UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL

FILED
DEC - 2 2015
U.S. Court of Appeals
Fourth Circuit

In the Matter of the Review of the	*	
Amendment to the Plan of the United	*	
States District Court for the	*	
Southern District of West Virginia	*	No. 340
in Implementation of	*	
the Criminal Justice Act	*	

FILED
DEC - 2 2015
TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

ORDER

The Plan of the United States District Court for the Southern District of West 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:

Samuel W. Phillips

Samuel W. Phillips, Secretary

Date: December 2, 2015

CRIMINAL JUSTICE ACT PLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Effective November 10, 2015

Approved by the Judicial Council of the Fourth Circuit on December 2, 2015

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CRIMINAL JUSTICE ACT PLAN

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) (the "CJA"), and the *Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures* (the "CJA Guidelines"), the Judges of the United States District Court for the Southern District of West Virginia (the "district") adopt the following amended Plan for furnishing adequate representation in this district to any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY

A. Objectives

1. The first objective of this Plan is to attain the ideal of equality before the law for all persons. This Plan, therefore, shall be administered so that those accused of a crime, or otherwise eligible for services pursuant to the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense.
2. The second objective of this Plan is to ensure that attorneys have the adequate skill, experience, and passion necessary to represent financially eligible defendants in federal court, and to facilitate the proper training and professional development of those attorneys.
3. The final objective of this Plan is to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified 18 U.S.C. § 3599), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance

1. This Court, its Clerk, the Federal Public Defender Office, and private attorneys appointed under the CJA must 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 and its Appendix.

2. Each private attorney shall be provided with a then-current copy of this Plan by the CJA Supervising Attorney 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 (the "CJA Panel" or "Panel"). The CJA Supervising Attorney will maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel.

III. DEFINITIONS

A. "Capital cases" include capital prosecutions and capital habeas cases under 28 U.S.C. § 2255.

B. "Judge," when not otherwise specified, includes both district judges and magistrate judges.

C. "Representation" includes counsel and investigative, expert, paralegal, law clerk, and other services.

D. "Appointed attorney" includes private attorneys appointed under the CJA, the federal public defender and its staff attorneys, and attorneys on the CJA Panel.

E. "Eligible defendant(s)" or "eligible person(s)" are those defendants financially eligible for representation under the Criminal Justice Act.

IV. PROVISIONS OF REPRESENTATION

A. Circumstance

1. *Mandatory.* Representation shall be provided for any financially eligible person who
   a. is charged with a felony or a Class A misdemeanor;
   b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
   c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
   d. is under arrest, when such representation is required by law;
   e. is entitled to appointment of counsel in parole proceedings (*see* CJA Guidelines, Vol. 7A, § 210.20.10(e));
   f. 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;

g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
h. is in custody as a material witness or is a grand jury witness who may be subject to grand jury investigation;
i. is the target of a grand jury investigation;
j. is entitled to appointment of counsel under the Sixth Amendment of the United States Constitution;
k. faces loss of liberty in a case, and Federal law requires the appointment of counsel;
l. is entitled to the appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
m. is seeking to set aside or vacate a federal death sentence under 28 U.S.C. § 2255; or
n. is a juvenile before critical stages of proceedings before a magistrate judge, when the juvenile and his parents, guardian, or custodian are financially unable to obtain adequate representation. In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the judicial officer may appoint counsel and order the payment of reasonable attorneys' fees or may direct the juvenile and his parents, guardian, or custodian to retain private counsel within a specified period of time, pursuant to 18 U.S.C. § 5034.

2. *Discretionary*. Whenever a judge determines that the interests of justice so require, representation may be provided for any financially eligible person who
   a. is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized;
   b. is seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. §§ 2241, 2254, or 2255;
   c. is charged with civil or criminal contempt and who faces loss of liberty;
   d. 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 or a civil or criminal contempt proceeding, risks self-incrimination, or otherwise faces loss of liberty;
   e. is proposed by the United States Attorney for processing under a pretrial diversion program;

f. is held for international extradition under chapter 209 of title 18, United States Code;
g. is involved in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA; or
h. is under federal supervision or in the custody of the Bureau of Prisons, or is otherwise in contact with federal law enforcement officials, whenever the interests of justice require and the judge determines that assignment of counsel would be of assistance to the Court.

