

**THE PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT TO SUPPLEMENT THE PLANS OF THE SEVERAL
UNITED STATES DISTRICT COURTS WITHIN THE SEVENTH CIRCUIT**

INTRODUCTION

Pursuant to the approval of the Judicial Council of the Seventh Circuit, the United States Court of Appeals for the Seventh Circuit adopts the following Plan for furnishing representation for persons financially unable to obtain adequate representation in the cases and situations defined in the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A ("Act"), and 21 U.S.C. § 848(q), and the *Guidelines for the Administration of the Criminal Justice Act*, Volume VII, *Guide to Judiciary Policies and Procedures* ("CJA Guidelines"). This Plan supplements the plans heretofore adopted by the several United States District Courts within the Seventh Circuit and approved in final form by the Judicial Council of the Seventh Circuit.

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

I

STATEMENT OF POLICY

The Judicial Council recognizes that the successful operation of this plan will require the active and continual cooperation of members of the bar, appropriate bar associations and legal aid agencies. In particular, it is expected that the advice and assistance of the Seventh Circuit Bar Association will contribute greatly to the successful working of this Plan.

The judges, circuit executive, clerk, all federal public defender organizations and community defender organizations, and private attorneys appointed under the CJA should comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with the Plan.

The payment of compensation to counsel under the Act, in most cases, probably will be something less than compensatory. Service of counsel by appointment under the Act will continue to require a substantial measure of dedication and public service. The responsibility of members of the bar to accept appointments and to serve in these cases is the same as it traditionally has been in the past and is in no way lessened by the passage of the Act. We have complete confidence in the professional integrity of the bar to fulfill this responsibility.

In the administration of this Plan, the Court will be particularly careful to safeguard against the opportunity for any charges of fiscal laxity, favoritism or other abuse

which may cast a shadow on the general judicial system. The public funds involved will be expended with characteristic judicial responsibility.

It is deemed advisable at all times to coordinate efficiently the operation of this Plan with the several state courts to the end that there be a proper cooperation between the federal and state judicial systems.

The Court will welcome any proper and approved plan of cooperation whereby the services of advanced law school students may be made available to provide legal research assistance to appointed counsel, thereby to furnish such assistance to appointed counsel who may find it helpful and to broaden the interest and capabilities of law school students in the field of criminal law.

Finally, and most important, the Plan shall be administered so that those accused of crime will not, because they are financially unable to pay for adequate representation, be deprived of any element of representation necessary to enable them to have a fair opportunity to be heard on appeal in this Court.

II

PREPARATION OF PANEL OF ATTORNEYS

1. The Clerk of this Court, under the direction and supervision and with approval of the Court, shall forthwith prepare and maintain a panel of practicing attorneys, or attorneys from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan, in areas of the principal places of holding district court within the Seventh Circuit, who are deemed competent to provide adequate representation on appeal for persons qualifying under the Act. The Clerk of this Court shall reexamine the panel of attorneys annually to assure that it is kept current at all times.

2. Attorneys for the panel shall be selected without regard to race, color, creed, or membership in any organized bar association.

3. The Clerk shall solicit the assistance of the Seventh Circuit Bar Association, law schools, and any other appropriate bar association, in the preparation and maintenance of the panel of attorneys.

4. Additions to and removals from the panel of attorneys may be made at any time by the Court or any active member thereof.

5. The clerk of court shall provide each appointed attorney a copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the panel and shall also make available to them a current copy of the *Guidelines*.

III

DETERMINATION OF NEED FOR APPOINTMENT OF COUNSEL

1. In all cases where the defendant was found by the district court to be financially unable to obtain adequate representation, the Court may accept this finding and appoint an attorney without further proof. *But see* Fed. R. App. P. 24(a).

2. At any time before or after the appointment of counsel, the Court may examine or reexamine the financial status of the defendant. If the Court finds upon such inquiry that the defendant is financially able to employ counsel or make partial payment for his representation, then the Court may make an order appropriate under the circumstances denying or terminating such appointment pursuant to subsection (c) of the Act, or requiring such partial payment to be made pursuant to subsection (f) of the Act, as the interests of justice may dictate.

3. In determining the need for appointment of counsel under the Act, the Courts shall not be governed by a requirement of indigence on the part of the defendant, but rather by his financial inability to employ counsel, in harmony with Congressional intent in formulating this program of assistance to those found to be in need within the spirit and purpose of the Act.

IV

APPOINTMENT OF COUNSEL

1. 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. When the Court determines that the appointment of an attorney who is not a member of the panel is in the interest of justice, judicial economy, or continuity of representation, or there is some other exceptional circumstance warranting his or her appointment, the attorney may be admitted to the panel and appointed to represent the individual. Agreeable with the directives of the Judicial Conference of the United States, at least 25% of all such appointments shall be assigned to members of the private bar. Such order of appointment of counsel may be entered by the current motion judge or by any active member of the Court.

2. In all cases on appeal where the defendant was represented in the district court by court appointed counsel, such counsel shall continue to represent the defendant on appeal, unless and until relieved by order of this Court. The Court may, in appropriate cases, designate such counsel to continue on appeal.

3. At the time such appeals are docketed in this Court, the Clerk shall notify defendant's court appointed trial counsel that he shall continue such representation of

defendant in this Court unless and until relieved by order of this Court, and shall request such trial counsel to advise the Court whether he desires to continue such representation throughout the appeal.

4. In appeals under the Act involving more than one defendant, if the Court finds the need, because of conflicting interests of certain defendants or where circumstances otherwise warrant, separate counsel may be appointed for any one or more of the defendants as may be required for their adequate representation.

5. The Court may, in its discretion, at any stage of the proceedings on appeal, substitute one appointed attorney for another.

6. If, at any stage of the proceedings on appeal, the Court finds the defendant is financially unable to pay counsel whom he has retained, the Court may appoint counsel as provided in subsection (b) of the Act and authorize payment as provided in subsection (d) of the Act and the *CJA Guidelines*, pursuant to subsection (c) of the Act.

7. 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. Except as provided by section 848(q)(7) of title 21, U.S.C., at least one attorney appointed in a capital case shall meet the experience qualifications required by section 848(q)(6) of title 21, U.S.C. Pursuant to section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under section 848(q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

8. The selection of counsel to represent any person under the Act shall remain the sole and exclusive responsibility of the Court.

V

DUTIES OF APPOINTED COUNSEL

1. The services to be rendered a defendant by counsel appointed under the Act shall be reasonably commensurate with those rendered if counsel were privately employed, having regard for the circumstances of each case and as the interests of justice may require.

2. If, at any stage of the proceedings on appeal, appointed 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.

3. After an adverse decision on appeal by this Court, appointed counsel shall advise the defendant in writing of his right to seek review of such decision by the Supreme Court of the United States. If, after consultation (by correspondence, or otherwise), the represented person requests it and there are reasonable grounds for counsel properly to do so, the appointed attorney must prepare and file a petition for writ of certiorari and other necessary and appropriate documents and must continue to represent the defendant until relieved by the Supreme Court. Counsel who conclude that reasonable grounds for filing a petition for writ of certiorari do not exist must promptly inform the defendant, who may by motion request this Court to direct counsel to seek certiorari.

4. Attorneys appointed pursuant to any provisions of the Act shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct.

5. Appointed appellate attorneys have a duty to continue to represent their clients after remand to the district court. An attorney appointed for the appeal who is unable to continue at the trial level should move in the district court for withdrawal and appointment of trial counsel.

6. Attorneys appointed in a federal death penalty case, unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, shall represent the defendant throughout every stage of the available judicial proceedings, including all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in proceedings for executive or other clemency as may be available to the defendant.

VI

PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

1. An attorney, bar association, legal aid agency, or community defender organization appointed by the Court pursuant to the Plan shall be compensated for their services and reimbursed for their expenses reasonably incurred within the limitations and subject to the conditions of subsection (d) of the Act.

2. The hourly rates of compensation fixed by the Act are designated and intended to be maximum rates only and shall be treated as such.

3. No appointed representative under the Plan shall accept a payment from or on behalf of the person represented in this Court without prior authorization by a United States circuit judge on the form provided for such purpose. All such authorized payments shall be received subject to the directions contained in such order and pursuant to the provisions of subsection (f) of the Act.

4. Each appointed representative under the Plan shall be entitled to reimbursement for expenses reasonably incurred for travel and out-of-pocket expenditures. Travel by privately owned automobile should be claimed at the rate per mile set forth in the *Travel and Transportation* regulations, Volume I, *Guide to Judiciary Policies and Procedures*, plus parking fees and tolls. Transportation other than by privately owned automobile should be claimed on an actual cost basis. Per diem in lieu of subsistence is not allowable. Meals and lodging expenses, which are reasonably incurred based upon the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing travel regulations, as well as telephone toll calls, telegrams and copying (except printing), are reimbursable. Non-reimbursable items include general office overhead, personal items for the person represented, filing fees, and printing. (A person represented under the Act is not required to pay filing fees.)

5. An appointed attorney or other authorized legal entity shall not incur any expense subject to claim for reimbursement in excess of \$300 except for necessary travel and maintenance to and from this Court for hearing on oral argument, without prior Court approval. In the event it is deemed necessary to provide an appendix of the record on appeal of more than 50 pages, they shall first petition the Court for authority to incur such expense and obtain approval therefor.

6. All claims for compensation and reimbursement for expenses reasonably incurred shall be itemized and prepared on prescribed forms and filed with the Clerk of this Court. All such claims should be filed promptly and in any event not more than 30 days after the conclusion of such services.

7. A panel of judges hearing an appeal, or any active member of the Court if designated by such panel, shall, in each instance, fix the compensation and allow the reimbursement for expenses to be paid to the appointed representative as provided in the Act. After such approval, the Clerk of this Court shall forthwith forward such claims to the Director of the Administrative Office of the United States Courts for payment.

8. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari shall be considered as applicable to the case before this Court, and should be vouchered as such.

VII

MISCELLANEOUS

1. The United States Court of Appeals shall submit a report of the appointment of counsel to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may direct, and otherwise

comply with such rules, regulations, and guidelines governing the operation of Plans formulated by the Judicial Conference of the United States, pursuant to subsection (h) of the Act.

2. Where standard forms have been prescribed and distributed by the Director of the Administrative Office of the United States Courts, such forms shall be used, where applicable, in all proceedings under this Plan.

3. Amendments to the Plan may be made from time to time by the Judicial Council of this circuit, and such amendments shall be forwarded immediately to the Administrative Office of the United States Courts.

VIII
EFFECTIVE DATE

This Plan shall become effective January 1, 1991.

Approved and adopted by the Seventh Circuit Judicial Council on December 3, 1990.
As amended January 1, 1996.
