UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

CRIMINAL JUSTICE ACT PLAN

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I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) [hereinafter referred to as CJA], and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the Judges of the United States District Court for the Northern District of Florida adopt the following amended plan for furnishing representation in federal court to any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY

A. Objectives.

1. The principal objective of this Plan is to attain the goal of equality before the law for all persons. This plan, therefore, shall be administered so that those accused of crime, or otherwise eligible for service pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an effective defense.

2. The further objective of this Plan is to particularize the requirements of the CJA and the CJA Guidelines in a way that meets the needs of this District.

B. Compliance.

1. The Court, its Clerk, the Federal Public Defender's Office, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

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NORTH DIST., FLA.
TALLAHASSEE, FLA.

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2. Each private attorney shall be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. PROVISION OF REPRESENTATION

A. Representation shall be provided in this District for any financially eligible person who:

1. is charged with a felony;

2. is charged with a misdemeanor, unless the charge is a petty offense for which incarceration will not be imposed;

3. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;

4. is charged with a violation of probation or supervised release in a felony case or a misdemeanor case in which a term of imprisonment may be imposed (unless the presiding judicial officer announces in advance that a term of imprisonment will not be imposed);

5. is under arrest, when such representation is required by law;

6. is entitled to appointment of counsel in parole proceedings;

7. is subject to a mental condition hearing under 18 U.S.C. §§ 4241-4247;

8. is in custody as a material witness;

9. is seeking to set aside or vacate a death sentence under Sections 2254 or 2255 of Title 28, United States Code;

10. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;

11. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

12. faces loss of liberty in a case, and federal law requires the appointment of counsel.

B. Whenever the judicial officer determines that the interests of justice so require, representation may be provided in this District for a financially eligible person who

1. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;

2. is seeking relief, other than to set aside or vacate a death sentence under 28 U.S.C. § 2241, 2254, or 2255;

3. is charged with civil or criminal contempt and faces a loss of liberty;

4. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or faces a loss of liberty;

5. is proposed by the United States Attorney for processing under a pretrial diversion program; or

6. is held for international extradition under Chapter 209 of Title 18, United States Code.

IV. ESTABLISHMENT OF THE FEDERAL PUBLIC DEFENDER ORGANIZATION

The Court continues to find that the use of a Federal Public Defender Organization in this District, as defined in 18 U.S.C. § 3006A(g)(2)(A), is appropriate and should continue. 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, reports of the office's activities and the financial position and proposed budget of the office. Copies of the reports shall be furnished to this Court and to the

Judicial Council for the Eleventh Circuit. Neither the Federal Public Defender, nor any staff attorney appointed as an Assistant Federal Public Defender, may engage in the private practice of law.

V. CRIMINAL JUSTICE ACT PANEL

A. Formation of a Standing Committee to Oversee the Criminal Justice Act Panel.

1. The Judges of the United States District Court for the Northern District of Florida hereby create a standing committee to oversee the CJA Panel. This committee shall consist of the Federal Public Defender or his or her designee and four attorneys who are engaged in the private practice of law and appointed by the Chief Judge of the District. Preferably, each of the private attorneys should come from a different division within the district. Each member of the standing committee shall be a voting member, and possess sufficient experience and interest in the federal criminal justice system to administer the CJA Panel.

2. The Federal Public Defender or his or her representative shall be a permanent member of the committee. The Clerk of Court or his or her designee shall be an ex officio, non-voting member of the committee.

3. Appointments will be made for two-year terms. The standing committee will be permitted to use the staff of the Clerk for clerical and record-keeping matters.

4. The standing committee shall meet formally at least twice a year. In addition to reviewing panel membership, the committee shall identify and define any operating difficulties encountered in the administration of the Panel and make recommendations to the Court for appropriate changes.

5. The standing committee shall also coordinate with the Federal Public Defender's Office, and the panel representative, training efforts for the CJA Panel. Such training shall include correspondence with panel attorneys on substantive and procedural changes in the law, local rules, and other matters affecting the panel

attorneys. The training shall also include an annual seminar. The Federal Public Defender shall be responsible for presenting the training seminar to the panel attorneys.

B. Membership of the CJA Panel.

1. Pursuant to the terms of this Plan, CJA panel attorneys shall be members of the bar of this District. In addition to bar membership, the panel attorneys should have prior federal and/or state criminal trial experience, significant involvement in serious or complex criminal cases, knowledge of the Sentencing Guidelines and the Bail Reform Act, and knowledge of other relevant areas of criminal practice.