B. Eligibility for Representation

1. *Factfinding.* Any judge may determine eligibility for representation under the CJA after making appropriate inquiries concerning the person's financial condition. A person is "financially unable to obtain counsel" within the meaning of the CJA if the person's net financial resources and income are insufficient to obtain qualified counsel. In determining whether such insufficiency exists, the judge should consider
   a. the cost of providing the person and his or her dependents with the necessities of life, and
   b. the cost of the defendant's bail bond if financial conditions are imposed, or the amount the defendant is required to deposit to secure release on bond.

2. *Disclosure of Change in Eligibility.* 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 and other services in connection with his or her representation, and the information is not protected as a privileged communication, counsel will advise the court.

C. Timely Appointment of Counsel

1. Counsel shall be appointed to eligible persons
   a. as soon as feasible after they are taken into custody;
   b. when first appearing before a judge;
   c. when formally charged or notified of charges if formal charges are sealed; or
   d. when otherwise entitled to counsel under the CJA or determined by a judge to be so entitled,

   whichever occurs earliest.

2. An appointment may be made retroactive to include any representation furnished prior to appointment.
3. If the defendant is eligible or likely to be determined eligible for assigned counsel by the Court, and the defendant is to be represented by a panel attorney, the CJA Supervising Attorney will make every effort to appoint the panel attorney before the initial appearance. Where circumstances do not allow for the appointment of a panel attorney before the initial appearance, the Federal Public Defender Office, upon direction of the Court, will initially appear with all persons arrested in the district at the initial appearance, and at bail hearings or arraignments if necessary. The CJA Supervising Attorney shall contact the Federal Public Defender Office in such situations and notify the Office of the need for counsel at the hearing.

D. Number and Qualifications of Counsel.

1. *Number.* If the Court determines that a particular case will be extremely difficult, it may appoint more than one attorney.
   a. In a capital case, at least two attorneys shall be appointed. This includes all death-eligible cases, even if the government does not seek the death penalty. *See U.S. v. Boone*, 245 F.3d 352, 360-61 (4th Cir. 2001). At least one of the attorneys "shall be learned in the law applicable to capital cases" pursuant to 18 U.S.C. § 3005. In appointing learned counsel, the assigned district shall consider the recommendation of the Federal Public Defender.
   b. Separate counsel shall be appointed for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

2. *Qualifications.* Qualifications for appointed counsel shall be determined by the Court, as set forth in the **Appendix**. For qualifications of attorneys in capital cases, see Section IX, *infra*.

E. Waiver of Counsel. If the accused desires to waive his right to counsel, the judicial officer shall present the person with a waiver form, explain its meaning and effect, and request that the person execute the waiver. If the person executes the waiver, it shall be included in and certified as a part of the record of the proceedings. If the person refuses to execute the waiver, such fact shall be entered of record and certified as a part of the proceedings. If it is determined that the person is financially able to obtain counsel but refuses to do so, such fact shall be entered of record and certified as part of the proceedings.

V. FEDERAL PUBLIC DEFENDER OFFICE

A. **Continuation.** The Court finds that the use of a Federal Public Defender Office 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 activities, financial position, and proposed budget of the Office.

B. **Location.** The Federal Public Defender Office will be capable of providing legal services throughout the district and will maintain an office in Charleston.

C. **Supervision.** The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Office. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that Office for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

D. **No Private Practice.** Neither the Federal Public Defender nor any staff attorney appointed as an Assistant Federal Public Defender may engage in the private practice of law.

VI. PANEL OF PRIVATE ATTORNEYS

A. **CJA Panel.** The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized. As set forth in the **Appendix**, however, the Court will require all current CJA Panel attorneys to reapply to the Panel within six months of the effective date of this Plan.

B. **Organization.** The Plan for the Composition, Administration, and Management of the CJA Panel is found in the **Appendix** of this Plan.

C. **Ratio of Appointments.** Where practicable, private attorneys from the CJA Panel should be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" is defined as approximately 25% of the appointments under the CJA annually throughout the district, subject to guidance from the Judicial Conference.

D. **Compensation.** CJA Panel attorneys will be compensated for their representation as set forth in the Defender Services *Guidelines for Administering the CJA and Similar Statutes* Chapter 2, and the **Appendix** of this Plan.

