

Approved: November 4, 1987
Revised: February 7, 1994

UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF MICHIGAN

REVISED PLAN FOR IMPLEMENTING THE CRIMINAL
JUSTICE ACT OF 1964, AS AMENDED, 18 U.S.C. §3006A

P R E A M B L E

Pursuant to the provisions of the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A, [hereinafter referred to as "The Act"], the Judges of the United States District Court for the Eastern District of Michigan adopt the following amended plan for the 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 misdemeanor other than a petty offense as defined in section 1 of title 18, United States Code (but see paragraph (2) (i), infra);

(ii) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, U.S.C. (see section 5034 of title 18, U.S.C., 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 pursuant to chapter 311 of title 18, U.S.C.;

(vi) is subject to a mental condition hearing under chapter 313 of title 18, U.S.C.;

(vii) is in custody as a material witness; and

(viii) is entitled to appointment of counsel under the sixth amendment to the Constitution; or

(ix) faces loss of liberty in a case and federal law requires the appointment of counsel.

(2) Whenever the United States magistrate 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 for which a sentence to confinement is authorized; or

(ii) is charged with civil or criminal contempt who faces loss of liberty;

(iii) could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty as a result of an appearance before a grand jury or court;

(iv) is proposed by the U.S. Attorney for processing under a "pretrial diversion" program;

(v) is held for international extradition under chapter 209, title 18, United States Code;

(vi) is involved in "ancillary matters appropriate to the proceedings" pursuant to subsection (c) of the Act.

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 criminal charge.

In determining whether representation in an ancillary matter is appropriate to the proceedings, the court should consider whether such representation is reasonably necessary to accomplish, inter alia, one of the following objectives:

(a) to protect a Constitutional right;

(b) to contribute in some significant way to the defense of the principal criminal charge;

(c) to aid in preparation for the trial or disposition of the principal criminal charge;

(d) to enforce the terms of a plea agreement in the principal criminal charge;

- (e) to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding pursuant to 21 U.S.C. § 881, 19 U.S.C. § 1602 or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act; or
- (f) to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property pursuant to Fed. R. Crim. P. 41(e), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act.

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

I. Provision for Furnishing Counsel

A. This plan provides for the furnishing of legal services by a Community Defender Organization, serving the United States District Court for the Eastern District of Michigan, and 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 association, 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. The determination of whether a party entitled to representation will be represented by the Community Defender Organization or by private counsel is within the discretion of the appointing judge or magistrate. Insofar as practical, private attorney appointments will be made in at least 25 percent of the cases.

II. Community Defender Organization

A. Legal Aid & Defender Association of Detroit, a non-profit defense counsel service, is authorized by this Plan to provide representation as a Community Defender Organization, and shall be eligible to furnish attorneys and receive payments pursuant to subsection (g)(2)(B) of the Act. The by-laws of L.A.D.A. are incorporated as part of the Plan, and a copy of said by-laws shall be maintained by the Clerk of the Court and attached to the original of this Plan.

B. The Community Defender Organization shall operate pursuant to the provisions of subsection (g)(2)(B) of the Act, the terms and conditions of the sustaining grant, and 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.

C. The Community Defender Organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year.

D. The Community Defender shall furnish to this court the 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 Community Defender Organization, its Chief Attorney (hereinafter the Community 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 Community Defender Organization rather than in the name of individual staff attorneys.

III. Panel of Private Attorneys

A. Composition of Panel of Private Attorneys.

1. Approval. 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 Part B of this title. Members of the CJA Panel shall serve at the pleasure of the court.

2. Size. The court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have sufficient experience to demonstrate competence in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

4. 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. Notice of such appointment shall be sent to the District Court Executive at the time of the appointment.

5. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Federal Defender Office. Completed applications shall be transmitted to the Federal Defender Office.

