

United States District Court
for the District of Columbia
Washington, D.C. 20001

Thomas F. Hogan
Chief Judge

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March 12, 2002

MEMORANDUM

TO: District Court Judges
Magistrate Judges

FROM: Chief Judge Thomas F. Hogan *TFH*

SUBJECT: District Court's Criminal Justice Act Plan

Please be advised that the Circuit Judicial Council has approved the amendments to the District Court's Criminal Justice Act Plan that were adopted at the February 5, 2002, Executive Session. A copy of the Plan, as amended, is attached.

Attachment

cc: Ms. Nancy Mayer-Whittington
✓ Mr. A. J. Kramer

PLAN

OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

Pursuant to the provisions of the Criminal Justice Act of 1964 (18 U.S.C. 3006A) as amended, by the Criminal Justice Act Revision of 1986, the judges of the United States District Court for the District of Columbia have adopted the following amended plan for the adequate representation of any person otherwise financially unable to obtain adequate representation.

- (1) Representation shall be provided for any financially eligible person who:
 - (i) is charged with a felony or with a Class A misdemeanor;
 - (ii) is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. 5031 (See 18 U.S.C. 5034 with regard to appointment of counsel);
 - (iii) is charged with a violation of probation;
 - (iv) is under arrest, when such representation is required by law;
 - (v) is entitled to appointment of counsel in parole proceedings;
 - (vi) 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;
 - (vii) is subject to a mental condition hearing under chapter 313 of 18 U.S.C.,
 - (viii) is in custody as a material witness; and
 - (ix) is entitled to appointment of counsel under the sixth amendment to the Constitution, or faces loss of liberty in a case, and federal law requires the appointment of counsel.

- (2) Whenever the magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- (i) is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized; or
 - (ii) is seeking relief under section 2241, 2254, or 2255 of title 28 U.S.C.

Representation shall include counsel and investigative, expert and other services necessary for adequate representation.

I. Provision for Furnishing Counsel

- A. This plan 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 Columbia. In addition, this plan provides for the appointment and compensation of private counsel in a substantial proportion of cases. The term "private counsel" includes counsel furnished by a bar association, a legal aid agency, and a state or local defender organization, and a claim by such an entity for compensation will be approved on the same basis as in the case of the appointment of private counsel.
- B. Insofar as practical, private attorney appointments will be made in at least 25 percent of the cases.
- C. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, at least two attorneys should be appointed.

II. Federal Public Defender Organization

- A. The Federal Public Defender Organization for the District of Columbia, established under this plan shall operate pursuant to the provisions of subsection (g)(2)(A) of the Act, as well as the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), promulgated by the United States Judicial Conference pursuant to subsection (h) of the Act.
- B. Neither the Federal Public Defender nor any appointed staff attorney may engage in the private practice of law.
- C. The Federal Public Defender shall 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.
- D. The Federal Public Defender shall furnish to this court the initial roster of staff attorneys and shall report any changes thereto to the court.
- E. In order 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.

III. Administrative Organization

A. CJA Panel

The Court shall 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 shall approve attorneys

for membership on the panel after receiving recommendations from the "Panel Selection Committee" established pursuant to paragraph B hereof. Members of the CJA Panel shall serve at the pleasure of the Court.

B. Panel Selection Committee

A Panel Selection Committee shall be established by the Court. The Committee shall consist of one or more district judges, one or more magistrate judges, one or more attorneys who are experienced members of the CJA Panel, one or more experienced criminal law practitioners who are not members of the CJA Panel, and the Federal Public Defender. The Chief Judge of the District Court shall select the chairperson.

The Committee shall meet at least once a year and shall review the qualifications of applicants and recommend the best qualified to the Court.

At its annual meeting, the Committee shall 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 regarding the appointment process and panel management. The Committee shall also inquire as to the continued availability and willingness of each panel member to accept appointments.

C. Application for Panel Membership

Application forms for panel membership shall be made available, upon request, by the Federal Public Defender Office. Applicants must be members in good standing of the bar of this Court, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence, and shall have had criminal trial experience.

Completed applications shall be submitted to the Federal Public Defender who will transmit the applications to the chairperson of the Panel Selection Committee.

D. Size of Panel

The Panel shall consist of a list of names large enough to provide a sufficient number of experienced attorneys to handle the Criminal Justice Act caseload, yet small enough so that panel members receive an adequate number of appointments to maintain their proficiency in criminal defense work and thereby provide a high quality of representation.

E. Management of Panel

The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers. The Federal Public Defender shall also maintain a record of qualifications and experience of each panel member. The Federal Public Defender shall furnish a copy of this list to each judge and magistrate judge. The Federal Public Defender shall maintain a public record of assignments to private counsel, as well as statistical data reflecting the proration of appointments between the Federal Public Defender Organization and private attorneys, according to the formula described in Subtitle B of Title I. Every effort shall be made to ensure that counsel is appointed as expeditiously as possible, that appointments are equitably distributed and that information on availability of counsel is maintained.

Appointments from the list shall be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case and attorney availability. This procedure shall result in a balanced distribution of appointments and compensation among members of the panel of attorneys, and quality representation for each person for whom counsel is appointed.