E. **CJA Supervising Attorney.** To assist in the discharge of its responsibilities under the CJA, the Court has established the position of CJA Supervising Attorney, whose specific duties and responsibilities are to be determined by the Court.

VII. DUTIES OF APPOINTED COUNSEL

A. **Standards.** The services to be rendered a person represented by appointed counsel will be commensurate with those rendered if counsel were privately employed by the person.

B. **Professional Conduct.** Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including the West Virginia Rules and Standards of Professional Conduct.

C. **No Receipt of Other Payment.** Appointed counsel may not require, request, or accept any payment, promise of payment, or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.

D. **Continuing Representation.** Once appointed under the CJA, counsel shall continue the representation until the earliest of (1) the final conclusion of the matter, including appeals or review by certiorari (as governed by the Local Rules of the Court of Appeals for the Fourth Circuit or the *Plan of the United States Court of Appeals for the Fourth Circuit in Implementation of the Criminal Justice Act* concerning representation on appeal); (2) the filing of a notice of appearance by substitute counsel; (3) entry of a court order allowing or requiring the person represented to proceed *pro se*; or (4) entry of a court order terminating the appointment.

VIII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. **Presentation of the Accused for Appointment of Counsel.** Federal law enforcement, prosecutorial agents, and probation officers in this district, and those acting on their behalf, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he/she is financially able to secure representation. If the accused indicates that he or she is not financially able, the accused should be provided information regarding the right to representation and to appointed counsel. If appointment of counsel seems likely, a court employee designated by the responsible magistrate judge will assist in the completion of a financial affidavit (Form CJA-23) and arrange to have the person promptly presented before a judge for a determination of financial eligibility. Employees of law

enforcement agencies or the United States Attorney's Office should not participate in the completion of the Form CJA-23 or seek to obtain information concerning the person's eligibility.

B. **Pretrial Services Interview.** The Judicial Conference has recognized the importance of the advice of counsel for persons subject to proceedings under chapter 207 of title 18, United States Code, prior to being interviewed by a probation officer. This Court recognizes the defendant's interest in speaking with an attorney at the earliest opportunity, as well as the probation officer's interest in having sufficient time to obtain information relevant to the defendant's release status. Prior to proceeding with the pretrial service interview, the probation officer shall advise the defendant of his/her right to have counsel present at the interview, and that he/she can have an attorney appointed if unable to afford one. If the defendant requests counsel prior to proceeding, the probation officer shall not continue with the interview without an attorney present. During the course of the interview, the probation officer shall not discuss with the defendant any information about the defendant's alleged offense.

C. **Notice of Indictment or Criminal Information.** Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney or the probation officer, as appropriate, must immediately mail or otherwise deliver a copy of the document to appointed counsel, to the address shown on defendant's bond papers, or to the jail in which the defendant is incarcerated.

IX. APPOINTMENTS IN CONNECTION WITH CAPITAL CASES

A. **Notification.** In order to conserve scarce resources, facilitate good administration under the CJA, and ensure the early appointment of qualified counsel, the United States Attorney's Office shall, consistent with other lawful obligations, promptly notify the Clerk and the CJA Supervising Attorney that a death-eligible offense is charged or is to be charged.

B. **Appointment of Counsel.** In death-eligible cases, the assigned district judge shall appoint two attorneys, at least one of whom shall be learned in the law applicable to capital cases under 18 U.S.C. § 3005. The judge shall consider the recommendation of the Federal Public Defender and may additionally seek input from the Federal Death Penalty Resource Council. At his/her initial appearance, the defendant shall be advised of his/her right to be represented by two appointed attorneys.

C. **Attorney qualification.** The following requirements apply to attorneys appointed in capital cases.

1. *Appointment of counsel prior to judgment.* Pursuant to 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court.

2. *Appointment of counsel after judgment.* Pursuant to 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the Court of Appeals for the Fourth Circuit for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.

3. *Attorney qualification waiver.* Pursuant to 18 U.S.C. § 3559(d), the presiding district judge, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case. The Court should give due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Case budgeting. Appointed counsel in capital cases must submit a proposed budget to the presiding district judge at least ten (10) days prior to the precertification budget conference. The proposed budget must detail the costs reasonably expected to be incurred in the representation of the defendant, including attorney fees, expert fees, and other costs, such as projected travel expenses. In preparing this proposed budget, counsel may wish to consult the "Resource Guide for Managing Capital Cases," available from the Federal Judicial Center, along with Chapter 6 of the CJA Guidelines. Some elements of the budget may require the approval of the Chief Judge of the United States Court of Appeals for the Fourth Circuit, if first recommended for approval by the presiding district judge.

E. Compensation. CJA Panel attorneys will be compensated for their representation in capital cases as set forth in Chapter 6 of the CJA Guidelines and the Appendix.

X. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and distributed by the Director of the Administrative Office of the United States Courts, must be used, where applicable, in all proceedings under this Plan.

B. Supersession. This Plan supersedes all prior CJA Plans of this Court.

XI. EFFECTIVE DATE

This Plan will become effective when approved by the Judicial Council of the United States Court of Appeals for the Fourth Circuit.

APPENDIX: Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

ENTER ON November 10, 2015

Robert C. Chambers, Chief Judge

John T. Copenhaver, District Judge

Joseph R. Goodwin, District Judge

Thomas E. Johnston, District Judge

Irene C. Berger, District Judge

David A. Faber, Senior District Judge

APPENDIX:

PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

I. **CJA Supervising Attorney.** To assist the court in the discharge of its responsibilities under the CJA, the Court has established the position of CJA Supervising Attorney. The CJA Supervising Attorney shall be employed by the Clerk's Office and report to the Court. He/she shall not be an employee of the Federal Public Defender. The CJA Supervising Attorney shall be responsible for CJA Panel management and other duties at the direction of the Court.

II. Composition of Panel of Private Attorneys

A. **CJA Panel.** The Court recognizes a panel of private attorneys (the "CJA Panel" or "Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act.

1. *Points of Holding Court.* There shall continue to be separate CJA Panel lists for each of the four points of holding court in this district: Beckley, Bluefield, Charleston, and Huntington. Unless otherwise directed by the Court, an attorney may serve on more than one panel list.

2. *Selection.* In the normal course, all applications and reapplications for panel membership will be reviewed by the Panel Advisory Committee, who will make recommendations to the Court. The Court will then make the final decision as to panel membership. The Court's goal is to constitute and maintain a panel of attorneys who can provide high-quality representation to eligible defendants. In selecting attorneys to serve on the CJA Panel, the Court will consider several factors, including the recommendation of the Panel Advisory Committee, as well as general competence and diversity of the attorneys who apply. Experience, while desired, is not alone a predictor of high-quality representation. ***Members of the CJA Panel shall serve at the will and pleasure of the Court. Panel membership is a unique privilege that should not be taken lightly, and panel members have no vested right in membership on the Panel.***

3. *Size.* The Court will fix, periodically, the size of the CJA Panel. The Panel shall be large enough 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. The Court may also alter the composition of a panel list for a specific point of holding court, should it determine that attorneys on that list are not obtaining a suitable number of appointments.

4. *Eligibility.*
   a. Attorneys who serve on the CJA Panel
      i. must be members in good standing of the federal bar of the Southern District of West Virginia;
      ii. must have working knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Bail Reform Act, and the United States Sentencing Guidelines; and
      iii. must have sufficient relevant experience, with preference given to those who have criminal trial experience and a reputation for providing high-quality representation. Federal judicial clerkship(s) or civil litigation experience may also be considered.
   b. Applicants who may not have the experience necessary to become members of the CJA Panel may apply for the CJA Training Panel, set forth in Section II.C. of this Appendix.
   c. Subsection (b) of the CJA 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.

18 U.S.C. § 3006A(b). 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 defendant. In order to preserve the integrity of the panel appointment process, such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify the

attorney for admission to the district's CJA Panel in the ordinary course of panel selection.

5. *New Member Application.* Application forms for membership on the CJA Panel will be made available, upon request, by the CJA Supervising Attorney. Completed applications will be submitted to the CJA Supervising Attorney. Applications will be received at any time during the year, but in the normal course, membership recommendations will be made to the Court twice yearly, after Panel Advisory Committee meetings. Applications and copies of the CJA Plan will be distributed by the Clerk's Office at all new attorney ceremonies in this district.

6. *Equal Opportunity.* All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, or disabling condition.

