

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PLAN FOR THE ADEQUATE REPRESENTATION
OF DEFENDANTS PURSUANT TO THE
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

As Amended April 3, 2002

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

PLAN FOR THE ADEQUATE REPRESENTATION OF DEFENDANTS

PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

Pursuant to the provisions of the Criminal Justice Act of 1964, 18 U.S.C., § 3006A, as amended, the United States District Court for the District of Maine adopts the following plan for furnishing representation for any person financially unable to obtain adequate representation.

- (1) Representation shall be provided for any financially eligible person, who
 - (A) is charged with a felony or with a Class A misdemeanor;
 - (B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in Section 5031 of Title 18, United State Code;
 - (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;

(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;

(I) is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28, United States Code;

(J) is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under Section 4109 of Title 18, United States Code;

(K) is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

(L) faces loss of liberty in a case, and Federal law requires the appointment of counsel.

(2) Whenever the Court determines that the interests of justice so require, representation may be provided for any financially eligible person who

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

(B) is seeking relief, other than to set aside or vacate a death sentence under Sections 2241, 2254, or 2255 of Title 28, United States Code;

- (C) is charged with civil or criminal contempt 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, a civil or criminal contempt proceeding, or face 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) has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and who has been represented by counsel appointed under section 3006A of Title 18, United States Code in connection with a related criminal case.

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

I. APPOINTMENT OF COUNSEL

In every case in which a person entitled to representation appears without counsel, the United States magistrate judge or the district judge shall advise the person that s/he has the right to be represented by counsel. 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. Such appointment may be made retroactive to include any appropriate representation furnished prior to appointment. The Court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown. The Court may appoint more than one counsel to represent a defendant when, in the judgment of the Court, the nature of the case so requires, or when other good cause is shown.

Even though a financially eligible defendant has waived the appointment of counsel before the United States magistrate judge, if the defendant thereafter appears before a district judge without counsel, the district judge shall again advise the defendant of the right to court-appointed counsel, and unless the defendant again waives the appointment of counsel, the district judge, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent the defendant.

In determining whether the defendant is financially unable to obtain counsel, the Court shall act only upon statements made by the defendant either (a) under oath in open court or (b) by sworn affidavit. The personal appearance of the defendant is not required.

II. SELECTION OF COUNSEL; PANEL OF ATTORNEYS

Counsel appointed to represent indigent persons shall be selected from a panel of attorneys maintained by the Clerk of Court. Any member of the bar of this court may file a written request to be included on the panel, and if approved by the Court, his or her name shall be included thereon. Names may be added to, or deleted from, the panel from time to time by the Court.

Each attorney newly included on the panel shall attend a court approved Guideline Sentencing training session within one year of joining the panel. To remain eligible for appointment, panel attorneys shall attend a Court approved criminal defense training session at least every two years or otherwise satisfy the Court in writing of his or her proficiency with the Sentencing Guidelines. Verification of attendance and a description of any training session shall be provided by each panel member to the CJA Resource Counsel. The Clerk shall periodically review the records of the CJA Resource Counsel to assure that the panel membership remains eligible for appointment.

The names of the attorneys on the panel shall be listed as follows:

- (A) Attorneys practicing in the greater Portland and southern Maine area, who shall be listed in alphabetical order; and**
- (B) Attorneys practicing in the greater Bangor and northern Maine area, who shall be listed in alphabetical order.**

Counsel appointed to represent a defendant in a proceeding which is pending at Portland shall be selected from the list of attorneys practicing in the greater Portland area, and counsel appointed to represent a defendant in a proceeding which is pending at Bangor shall be selected from the list of attorneys practicing in the Bangor area; except when, in the judgment of the Court, the selection of counsel from another area is desirable because the defendant is located in such area, because the proceeding is to be transferred to such area, or when other good cause is shown.

A defendant shall not have the right to the appointment of any particular counsel.

III. DURATION AND SUBSTITUTION OF APPOINTMENTS

Counsel appointed for a defendant shall represent such defendant at every stage of the proceedings from the initial appointment through appeal, including ancillary matters appropriate to the proceedings, unless the appointment is previously terminated by this court or by any appellate court in which an appeal is pending. The Court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

In the event that a defendant is convicted following trial, counsel 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, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless, or until, relieved by this court or by the court of appeals.

If at any stage of the proceedings, including an appeal, the Court finds that the defendant becomes financially unable to pay counsel who had been retained, the Court may appoint counsel to represent the defendant as the interests of justice may so dictate.

If at any time after the appointment of counsel the Court finds that the defendant is financially able to obtain counsel or to make partial payment for the representation, the Court may terminate the appointment of counsel or authorize or direct payment by the defendant in an amount fixed by the Court, either to appointed counsel, or to the Clerk of Court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of 18 U.S.C. § 3006A, as amended, as the interests of justice may dictate. Except as so authorized or directed, no appointed attorney may request or accept any payment or promise of payment for the representation of a defendant. Appointed counsel shall be under a continuing duty to report to the Court any

circumstance indicating that the defendant is financially able to make full or partial payment for CJA representation.

IV. PAYMENT FOR REPRESENTATION

An attorney appointed to represent a defendant shall, at the conclusion of the representation, be compensated at the rate allowed by statute for time expended in court, and at the rate allowed by statute for the time reasonably expended out of court, and shall be reimbursed for actual expenses reasonably incurred.

The hourly rates of compensation are designated and intended to be maximum rates and will be treated as such. In fixing the compensation, the Court will consider the qualifications of attorneys and the relative difficulties encountered in presenting the case. The Court shall also bear in mind the underlying philosophy of the Act 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 private counsel fees. In keeping with that philosophy, charges in excess of the statutory maximum shall only be sought in complex or extended cases.

A claim for compensation and reimbursement shall be made promptly after the conclusion of the criminal proceeding. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered and actual expenses incurred, and the amount of any compensation and reimbursement applied for or received in the same case from any other source. The Court shall, in each instance, fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished exclusively before a United States magistrate judge, the claim shall be submitted to the

magistrate judge who shall fix the compensation and reimbursement to be paid. In all other cases claims shall be submitted to the district judge who presided in the matter.

Payment in excess of the statutory case maximum for compensation to be paid to an attorney may be made for extended or complex representation when supported by a written request from counsel setting forth the reason for excess payment and when the Court certifies that such payment is necessary and the amount of the excess payment is approved by the chief judge of the Court of Appeals for the First Circuit.

With regard to the payment of certain expenses, counsel must

- (A) comply with the provisions of F.R.Crim.P., Rule 17(b) regarding the issuance of subpoenas;
- (B) receive court approval for transcripts by submission of a CJA 24 Authorization and Voucher for Payment of Transcript;
- (C) receive court approval for investigative, expert or other services by submission of a CJA 21 Authorization and Voucher for Expert and Other Services.

V. SERVICES OTHER THAN COUNSEL

Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the Court shall authorize counsel to obtain the services.

The compensation to be paid to a person or an organization for services rendered to a defendant hereunder shall not exceed \$1,000, exclusive of reimbursement for expenses

reasonably incurred, unless payment in excess of such limit is certified by the Court, as necessary to provide fair compensation for services of any unusual character or duration, and the amount of the excess payment is approved by the chief judge of the Court of Appeals for the First Circuit. The total cost of services obtained without prior authorization may not exceed \$300 exclusive of expenses reasonably incurred.

A claim for compensation for investigative, expert or other services, and for reimbursement, shall be promptly made to the court by each organization or person who rendered them. Each claim shall be supported by an affidavit specifying the time expended, services rendered, and actual expenses incurred, and the amount of any compensation and reimbursement applied for or received in the same case or for the same services from any other source. The Court shall, in each instance, determine the reasonable compensation for the services and direct payment to the organization or person who rendered them.

If at any time after counsel has been authorized to obtain investigative, expert or other necessary services for a defendant, the Court finds that the defendant is financially able to obtain such services or to make partial payment therefor, the Court may terminate the authorization of such services or authorize or direct payment by the defendant in an amount fixed by the Court, either to the person or organization who rendered such services, or to the Clerk of Court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of 18 U.S.C. § 3006A, as amended, as the interests of justice may dictate. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for assisting in the representation of a defendant. Appointed counsel shall be under a continuing duty to

report to the Court any circumstance indicating that the defendant is financially able to make full or partial payment for such services.

VI. REPORTS; VOUCHERS AND CLAIMS FOR PAYMENT; FORMS

(A) The Clerk of Court shall submit a report of every appointment of counsel and authorization of other services in this District 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 specify.

(B) Upon approval by the Court, all vouchers and claims for compensation and reimbursement of expenses shall be input into the system for payment and retained in this District for filing purposes.

(C) The Court shall use, where appropriate, such standard appointment and voucher forms as may be prescribed by the Director of the Administrative Office of the United States Courts.

So ORDERED.

For the Court:

D. BROCK HORNBY
Chief Judge

Dated this 2nd day of April, 2002.