Upon the determination of a need for counsel, the judge or magistrate judge shall notify the Federal Public Defender of the need for counsel and the nature of the case. The Federal Public Defender shall either accept the representation or obtain as counsel 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 appointed counsel is required

who is available to accept the appointment and shall provide the name to the appointing judge or magistrate judge. In making the decision whether to accept the representation or to obtain an attorney from the panel the Federal Public Defender must take into account the requirements of section I(b) that insofar as practical, private attorney appointments will be made in at least 25 percent of the cases. In the event of an emergency, i.e., weekends, holidays, or other nonworking hours, the magistrate judge or judge may appoint any attorney from the panel. In all cases where members of the panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Federal Public Defender of the name of the attorney appointed and the date of the appointment.

F. Removal from the Panel

In the event that a magistrate judge or judge considers that an attorney should be removed from the panel of Criminal Justice Act attorneys, referral of the matter shall be made to the Court's Panel Selection Committee. Upon consideration of the Committee's report, the Court shall have authority to terminate the eligibility of an attorney for appointment in future cases.

G. Pro Hac Vice Admission

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 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 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 this district, should possess such qualities as would qualify him or her for admission to this district's CJA panel in the ordinary course of panel selection.

IV. Determination of Need for Counsel

A. Advice of Right, Financial Inquiry, Appointment Procedure

Counsel should be provided to persons financially eligible for representation as soon as feasible after they are taken into custody, when they appear before a federal judge or magistrate judge, when formally charged, or when otherwise entitled to counsel under the Act, whichever occurs earliest. The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.

To effectuate this objective, federal law enforcement and prosecutorial agencies in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who might otherwise be entitled to counsel under the Act, whether the person desires court appointed counsel, and shall, in such cases in which the person indicates that he or she does seek representation, promptly arrange to have the person presented before a magistrate judge or judge of this court for determination of financial eligibility and assignment of counsel.

Unless it will result in undue delay, factfinding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (CJA Form 23) and the form shall be completed and executed before a judicial officer or employee. Employees of law enforcement agencies or United States attorney offices should not

participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.

Upon the appearance of a person before a magistrate judge or judge as provided above, or at any proceeding in which a person who is entitled to representation under this plan appears without counsel, the court shall advise the person of the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford adequate representation. Unless the person waives representation by counsel, the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel pursuant to procedure set forth in Section III – E to represent the person. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry may follow the appointment of counsel as soon thereafter as is practical. All statements made by a person in requesting counsel or during the inquiry into eligibility shall be either (a) by affidavit sworn to before the court, a court clerk or deputy, or a notary public, or (b) under oath in open court.

Appointment of counsel may be made retroactive to include representation furnished pursuant to this plan prior to appointment.

The court shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown.

B. Continuity and Duration of Appointment

A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the United States magistrate judge or the district court judge through appeal, including ancillary matters appropriate to the proceedings. In determining whether a matter is ancillary to the proceedings the court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal charge. If a United States magistrate judge

appoints counsel to represent a person and the person is later before a district court judge in connection with the same charge, the same counsel shall appear before the judge to represent the person until the judge has had the opportunity to make an independent determination as to whether appointment of counsel in the proceeding is appropriate and, if so, who should be appointed.

C. Appeal

In the event that a defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal. The attorney shall continue to represent the defendant on appeal unless or until relieved by the district court or the court of appeals.

D. Partial Payment or Reimbursement

If at any time after appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of a person furnished representation, the court may terminate the appointment of counsel or authorize payment as provided in subsection (f) of the Act, as the interests of justice may dictate.

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 the representation and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court. The court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such party. In such event, the amount so paid or payable by the party shall be considered by the court in determining the total compensation to be allowed to such attorney. No appointed counsel may require,

request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the court.

If at any stage of the proceedings, including an appeal, the court finds that the party is financially unable to pay counsel whom he or she had retained, the court may appoint counsel as provided in the Act, and authorize such payment as therein provided, as the interests of justice may dictate.

The court, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

V. Investigative, Expert and Other Services

A. Upon Request

Counsel (whether or not appointed under the Criminal Justice Act) for a person who is financially unable to obtain investigative, expert or other services necessary for adequate representation in his case may request such services in an ex parte application before a judge, or before a magistrate judge if the services are required in connection with a matter over which the magistrate judge has jurisdiction (or if the judge otherwise refers such application to a magistrate judge for findings and report). Upon finding, after appropriate inquiry in an ex parte proceeding, held in camera, that the services are necessary, and that the person is financially unable to obtain them, the court, or the magistrate judge, as the case may be, shall authorize counsel to obtain the services. The judge or magistrate judge may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by 18 U.S. 3006A(e)(3). Claims for investigative, expert and other services rendered in cases handled by the Federal Public Defender Organization do not require court approval if they are paid from the Federal Public Defender Office budget.

B. Without Prior Request

Counsel, appointed under the Criminal Justice Act may obtain, subject to later review, investigative, expert or other services without prior authorization, if

necessary for adequate representation. Except as provided in the paragraph below, the total cost of services obtained without prior authorization, may not exceed \$300 and expenses reasonably incurred.