7. *Terms and Reapplication.* The members of the reconstituted Panel appointed on February 9, 2012, and members appointed since that date have been divided randomly into three groups, equal in number. Each will serve for a term of three years before having to reapply. Thus, one-third of the Panel will reapply each year. There is no limit to the number of terms that a panel attorney may serve. At the end of an attorney's term, the attorney may reapply, and the Panel Advisory Committee will recommend to the Court whether he/she should remain a member of the Panel. The Court will make the final decision.

   If an attorney decides not to reapply or is not selected for reapplication and is involved in the representation of a defendant in an ongoing matter, the attorney should continue representing the defendant until the close of the case or until relieved by the Court, whichever occurs first.

8. *Reapplication criteria.* In determining whether to recommend an existing panel member for reappointment, the Panel Advisory Committee shall
   a. receive a written application;
   b. analyze the quality of past representation provided, i.e., investigative and litigation skills, rapport with clients, courtroom presentation, and strength in procedural and substantive legal knowledge and analysis;
   c. review administrative matters, including billing accuracy and timely submission of vouchers;
   d. assess the panel member's past availability for assignments;

e. consider comments by judges and court personnel (see subsection 9, *infra*);
f. examine CLE hours earned and sessions attended; and
g. compare the panel member's qualifications with the qualifications of other applicants.

9. *Eliciting information.* Prior to consideration of a panel attorney's reapplication, the CJA Supervising Attorney may elicit information about that attorney's professional performance from district and magistrate judges, the Federal Public Defender, and other court personnel.

10. *Turning down assignments.* The CJA Supervising Attorney or his/her designee shall formulate a method for recording when any panel member has refused to accept an appointment and the reason for that refusal. Frequent, unjustified refusals will prompt the CJA Supervising Attorney to speak with the panel member about his/her willingness to remain on the Panel, and may result in termination from the Panel. In such cases, the Court will review the record of refusals and reasons therefor before termination.

11. *Requirements.* Along with the professional conduct requirements for all appointed counsel set forth in Section VII.B. of this Plan, panel attorneys must also abide by the following:
    a. earn at least five (5) CLE credits per year on federal criminal law or procedure topics, especially those related to Sentencing Guidelines training;[1]
    b. have an office procedure in place that facilitates the prompt receipt of information concerning appointment in a CJA case;
    c. be qualified and willing to represent an assigned client through the appellate process unless or until relieved;
    d. promptly notify the CJA Supervising Attorney, in writing, in the event any action is taken by any court or bar affecting the standing of the attorney to practice before such court or bar;
    e. participate actively in the representation of eligible individuals to a degree commensurate with participation that would be rendered if counsel were privately employed by the person;

[1] Panel attorneys must submit to the CJA Supervising Attorney a record of all federal criminal law or procedure CLE sessions attended and corresponding dates by July 1 of each year. Attorneys are encouraged to attend training sessions provided by the Court or Federal Public Defender Office to earn these credits. The Court may require panel members to attend these training sessions.

f. be willing to serve as a mentor for Training Panel members; and
g. submit voucher requests in a timely fashion, i.e., within 45 days of the end of the attorney's representation or the close of a case, whichever occurs first.

12. *No receipt of other payment.* Appointed counsel may not require, request or accept any payment or promise of payment or any other valuable consideration for representation of their client in the matter for which they have been appointed (or for other contemporaneous representation of their client in any other matter), unless such payment is approved by order of the Court. Appointed counsel must make any such request to accept a fee in writing to the Court, and the Court will grant approval only in extraordinary circumstances. Allowing court-appointed counsel to accept payment from a client or his/her family creates an appearance of impropriety that may undermine the integrity of the judicial process.

13. *Continuing representation.* In the event that a defendant is convicted following trial, counsel appointed under the CJA shall discuss with the defendant the defendant's wishes regarding the filing of an appeal. If requested to do so by the defendant, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless and until relieved by the Court of Appeals for the Fourth Circuit. Should a panel member's term expire during the course of a case, and he/she does not seek reapplication or is not reappointed to the Panel, the panel member should continue representing the defendant unless or until directed otherwise by the Court.

