UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL

In the Matter of the Review of the	*	
Amendment to the Plan of the United	*	
States District Court for the Eastern District of	*	No. 170
Virginia in Implementation of the	*	
Criminal Justice Act	*	

ORDER

The Plan of the United States District Court for the Eastern District of Virginia, as amended, which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:

Chief Judge

Date: October 1, 2002

FILED

OCT 1 2002

U.S. Court of Appeals
Fourth Circuit

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

PLAN FOR PROVIDING REPRESENTATION FOR ELIGIBLE PERSONS UNDER THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

Effective Date: January 1, 2002

I. PREAMBLE

Pursuant to the provisions of 18 U.S.C. § 3006A(a) and the Guidelines for the Administration of the Criminal Justice Act and Related Statutes approved by the Judicial Conference of the United States (Guide to Judicial Policies and Procedure, Vol. VII, Appointment of Counsel in Criminal Cases), the PLAN AS TO APPOINTMENT OR ASSIGNMENT OF COUNSEL IN CRIMINAL CASES under the CRIMINAL JUSTICE ACT OF 1964, as amended February 11, 1971 and November 9, 1998 (the "1964 CJA Plan") shall be amended as hereinafter provided to terminate the 1964 CJA Plan and to establish a new CJA Plan (the "CJA Plan").

Upon approval of the CJA Plan by the Fourth Circuit Judicial Council, the 1964 CJA Plan shall be terminated and superceded by the CJA Plan as herein established.

II. THE CJA PLAN

The CJA Plan shall be comprised of: (1) the requirements for a plan for adequate representation of defendants as set forth in 18 U.S.C. § 3006(A)(a)-(f), in non-capital cases, and by 18 U.S.C. § 3005 and 21 U.S.C. § 848(q)(4)-(10), in capital cases, as in effect as of the effective date of the CJA Plan, and as those statutes are thereafter amended in respect of providing adequate representation of defendants; and (2) the requirements set forth in Sections III through VII below.

The Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Chapter VII, APPOINTMENT OF COUNSEL IN CRIMINAL CASES, as from time to time amended, shall be used to inform the administration of the CJA Plan except to the extent that: (i) they may be inconsistent with the provisions of 18 U.S.C. § 3005, 18 U.S.C. § 3006A or 21 U.S.C. § 848(q), as amended; or (ii) local practice controls as evidenced in the CJA Plan.

III. REPRESENTATION BY APPOINTED COUNSEL

A. Eligibility For Representation By Appointed Counsel

(1) Any person who is determined, after appropriate inquiry by a magistrate judge or a district judge, to be financially unable to obtain counsel, who does not waive the right to counsel, and who qualifies for counsel under 18 U.S.C. § 3006A(a)(1) shall be eligible for representation by counsel appointed under the CJA Plan.

(2) Any person who is determined by a magistrate judge or a district judge: (a) to be financially unable to obtain counsel; and (b) to require representation in the interests of justice under 18 U.S.C. § 3006A(a)(2) also shall be eligible for representation by counsel appointed under the CJA Plan. For ease of reference, the provisions of 18 U.S.C. § 3006A)(a)(1) and (2), as currently in effect, are attached as Appendix A.

(3) Only natural persons shall be eligible for representation by counsel appointed under the CJA Plan.

B. **Determination Of Eligibility**

(1) The determination of eligibility for representation under the CJA Plan is a judicial function to be made by a district judge or magistrate judge after an appropriate inquiry respecting the person's financial condition. However, employees of the Court, including Deputy Clerks and Pretrial Services Officers, are hereby designated to obtain or verify facts upon which the determination of eligibility may be made. The facts shall be set forth on a CJA Form 23 completed and executed under oath by the person before a district judge, magistrate judge or other judicial employee designated to obtain and verify factual information.

(2) It is the responsibility of the person requesting the services of appointed counsel to demonstrate financial eligibility, but doubts respecting eligibility should be resolved in favor of eligibility. If it later appears that the person was not financially unable to obtain counsel, a district judge or magistrate judge may require the person to reimburse the fees and costs of the defense provided under the CJA Plan.

C. Federal Public Defender Organization

As permitted by 18 U.S.C. § 3006A(g)(1) and (g)(2)(A), on November 9, 1998, the 1964 CJA Plan was amended to establish a Federal Public Defender Organization ("FPDO") in this district, which action subsequently was approved by the Fourth Circuit Judicial Council. Attorneys employed by the FPDO shall provide representation under the CJA Plan as provided hereafter.