The court or the magistrate judge (if the services were rendered in a case disposed of entirely before the magistrate judge), may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment of such services after they have been obtained, even if the cost of such services exceeds \$300.

A sworn application may be made by counsel to the court or magistrate judge on the appropriate CJA form for the ex parte review by the judge, or by a magistrate judge if the services were rendered in a case disposed of entirely before the magistrate judge.

C. Necessity of Affidavit

The statement by or on behalf of the person in support of the request under Paragraph A and B supra, shall be made either by affidavit sworn to before the clerk, or other appropriate officer, or by declaration.

D. Quality of Services

The court, in all cases, will hold counsel accountable to obtain only qualified investigators or experts.

VI. Compensation

A. Individual Payments to Counsel Appointed Under This Plan

Payment of fees and expenses to counsel appointed under this plan, and payment for investigative, expert and other services incurred pursuant to Title V hereof, shall be made in accordance with the provisions of the United States Judicial Conference's guidelines for the administration of the Criminal Justice Act, and in accordance with the fiscal policies of the Administrative Office of the United States Courts.

B. Schedule of Maximum Fees for Counsel Appointed Under This Plan

The following fees are hereby prescribed for this District:

1. Maximum Hourly Rate for Counsel The maximum hourly rate for attorneys shall not exceed the amount set by the United States Judicial Conference. In addition, such attorney shall be reimbursed for expenses reasonably incurred, including the cost of any necessary transcripts authorized by the court or the magistrate judge.
2. Maximum Amounts for Counsel For representation of a defendant before a magistrate judge or judge of this court, or both, the maximum compensation to be paid for an attorney shall not exceed \$3,500 for each attorney in a case in which one or more felonies are charged, and \$1,000 for each attorney in a case in which only misdemeanors (including petty offenses as set forth in subsection (a)(2)(A) of the Act), are charged. Representation of a defendant on a new trial shall be considered a separate case, and fees shall be paid on the same basis as on the original trial.

For any other representation required or authorized by the Criminal Justice Act, the compensation shall not exceed \$750 for each attorney in each proceeding. This includes, but is not limited to, representation of persons charged with a violation of probation, persons entitled to appointment of counsel in parole proceedings under chapter 311 of Title 18, U.S.C., material witnesses in custody, and persons seeking relief under section 2241, 2254 or 2255 of Title 28 U.S.C.

3. Time Limitation on Claims No claim for compensation or reimbursement will be honored unless filed within forty-five (45) days of the termination of the representation, unless good cause is shown.
4. Waiving Maximum Counsel Fees Payment in excess of any maximum amount provided in Subpart 2 above, may be made for extended or

complex representation whenever the court in which representation was rendered, or the magistrate judge if the representation was furnished exclusively before the magistrate judge, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the District of Columbia Circuit. The Chief Judge of the Circuit may delegate such approval authority to an active circuit judge.

5. Payment for services Other than Counsel

(a) **Previously Approved Services.** Where counsel has received prior authorization for services, the maximum which may be paid per person so authorized shall not exceed \$1,000 exclusive of reimbursement for expenses reasonably incurred.

(b) **Without Prior Request.** Counsel may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for adequate representation. The total cost of these services may not exceed \$300, and expenses reasonably incurred. The court, or the magistrate judge (if services were rendered in a case disposed of entirely before the magistrate judge) may, in the interest of justice, and upon finding that timely procurement of the necessary services could not await prior authorization, approve payment of such services after they have been obtained, even if the cost of such services exceeds \$300.

(c) **Payment in excess of the maximum amount** may be made if the presiding judicial officer certifies that the excess payment is necessary to provide fair compensation for services of an unusual character or

duration and the payment is approved by the Chief Judge of the District of Columbia Circuit. The Chief Judge of the Circuit may delegate such approval authority to an active circuit judge.

C. Claims

Claims for compensation of private attorneys and others furnishing services under the Act shall be submitted on the appropriate CJA form, to the office of the Federal Public Defender Organization. That office shall review the claim form for mathematical and technical accuracy and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), and if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. Claims for investigative, expert and other services rendered in cases handled by the Federal Public Defender Organization do not require court approval if they are paid from the Federal Public Defender Office budget.

VII. Forms

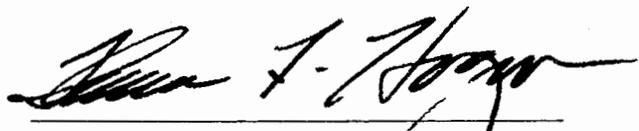
Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the court, the clerk, the magistrate judges, and Federal Public Defender Organization and other appointed counsel.

VIII. Guidelines for the Administration of the Criminal Justice Act

The court, clerk of the court, Federal Public Defender Organization, and private attorneys appointed under the Act and this plan, shall comply with the provisions of the Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, Vol. VII, Guide to Judiciary Policies and Procedures.

IX. Effective Date

This plan as amended this 5th day of February 2002, shall take effect when approved by the Judicial Council of the District of Columbia Circuit.



CHIEF JUDGE