14. *CLE training.* The Federal Public Defender Office shall provide 1-2 comprehensive CLE training sessions during each calendar year. The Federal Public Defender may solicit assistance from the CJA Supervising Attorney and/or the Panel Advisory Committee. In addition, the CJA Supervising Attorney may coordinate various shorter and topic-based training sessions throughout the year, based on the needs and desires of Panel and Training Panel members.

15. *Removal from the Panel and Other Actions.* Panel members appointed by the Court serve at the will and pleasure of the Court, as membership is a privilege and not a proprietary right. As such, a member of the CJA Panel may be subject to suspension or removal from the Panel at any time, as well as to other appropriate action or non-reappointment.
    a. *Summary Removal from the Panel.* In the event that a panel attorney is suspended or disbarred from the practice of law by any state or federal court, or is convicted of a felony or of any misdemeanor involving moral

turpitude, the Court shall summarily remove that individual from the CJA Panel, and that attorney shall not be appointed to represent future eligible defendants. The Court shall immediately notify the panel attorney of the action taken and the reasons therefor. The attorney shall not have the right to respond to this action.

b. *Other Grounds for Suspension, Removal or Non-Reappointment.* Suspension, removal or non-reappointment may result if the Court determines that a panel attorney has failed to fulfill the obligations of panel membership, or has engaged in other conduct warranting such action. In addition to the grounds for summary removal mentioned in the preceding paragraph, grounds for suspension, removal or non-reappointment may include, but are not limited to, inclusion of false or misleading information in CJA vouchers, unjustified or frequent failure to comply with the obligation to accept appointments, unjustified or frequent cancellation of or absence from meetings with court personnel, failure to comply with the eligibility requirements for membership, failure to comply with the applicable CLE requirements, violation of applicable Rules of Professional Conduct, violation of the rulings or orders of a judicial officer, failure to provide assistance of counsel within the standards of the Sixth Amendment of the United States Constitution, and general lack of professional competence. Should the Court determine that the attorney be suspended or removed before his or her term has ended, the CJA Supervising Attorney will notify the panel member of the impending suspension or removal, and the attorney will have ten (10) days to respond to the determination, in writing. The Court will review the written response and will make a final decision, which is not appealable.

16. *CJA Panel Representative*

a. The CJA Panel Representative is a member of the CJA Panel who shall perform the following functions:

i. attend the national CJA Panel Representative Conference, which is usually held in late February or early March;

ii. serve as a member of the Panel Advisory Committee;

iii. serve as a liaison for the Panel to the CJA Supervising Attorney and the judges;

iv. communicate with panel members about matters learned at the CJA Panel Representative Conference and information provided from the Office of Defender Services; and

v. other functions as determined by the Court.

b. The CJA Panel Representative will be chosen by the Court from among the members of the reconstituted CJA Panel. He/she will serve for a two-year term and can be reappointed as many times as the Court desires. Should the Court at any time feel that the Panel Representative is not carrying out his/her duties appropriately, the Court will ask for the Panel Representative's resignation and will appoint a replacement.

B. Panel Advisory Committee

1. *Membership.* The Panel Advisory Committee is hereby established by the Court. The Committee will consist of the following:
   a. a magistrate judge, to be appointed by the Court;
   b. the Federal Public Defender;
   c. at least three private attorneys, to be appointed by the Court, who have significant federal criminal experience and are familiar with panel functions (these attorneys may or may not be members of the Panel);
   d. the Panel Representative; and
   e. the CJA Supervising Attorney, who will serve as chair of the Committee and liaison to the Court.

   Quorum shall be achieved by attendance of two-thirds of the voting Committee members.

2. *Duties.*
   a. The Panel Advisory Committee shall meet twice yearly to
      i. recommend to the Court the applicants who should be admitted or re-admitted to the Panel and Training Panel after review of the qualifications of those applicants;
      ii. assist the CJA Supervising Attorney and Federal Public Defender, if needed, in planning training sessions;
      iii. recommend to the Court those attorneys who shall serve as mentors for Training Panel members;
      iv. provide assistance, if desired by the Court, in reviewing proposed reduction of claims; and
      v. perform any other duties the Court deems appropriate regarding the management and operation of the CJA Panel.
   b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death detrimentally decreases the size of the Panel, the CJA Supervising Attorney will solicit applications for the vacancies and/or collect outstanding applications, convene a meeting of the Panel Advisory Committee to review the qualifications of the

applicants, and recommend prospective members to the Court for approval. An attorney appointed to the Panel in this manner will serve the remainder of the term of his/her predecessor.