D. CJA Panel Attorneys

To achieve the purposes of the CJA Plan and to effectuate the requirements of 18 U.S.C. 3006A(a)(3), the district judges of each division in the district shall constitute a panel of private attorneys, qualified as required by law and the standards established in that division, who are willing to serve, upon appointment under the CJA Plan, as counsel for persons who are eligible for representation under the CJA Plan (hereinafter "CJA Panel Attorney(s)"). The Clerk's Office in each division shall maintain a list of private attorneys selected to serve as CJA Panel Attorneys in the division. CJA Panel Attorneys shall serve at the pleasure of the Court; and the list of CJA Panel Attorneys in each division shall be reviewed from time to time and names may be added to, or deleted from, the list as, in the discretion of a district judge in the division, circumstances may require.

To the extent practicable and considering the complexity of the case, appointments shall be made in rotation from the list of CJA Panel Attorneys. The Clerk shall assure that the list of CJA Panel Attorneys, as revised from time to time, is delivered to the district judges and magistrate judges in the division.

E. Source Of Appointed Counsel For Representation Under The CJA Plan

Representation shall be provided by attorneys furnished by the FPDO and, in a substantial proportion of cases, by private attorneys as hereinafter provided.

F. Appointment Of Counsel

(1) Counsel to represent an eligible person in a non-capital case shall be appointed by, or at the direction of, a district judge or a magistrate judge of the division. Appointed counsel shall be: (i) an attorney employed by the FPDO; (ii) a CJA Panel Attorney, or (iii) any other qualified private attorney who is a member of the bar of the Court upon a determination by the district judge to whom the case is assigned or, if not assigned, by a district judge of the division in which the case is pending, that it is in the interest of justice, judicial economy or continuity of representation or other good cause so to do.

(2) In non-capital cases, a district judge may appoint an additional attorney upon a finding (which shall appear in the Order of Appointment) that the case is exceptionally difficult and that it is in the interest of justice to appoint an additional attorney.

(3) Appointment of counsel in capital cases (including cases that are not certified by the Attorney-General as capital but as to which the death penalty is a penalty permitted by a statute a violation of which is charged in an indictment) shall be governed by 18 U.S.C. § 3005 and by 21 U.S.C. § 848(q)(4)-(10) and shall be made, or approved, by the district judge to whom the case is assigned or, if not assigned, by a district judge of the division in which the case is pending.

(4) If the FPDO is appointed as counsel and does not decline the appointment, an attorney employed by the FPDO shall note an appearance as counsel of record at the earliest possible date (but not later than three calendar days before the next scheduled court proceeding or five calendar days after the Order of Appointment is entered, whichever shall first occur).

(5) Appointed counsel shall report to the Court any conflict of interest promptly after learning thereof so that substitute counsel can be appointed (if the conflict is thought to be of the nature which precludes continued representation) or the court can examine the defendant about continued representation (if the conflict is of the sort that may permit continued representation).

Conflicts of interest shall be determined under the provisions of the Virginia Rules of Professional Conduct, as published in the version effective January 1, 2000, except for Virginia Rule of Professional Conduct 3.6 (the subject of which is covered by Local Criminal Rule 57).

(6) Appointment of counsel for an eligible person shall be made by a district judge or magistrate judge as soon as feasible after the eligible person has been taken into federal custody, when the eligible person first appears before a magistrate judge, or when such person is otherwise entitled to counsel under the law or the CJA Plan, whichever shall first occur.

(7) The provisions of 18 U.S.C. § 3006A(c) and (d), the Local Rules of this Court, and the CJA Plan shall govern the duration of representation by appointed counsel; the terms governing payment for, and reimbursement of expenses in respect of, the representation; the disclosure of appointed counsel's fees and expenses; the filing of claims by appointed counsel for compensation and reimbursement of expenses; and the substitution or replacement of appointed counsel.

(8) If an eligible person is convicted, it shall be the duty of appointed counsel to advise the person of any right to appeal and, upon request, timely to file a notice of appeal. Continued representation of the eligible person shall be pursuant to the decision and orders of the United States Court of Appeals for the

Fourth Circuit in accord with its practices and procedures for providing representation on appeal under 18 U.S.C. § 3006A, 18 U.S.C. § 3005 and 21 U.S.C. § 848(q).

(9) Counsel appointed under the CJA Plan shall not solicit or accept anything of value from a defendant, the defendant's family or others acting for, or on behalf of the defendant, without previous approval by a district judge.

(10) No eligible person has the right to designate or select a specific appointed counsel, investigator, expert or other service provider.

IV. SERVICES OTHER THAN COUNSEL

The expense of investigators, experts or other service providers required by the FPDO shall be paid from FPDO funds.