B. Panel Selection Committee.

1. Membership. A Panel Selection Committee shall be established by the Court. One experienced federal criminal law practitioner from each of the following bar associations shall be invited to sit on the committee:

SOUTHERN DIVISION, DETROIT:

Detroit
Jackson County
Legal Aid & Defender Assn. of Detroit
Lenawee County
Macomb County
Monroe County
Oakland County
St. Clair County
Sanilac County
Washtenaw County
Wolverine

SOUTHERN DIVISION, FLINT:

Genesee County
Lapeer County
Livingston County
Shiawassee County

NORTHERN DIVISION, BAY CITY:

Bay County

Cheboygan County
Gratiot County
Huron County
Midland County
Saginaw County
Tuscola County
21st Judicial Circuit (Isabella)
23rd Judicial Circuit (Iosco, Oscoda)
26th Judicial Circuit (Alcona, Alpena,
Montmorency, Presque Isle)
34th Judicial Circuit (Arenac, Ogemaw,
Roscommon)
46th Judicial Circuit (Crawford, Otsego)
55th Judicial Circuit (Clare, Gladwin)

2. Duties. The Committee shall review the qualifications of applicants and recommend, for approval by the court, those applicants best qualified to fill the vacancies.

C. Disqualification from Membership on CJA Panel.

1. Removal from List, Automatic; Reinstatement. Any attorney whose license is revoked or suspended by the Attorney Discipline Board for more than 119 days shall be removed automatically from the CJA Panel list. In the event of such an attorney's reinstatement to membership in good standing in the State Bar of Michigan and the Bar of this Court, an attorney who desires to be reinstated to the CJA Panel shall proceed as on original application. If such attorney receives a recommendation by the Panel Selection Committee for appointment to the CJA Panel, the Court shall be advised of the recommendation and shall discuss and decide the appointment.

2. Suspension from List, Automatic; Reinstatement. Any attorney whose license is suspended by the Attorney Discipline Board for 119 days or less or for any other reason is no longer a member in good standing of the State Bar of Michigan shall be suspended automatically from active status on the list of CJA Panel attorneys. Upon reinstatement to membership in good standing in the State Bar of Michigan and the Bar of this Court, a suspended CJA panel attorney shall be responsible for initiating any request for return to active status on the Panel list. Such request shall be made to the Panel Selection Committee, which shall in turn recommend appropriate action to the Chief Judge. The Chief Judge shall either notify the Court of his or her intended action on the recommendation, or refer the recommendation to the Court for discussion and decision.

3. Suspension from List, Provisional; Reinstatement. The Chief Judge may provisionally suspend an attorney from membership on the CJA Panel for reasons other than bar membership status, including but not limited to formal accusation of a crime, conviction of crime not resulting in action by the Attorney Discipline Board, indications of lack of professional competence or lack of adherence to ethical standards, and indications

of mental or emotional instability affecting professional responsibilities. A district judge in possession of any such information concerning a panel attorney should immediately make the Chief Judge aware of that information and any recommendation the district judge may have concerning the panel attorney's continued status. Upon such a provisional suspension, the attorney shall be given written notice and shall have the opportunity to seek relief from suspension. Any such application shall be to the Chief Judge, who shall either refer the matter to the Panel Selection Committee for study and recommendation, or shall notify the Court of his or her intended decision on the matter or shall refer the matter to the Court for discussion and decision.

4. None of the foregoing reinstatement procedures shall be construed to alter the principle stated in section III.A.1., i.e. that all Panel attorneys serve at the pleasure of the Court.

IV. Selection for Appointment

A. Maintenance of List and Distribution of Appointments.

The Community Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers as well as a statement of qualifications and experience. The Community Defender shall furnish a copy of this list to each judge and magistrate. The Community Defender shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Community Defender Organization and private attorneys, according to the formula described in title I(B) of this plan.

B. Method of Selection.

Appointments from the list of private attorneys should be made on a rotational basis, subject to discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate shall notify the Community Defender of the need for counsel and the nature of the case.

V. 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, 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 after making appropriate inquiries regarding 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 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. Pretrial Services officers are designated by the court to obtain or verify the facts upon which such determination is to be made. 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 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 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 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 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. Representation continues with regard to consideration of and, if proper, the filing of a Rule 35 motion to reduce sentence.

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 state 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 state of the proceedings.

IV. Investigative, Expert, and Other Services

A. With Prior Authorization.

Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request such services in an ex parte application before a judge or before a United States magistrate, if the services are required in connection with a matter over which the magistrate has jurisdiction or if a judge otherwise refers such application to a magistrate for findings and report. Upon finding, after appropriate inquiry in such ex parte proceedings, that the services are necessary, and that the person is financially unable to obtain them, the judge or the magistrate, as the case may be, shall authorize counsel to obtain the services. The maximum which may be paid to a person or organization for services so authorized shall not exceed \$1,000 exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the judge, or by the magistrate if the services were rendered in connection with a case disposed of entirely before the magistrate, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the Court of Appeals for the Sixth Circuit, (or an active circuit judge to whom excess compensation approval authority has been delegated). If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or the active circuit judge to whom excess compensation approval authority has been delegated).

B. Without Prior Authorization.

Counsel appointed under the Act may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for adequate representation. However, the total cost for services obtained without prior authorization may not exceed a maximum of \$300 and expenses reasonably incurred, for each person or organization providing the services. This \$300 limit may be waived, however, if the presiding judge or magistrate (if the services were rendered in a case disposed of entirely before the magistrate) in the interest of justice finds that timely procurement of necessary services could not wait prior authorization.

C. Ex Parte Applications.

Ex parte applications for services other than counsel shall be heard in camera, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial court, subject to further order of the judge or magistrate.

D. Claims.

Claims for compensation of persons providing investigative, expert, and other services under the Act shall be submitted on the appropriate CJA form, to the office of the Clerk of the Court. 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.

E. Community Defender Organization.

The Community Defender Organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this title, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

VII. Payment for Representation by Private Counsel

A. Hourly Rates.

Any private attorney appointed under this plan shall, at the conclusion of the representation, or any segment thereof, be compensated at a rate not exceeding \$60 per hour for time expended in court, and \$40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that higher maximum rates, not to exceed \$75 per hour, are justified for particular places of holding court. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court.

B. Maximum Amounts.

For representation of a person before the district judge or the United States magistrate, or both, the compensation to be paid to a private attorney appointed under this plan 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. For any other representation required or authorized by the Act compensation is limited to \$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.

C. Waiving Maximum Amounts.

Payment in excess of any maximum amount provided in the previous paragraph may be made for extended or complex representation whenever the presiding judge, or the United States magistrate, if the representation was furnished exclusively before the magistrate, 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 Court of Appeals for the Sixth Circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated).

D. Filing Claims.

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of the Court. 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 and action of the presiding judge, or to the United States magistrate if the representation was furnished exclusively before the magistrate. In cases where representation is furnished other than before the district judge, magistrate, or an appellate court, the district judge shall fix the compensation and reimbursement to be paid.

In cases where the amount of compensation and reimbursement approved by the reviewing judicial officer is less than was requested by appointed counsel, the judicial officer should notify appointed counsel that the claim has been reduced, and provide an explanation for the reasons for the reduction.

VIII. Miscellaneous

A. 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 Community Defender Organization, and other appointed counsel.

B. Guidelines for the Administration of the Criminal Justice Act.

The court, clerk of the court, Community 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 shall take effect immediately upon its approval by the Judicial Council of the Sixth Circuit.

CERTIFICATE OF APPROVAL

This is to certify that in accordance with 18 U.S.C. §3006(a), the foregoing amended plan for the implementation of the Criminal Justice Act of 1964, as amended, has been duly received and approved by the Judicial Council of the Sixth Circuit of the United States.

This 4th day of November, 1987.

/s/ Pierce Lively

Pierce Lively
Chief Judge