2. The Panel shall consist of attorneys recommended by the standing committee and approved by a judge of the District.

3. Those attorneys approved by a District Judge are appointed for a three-year term. As the expiration of the three-year term approaches, the standing committee shall provide the Chief Judge with the names of those lawyers that, in the view of the committee, should continue for another three-year term. The Chief Judge shall consider the recommendations of the committee, and issue a letter or order reappointing those attorneys the Chief Judge wishes to continue serving on the panel. The responsibility for initiating this process rests with the standing committee, and there is no need for a panel member to reapply for appointment.

4. To maintain their continued eligibility to serve on the Panel each attorney shall attend annually the training seminar presented by the Federal Public Defender's Office, or inform the Office of the Public Defender of their participation in a seminar or training session that addresses the practice of federal criminal law.

5. An attorney may, during his or her three-year term, be removed from the Panel by a majority vote of the district judges.

VI. ASSIGNMENT OF CASES TO THE CJA PANEL.

A. The Federal Public Defender's Office shall be responsible for overseeing the assignment of cases to panel attorneys. That responsibility shall include the obligation to contact the panel member regarding the assignment, to secure the panel member's

agreement to represent the defendant, and to notify the Clerk of the assignment. It also includes the obligation of assisting the Court in its assignment of the appropriate number of cases to panel members. Assignments shall be made on a rotational basis except where, due to the nature and complexity of the case, an attorney's experience, and geographical considerations, require otherwise.

B. The Federal Public Defender's Office shall maintain a master list of CJA appointments, which will include the date of each appointment, the case name, the date of each refusal ("pass") by a panel attorney, and the reason for each pass.

C. If the Federal Public Defender's Office determines that a panel member has repeatedly passed assignments, the Federal Public Defender's Office may refer the name of the attorney to the standing committee. The standing committee shall then consider the information provided by the Federal Public Defender's Office and make such further inquiry as it deems appropriate.

D. The Federal Public Defender's Office shall also maintain a public record of assignments to the Federal Public Defender's Office and to the CJA Panel, as well as current statistical data reflecting the proration of appointments.

VII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Accused for Appointment of Counsel.

The United States Attorney or designee or the United States Marshal or designee shall contact the Clerk of the Court and arrange to have the arrested person promptly presented before a judicial officer for determination of financial eligibility and appointment of counsel.

B. Pretrial Service Interview.

Prior to any probation officer or pretrial services officer interviewing a person subject to proceedings under 18 U.S.C. § 3142 et. seq., the officer shall ask any person who is in custody, or who otherwise may be entitled to counsel under the Criminal Justice Act, whether he or she is financially able to secure representation. In those cases where the person says that he or she is unable to do so, the officer shall

notify the Federal Public Defender's Office. The Federal Public Defender or his or her representative may offer advice to the person prior to the pretrial interview or may also attend the interview itself for the purpose of providing assistance. If a representative from the Federal Public Defender's Office chooses to be present for the interview, he or she must report promptly to the interview so as to afford the pretrial services officer adequate time to complete the interview and verify information prior to the court appearance. Should there be no one available from the Federal Public Defender's Office who can promptly appear, or should the Federal Public Defender's Office choose not to appear, the pretrial officer may begin and complete the interview.

C. Notice of Indictment or Criminal Information.

The Clerk of the Court shall, no later than first appearance, provide the accused with a copy of the applicable indictment, information, or petition to modify or revoke probation.

VIII. DETERMINATION OF NEED FOR COUNSEL

A. Counsel for Persons Appearing Without an Attorney.

In every case in which a person is eligible for appointment of counsel pursuant to 18 U.S.C. § 3006A(a) and the person appears without counsel, the judicial officer shall advise that person that he or she has a right to be represented by counsel throughout the case and that counsel will be appointed to represent the person if so desired, if he or she is financially unable to obtain counsel.

Whenever the person states that he or she is financially unable to obtain counsel and desires the appointment of counsel, the judicial officer shall inquire into and make a finding as to whether the person is financially able to obtain counsel.

B. Counsel for Persons Appearing With an Attorney.

Where an arrested person has been represented by counsel before his or her presentation before a judicial officer under circumstances where such representation is authorized by 18 U.S.C. § 3006A(a), counsel may subsequently apply to the judicial officer for approval of compensation. If an application is made to a Magistrate Judge,

the Magistrate Judge shall submit a recommendation to a Judge of this Court for final approval. If the Judge finds that the person has been and is then financially unable to obtain an adequate defense, and that representation was required by law, compensation will be made retroactive pursuant to 18 U.S.C. § 3006A(b).

IX. APPOINTMENT OF COUNSEL

A. The Judicial Officer.

1. In every case in which appointment of counsel pursuant to 18 U.S.C. § 3006A(a) is appropriate, the judicial officer shall appoint counsel promptly if it is found that the person is financially unable to obtain an attorney, unless the person waives his or her right to be represented by counsel.

2. The judicial officer shall appoint the Federal Public Defender's Office or counsel from the CJA Panel, except in circumstances where, in the interest of justice, it becomes necessary to appoint some other qualified counsel. The person shall not have the right to select his or her appointed counsel from the Federal Public Defender's Office, from the CJA Panel, or otherwise.

3. Pursuant to 18 U.S.C. § 3005, a person charged with a capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. In appointing counsel in federal capital prosecutions, the Court shall consider the recommendation of the Federal Public Defender. If following the appointment of counsel in a case in which a defendant was charged with an offense that may be punishable by death, it is determined that the death penalty will not be sought, the Court may reconsider the question of the number of counsel needed.

4. If, at any time after the appointment of counsel, the judicial officer finds that the person is financially able to obtain counsel or make partial payment for the representation, the judicial officer may terminate the appointment of counsel or recommend that any funds available to the person be ordered paid as provided in 18 U.S.C. § 3006A(f).

5. If at any stage of the trial proceedings, the judicial officer finds that the person is financially unable to continue to pay retained counsel, the judicial officer may make an original appointment of counsel in accordance with the general procedure set forth in this Plan.

6. If a person having a right to counsel (i.e., where the appointment is not a matter of discretion) is not represented by counsel before the judicial officer and seeks to waive his or her right to have appointed counsel, the judicial officer shall make appropriate inquiry regarding such a waiver. If the person admits or the judicial officer finds that the person is financially able to obtain counsel but declines to do so, the judicial officer shall certify that fact in the record of the proceedings.

B. The Clerk.

If a person having a right to counsel desires to have counsel appointed, then

(a) if no affidavit of financial ability to employ counsel has been filed with the Clerk, a form of affidavit shall promptly be sent to the person, to be filled out by the person and returned to the Clerk; or

(b) if the notice to the Clerk includes an affidavit of financial inability to employ counsel, the Clerk shall promptly communicate with a judicial officer for consideration of the appointment of counsel.

C. Obligation of Counsel.

1. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

2. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of The Florida Bar's Rules of Professional Conduct and Guidelines for Professional Conduct.

3. Counsel appointed by a judicial officer shall, unless excused by order of court, continue to act for the person throughout the proceedings in this Court. Appointed counsel is expected to appear personally at all proceedings, with substitutions or the filing of additional appearances permitted only with leave of the

Court. The judicial officer before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

4. 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 his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

5. In all criminal cases, appointed counsel shall advise the defendant of the right to 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, and shall continue to represent the defendant, unless, or until, relieved by the district court or the court of appeals.

X. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

Counsel (whether or not appointed under the Act) for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense in his or her case may request such services in an *ex parte* application before a judicial officer, as provided in 18 U.S.C. § 3006A(e)(1). Upon finding that the services are necessary, and that the person is financially unable to obtain them, the judicial officer shall authorize counsel to obtain the services.

Appointed counsel may obtain, subject to later judicial review, investigative, expert, or other services without prior authorization, pursuant to the dollar limitation set out in 18 U.S.C. § 3006A(e)(2).

Counsel shall comply with all provisions regarding financial limitations and requests for services, as set forth in 18 U.S.C. § 3006A(e), and any guidelines or regulations approved by the Judicial Conference of the United States.

XI. COMPENSATION

Payment of fees and expenses to counsel appointed under this Plan (other than to the Federal Public Defender's Office), and payment for investigative, expert, and other services incurred, shall be made in accordance with any statutory limitations and such rules, regulations, and guidelines, as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts. No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a person, unless such payment is approved by order of court. Payment in excess of any maximum amount provided by statute or otherwise may be made for extended or complex representation, whenever the court in which the representation was rendered 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 Eleventh Circuit or the Chief Judge's designee.

Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form to the office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines and, if the claim is correct in form, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. After review of any submissions by appointed counsel and the completion of any other steps deemed appropriate by the Court, the judicial officer shall take action on the voucher, consistent with this Plan, the CJA, and the interests of justice.

XII. 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 judicial officers, the Federal Public Defender's Office, and counsel.

XIII. EFFECTIVE DATE

This Plan, as amended this 27th day of June, 2000, shall take effect when approved by the Judicial Council of the Eleventh Circuit. This Plan supersedes all prior Criminal Justice Act plans of this Court.

Roger Vinson, Chief Judge

Lacey A. Collier, District Judge

Robert L. Hinkle, District Judge

Stephan P. Mickle, District Judge

William Stafford, Senior Judge

Maurice M. Paul, Senior Judge