Appointed counsel may request authorization to obtain investigators, experts or other services for adequate representation as provided in 18 U.S.C. § 3006A, in non-capital cases, and as provided in 21 U.S.C. § 848(q)(4), (9) and (10) in capital cases; and the fees and expenses of any such authorized investigator, expert or other service provider shall be paid as provided in those statutes.

When appointed counsel request the Court to authorize such services, whether *ex parte* under 18 U.S.C. § 3006A(e) or 21 U.S.C. § 848(q)(9) or otherwise, counsel shall: (1) identify the specific services requested and the expected fee and expenses to be incurred

(hourly rate multiplied by time or other mode of charge) with sufficient specificity to permit a determination of the necessity for such services and the reasonableness of the expected fees and expenses; and (2) provide the name, address, telephone number and Social Security or Tax Identification number for each expert whose services are requested.

V. CLAIMS FOR COMPENSATION, REIMBURSEMENT OF EXPENSES BY APPOINTED COUNSEL OR BY INVESTIGATORS, EXPERTS OR PROVIDERS OF OTHER SERVICE

A. All claims for compensation or reimbursement of expenses by appointed counsel or by appointed investigators, experts or other service providers shall be made by submitting appropriate CJA Forms which may be obtained from the Clerk.

B. All claims for compensation and reimbursement shall be filed with the Clerk within thirty (30) days from the time of the termination of services in any district court proceeding or from the conclusion of the trial of a minor offense if no appeal is taken from the final action of the magistrate judge.

C. CJA Panel Attorneys or other appointed counsel not employed by the FPDO shall maintain records indicating the time expended on each case, the nature of the services performed, and the expenses incurred. Time records for legal research shall describe the nature of the legal problems necessitating research.

D. The courtroom deputy clerks shall maintain records of the actual time a matter was set for hearing, the time the hearing commenced, and the time the hearing ended. Appointed counsel is entitled to compensation for time in court from the time the hearing started (or was scheduled to start if the delay in starting was not caused by appointed counsel) until the hearing is completed, excluding time required for luncheon recess.

E. Reasonable charges for parking in the discharge of the representation are allowable where reasonably necessary. Reasonable toll charges may be reimbursed in accord with government travel regulations. Travel by private automobile beyond fifty miles from the boundaries of the district to the defendant's place of incarceration or to the residence of a potential witness must be approved by the Court.

F. Reasonable long distance telephone charges may be incurred if reasonably necessary to aid in the investigation and defense. General overhead items including, but not limited to, rent, telephone, secretarial help, or items of a personal nature are not allowable, either in whole or in part.

G. Claims for compensation ordinarily should be made at the conclusion of appointed counsel's representation but interim payments of fees and reimbursement of expenses may be made if authorized by a district judge.

VI. MISCELLANEOUS MATTERS

A. New Trial Considered a New Case

For purposes of compensation and other payments authorized by the CJA Plan, an order granting a new trial shall be deemed to initiate a new case.

B. Obtaining Attendance Of Witnesses At Trial

Appointed counsel may obtain the compulsory process for the attendance of witnesses or the production of documents at a trial or hearing by requesting that the Clerk issue a subpoena for same. The subpoena shall be served by the Marshal unless appointed counsel advises the Clerk that counsel will arrange for service in accordance with the Local Rules, in which case any cost incurred in connection with the service of the subpoena will not be a reimbursable expense. The Clerk shall issue a subpoena for the attendance of a witness located outside the district only if the Court grants a motion permitting issuance of the subpoena. Witness fees, travel advances, and reimbursement for travel expenses for all witnesses subpoenaed by appointed counsel shall be paid to the witness by the Marshal.

C. Transcripts

The FPDO will order transcripts directly from the appropriate court reporter and pay for those transcripts from FPDO funds and no approval by a judicial officer is required.

All other appointed counsel seeking a transcript of proceedings must make a request for same by filling out the appropriate request form in the Clerk's Office. After the request has been approved by a judicial officer, the transcript will be provided to the CJA Panel Attorney and any cost will be paid by the Court.

D. Retroactive Appointments

When an eligible person has been arrested and was represented by counsel before that person's appearance before a judicial officer and under circumstances where such representation is required by law, the eligible person's counsel may subsequently apply to a judicial officer for approval of compensation to cover out-of-court time expended by the attorney during the arrest period and for the in-court time of the initial appearance before a judicial officer. If the FPDO has declined or declines to accept appointment in the case, the judicial officer may, but is not required to, make a retroactive appointment of the attorney if such attorney is a CJA Panel Attorney as provided in this Plan.

Retroactive appointments may be made in the interest of justice, to serve the objectives of the CJA Plan and when not inconsistent with applicable statute.

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge