner Transfer Proceedings **from** the U.S. **to** a foreign country. Such appointments are to be considered an appointment in a misdemeanor case for purposes of compensation under the CJA.

§ 240.20 Transfers to the U.S.

The Director of the Administrative Office of the United States Courts (AO) has delegated authority to the Assistant Director for the Office of Defender Services to designate counsel and guardians ad litem for appointment in International Prisoner Transfer proceedings **from** a foreign country **to** the U.S. **See:** [18 U.S.C. § 4108](#) and [§ 4109\(a\)\(2\)](#).

For questions about the appointment of counsel in International Prisoner Transfer proceedings **from** a foreign country **to** the U.S., contact the AO Office of Defender Services, 202-502-3030.