C. **CJA Training Panel.** The Court may establish a CJA Training Panel, consisting of attorneys who may not have the relevant experience required for membership on the CJA Panel but are otherwise qualified.

1. Mentors will be chosen by the Court, upon the recommendation of the Panel Advisory Committee, to train and mentor members of the Training Panel.
2. To ensure that the guidance the Training Panel members receive is sufficient, the Panel Advisory Committee will review and recommend mentors to the Court after each meeting. The Committee may request and recommend panel members, assistant Federal Public Defenders, private attorneys from other districts' CJA Panels, or non-panel members from the private bar to serve as mentors.
3. Training Panel members will assist mentors with their criminal case load and should attend as many client meetings, jail visits, negotiations, hearings, and trials as possible. Training Panel members shall keep track of all proceedings attended and work performed for submission to the Panel Advisory Committee.
4. Mentors will make informal reports to the CJA Supervising Attorney regarding the Training Panel members' participation, ability, and progress. The CJA Supervising Attorney will share this information with the Panel Advisory Committee and the Court.
5. Training Panel members are not eligible to receive appointments independently, and cannot receive compensation for their services in assisting panel members, but they will be held to the same professional conduct standards as panel members. The lead attorney, however, will remain ultimately responsible for the representation, including all court filings and appearances.
6. Prior service on the Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.
7. Attorneys may apply to the Training Panel independently. However, some attorneys who apply for the CJA Panel may be offered admission to the Training Panel only.

III. Case Appointments

A. Maintenance of List and Distribution of Appointments

1. The CJA Supervising Attorney will maintain a current list of all attorneys included on the CJA Panel, with current contact information, as well as a résumé or statement of qualifications and experience. The CJA Supervising Attorney will

furnish a copy of this list to each judge. The CJA Supervising Attorney or his/her designee will also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender Office and private attorneys.

2. The CJA Supervising Attorney (or in his/her absence, an approved designee) will be responsible for contacting panel attorneys, as explained below.

B. Method of Selection

1. Upon the determination of a need for the appointment of counsel, the judge evaluating the defendant's financial eligibility will notify the CJA Supervising Attorney of the need for counsel and the nature of the case.
2. *Notification of Conflict.* The CJA Supervising Attorney will ascertain (1) whether the Assistant United States Attorney (AUSA) reasonably believes the Federal Public Defender Office to have a conflict that would preclude the Office's representation, and (2) those panel members the AUSA reasonably believes to have conflicts that would preclude their representation.
3. If the Federal Public Defender Office does not have a conflict, the CJA Supervising Attorney will notify the Federal Public Defender of the need for counsel in the case. If the case is a multi-defendant case, the Federal Public Defender Office shall represent the lead defendant, unless circumstances do not allow. If the Federal Public Defender Office has a conflict, or if the Office cannot or should not otherwise take the case, the CJA Supervising Attorney will determine the name of the next panel member(s) on the list who are available for appointment. The CJA Supervising Attorney will contact the panel member(s) and consult with the presiding judge, if necessary. All parties should seek to follow the guidance of the Judicial Conference that panel attorneys be appointed in a "substantial proportion" of the cases. Notwithstanding this paragraph, in supervised release revocation, probation revocation, or other post-sentencing matters (except for modification of supervised release or probation, which will be handled by the FPD Office), the CJA Supervising Attorney should strive to assign the matter to the attorney who handled the underlying representation, while remaining mindful of the ratio of appointments between the Panel and the FPD Office.
4. *Balanced Distribution.* Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's 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 of each CJA defendant.

5. *No outside delegation without permission.* An appointed attorney shall not delegate any substantive tasks in connection with the representation of a defendant to any person other than a partner, associate, or regular employee of the law firm of which the appointed attorney is a partner or associate, without the written consent of the defendant and the Court.
6. *Transferred Cases.* Absent special circumstances, whenever a case is transferred to another district, such as under Rules 5, 20, and 21 of the Federal Rules of Criminal Procedure, representation by counsel appointed in this district shall cease, and new counsel shall be appointed in the transferee district.

IV. Compensation

A. Statement of Policy. The Court is mindful that private attorneys often make a monetary sacrifice when representing financially eligible defendants. However,

> it is [] clear that Congress did not intend to provide full compensation and that it contemplated appointments of private counsel to supplement the efforts of professional defender organizations. Thus, although the increased maximum rates envisioned greater participation by the private bar, the Act also presupposes recognition by private attorneys of their professional obligation to render services for those unable to pay.

United States v. Smith, 633 F.2d 739, 741 (7th Cir. 1980) (internal citation omitted).

In the spirit of the Criminal Justice Act, the hourly rates and amounts of compensation are intended to be maximum rates and will be treated as such. In approving attorneys' submissions for compensation, the Court shall bear in mind the underlying philosophy of the CJA, that the bar of the nation owes a responsibility to represent persons financially unable to retain counsel and that the compensation provided is not intended to equate to private attorney fees. Thus, payment in excess of the statutory maximums shall only be sought in complex or extended cases.

B. Submission of Vouchers

1. *Forms.* Claims for compensation (or "vouchers") must be submitted to the Court via eVoucher. The vouchers should not be filed on the docket.
2. *Time limitation.* Unless good cause is shown, no claim for payment will be honored unless it is submitted within 45 days of the end of the attorney's representation or the final disposition in the case, whichever occurs first. In those instances where the Court approves the use of interim payments, claim

submission shall occur according to the schedule imposed by the presiding district judge.

3. *eVoucher Billing Records*. Entries for Services in eVoucher require: individual entries showing the date of service, the category of service (i.e. in-court, out-of-court, etc.), a precise description of the service (with care paid to maintaining confidential attorney/client information), and actual time consumed for the service in hours and tenths of hours. The name of the individual providing the service, if other than the appointed attorney, should be included in the description. The appropriate hourly rate is automatically calculated in eVoucher. Vouchers lacking essential documentation will be returned to the attorney for revision and proper submission.
4. *Interim Payments*
   a. *Extended felony cases*. In extended felony cases, counsel may request interim payments. The request shall be made to the CJA Supervising Attorney in writing and contain sufficient detail to support the request. The request shall be forwarded to the presiding judge with the CJA Supervising Attorney's recommendation.
   b. *Claim for Final Interim Payment*. Final interim payment vouchers shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement shall be attached to the final voucher that reflects all compensation received to date and the amount of compensation due.

C. Excess Amounts and Prior Approval

1. Excess Attorney Fee Compensation Claims. Vouchers requesting attorney fee payment in excess of the statutory maximum provided by the CJA shall include the panel attorney's written justification for why the case should be considered "extended" or "complex" and why the excess payment is necessary to provide fair compensation. In such cases, attorneys should submit a CJA-26 form by attaching it in the Documents section of the CJA 20 in eVoucher.

2. Excess Claims for Investigative, Expert, and Other Services.
   a. Where the cost of investigative, expert, and other services will exceed the maximum amount set forth in the Guidelines, prior authorization is required, unless it is waived by the presiding judge upon a finding that, in the interest of justice, timely procurement of necessary services could not await prior authorization. Prior approval shall be obtained by submitting an AUTH to the Court in eVoucher. Attorneys should obtain prior approval from the Court in both capital and non-capital cases.
   b. Requests for funding that will exceed statutory amounts should include

i. Reasons for requesting service;
ii. Provider's relevant experience and qualifications;
iii. Hourly rate requested;
iv. Fee arrangement, if applicable;
v. Specific service and expenses to be included; and
vi. Whether additional services/funding may be requested from/for this provider (as applicable).

c. Once funding for investigative, expert, and other services is approved, counsel is responsible for communicating the specific terms of the court order to the service provider to help ensure that charges do not exceed the amount authorized.

d. *If No Prior Approval.* Requests for the ratification of service providers in excess of statutory limits incurred without prior court approval are disfavored and will only be granted in extraordinary situations.

3. *Notice of Proposed Reduction.* If the Court determines that the amount claimed on a voucher is unreasonable, prior to the reduction of any voucher or denial of certification, the CJA Supervising Attorney will notify the panel attorney of the reason for the reduction or denial and allow the attorney to submit a written response. The response must be submitted within 10 calendar days of notification of the proposed reduction or denial, unless good cause is shown.