

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 September 23, 2008

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I. AUTHORITY

Pursuant to the provisions of the Criminal Justice Act of 1964, 18 U.S.C., § 3006A, as amended (CJA), and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, 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 in accordance with the CJA.

II. PROVISION OF REPRESENTATION

A. Circumstances.

1. Mandatory. 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 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. is faced with loss of liberty in a case, and Federal law requires the appointment of counsel.
2. Discretionary. 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 to 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 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.
- B. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA. Examples of ancillary proceedings can be found

in the *Guidelines for the Administration of the Criminal Justice Act*, Chapter II, Part A, § 2.01.

III. APPOINTMENT OF COUNSEL.

A. Appointments in General.

1. Advise of right to counsel. Unless a person entitled to court-appointed counsel waives representation, the Court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, may appoint counsel to represent the person.
2. Retroactive appointment. Such appointment may be made retroactive to include any appropriate representation furnished prior to appointment.
3. Separate counsel. The Court may appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.
4. Additional counsel. 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.
5. Renewed advice of right to counsel. A district judge may at any time, if satisfied after appropriate inquiry that a defendant is financially unable to obtain counsel, appoint counsel to represent the defendant, even though the defendant has previously waived appointment of counsel before a district judge or magistrate judge.
6. Determining financial eligibility. In determining whether the defendant is financially unable to obtain counsel, the Court shall act upon statements made by the defendant (a) under oath in open court, (b) by sworn affidavit, or (c) other information the court deems reliable. The personal appearance of the defendant is not required.

B. Federal Capital Prosecutions.

1. Number of counsel. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 18 U.S.C. §3599(a), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
2. Eligibility of counsel.

- a. 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.
- b. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.
- c. Pursuant to 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the Federal Public Defender.
- d. Pursuant to 18 U.S.C. §3599(d), the presiding judicial officer, 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, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

IV. FEDERAL PUBLIC DEFENDER

- A. Federal Public Defender Organization. The Federal Public Defender Organization of the District of Maine, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.
- B. Supervision of Defender Organization. The federal public defender is responsible for the supervision and management of the federal public defender organization and will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the federal public defender.

V. SELECTION OF COUNSEL; PANEL OF ATTORNEYS

- A. Establishment of a CJA Panel. The existing, previously established CJA Panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is recognized to serve pending selection of an updated Panel by the CJA Panel Selection Committee.
 - 1. Substantial number of Appointments. Private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the

accused is determined to be financially eligible for representation under the CJA.

2. Composition of CJA Panel.

a. Approval. The Court shall establish a panel of private attorneys 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 CJA Panel after receiving recommendations from the Panel Selection Committee (Committee), established pursuant to Section B. of this Plan.

b. Size. The size of the panel will be determined by the Committee, based on the activity of the membership, subject to review by the Court. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA Panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work enabling them to provide a high quality of representation.

c. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of this court, and federal sentencing law including the advisory Sentencing Guidelines.

i. Quality of Representation. Attorneys must demonstrate a commitment to provide high quality representation to those individuals eligible for their services, commensurate with those services rendered when counsel is privately employed.

ii. Continuing Education.

(a) Attorneys in the year before admission to the panel, and annually while on the panel, must attend a minimum of 6 hours of qualified training or continuing legal education programs on criminal defense at least 2 hours of which must be devoted to federal sentencing including the advisory sentencing guidelines.

- (b) Qualified electronic media such as video or DVD replays of a CLE or on-line and Distance Learning programs may be used to satisfy up to half of the time requirement.
- (c) It is the responsibility of each panel attorney to report their compliance with the training requirements on a form provided by the Clerk's Office, who will keep track on behalf of the Committee and for the Court.
- d. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, ethnicity, gender, age, or disability.
- e. Terms. Members shall serve two (2) year terms, which shall commence on February 1. Members seeking readmission should apply on or before December 31 of the year prior to the expiration of their membership term. Members who fail to reapply by December 31 shall be deemed to have resigned from the CJA Panel, but may apply for new membership at any subsequent time. Should a panel member's term expire while the panel member is appointed to represent a defendant, the panel member shall continue to represent that defendant until the conclusion of the representation. [NOTE: In the first year of this plan only, one half of panel members will be given 3 year terms and one half will be given 2 year terms.]
- f. Emeritus Panel. The Committee will also recommend to the court a list of highly experienced attorneys who are willing to serve as CJA counsel on complex or difficult cases to supplement the depth of the panel. The Emeritus Panel will be comprised of attorneys who are not part of the regular rotation of CJA appointments but who are willing to serve the court on cases requiring specific experience and expertise. Emeritus attorneys must demonstrate proficiency equivalent to the annual training requirements of the regular CJA panel attorneys.
- g. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk's Office. Completed applications, along with a statement of qualifications and experience and supporting material, shall be submitted to the Clerk of Court who will transmit these materials to the Chair of the Panel Selection Committee.

h. Mandatory Removal from CJA Panel. A member whose license to practice law in the district or state has been suspended or revoked shall be removed from the panel.

B. Panel Selection Committee.

1. Membership. The court shall establish a Panel Selection Committee consisting of the following members who, agree to serve without compensation: a CJA Panel attorney who practices primarily in the US District Court located in Portland; a CJA panel attorney who practices primarily in the US District Court located in Bangor; the National CJA Panel Representative for the District of Maine; a designee from the Maine Association of Criminal Defense Lawyers; and, the Federal Defender, or designee, who shall serve *ex officio*.

Members of the Panel Selection Committee must be members in good standing of the federal bar of this district. A district judge or magistrate judge, and/or the clerk of court, or the clerk's designee, shall be liaisons with the Committee. Membership on the Committee is for a three (3) year term. The Court will fill any vacancies that occur. Members of the Panel Selection Committee serve at the pleasure of the Court. The Committee will annually select its own Chair.

2. Duties.

a. The Committee is responsible for:

i. Panel Creation.

- (a) Creating an application process.
- (b) Annually evaluating applications for reappointment or change in the CJA Panel.
- (c) At least twice a year evaluating new applications for appointment, and for making recommendations to the court to ensure that applicants meet the criteria for inclusion in the CJA Panel.
- (d) Annually furnishing information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph V(A)(2)(c)(ii)(d) of this plan.

ii. Offering recommendation to the Court of a list of Emeritus Attorneys.

iii. Working with the Federal Defender and the CJA National Panel Representative to:

- (a) Provide training programs for the CJA Panel attorneys and other members of the criminal defense bar;
- (b) Attract and train less experienced attorneys;
- (c) Develop bylaws for the internal governance of the CJA Panel.

iv. Receiving, reviewing, and making recommendations to the court concerning any comments or concerns regarding;

- (a) the performance of CJA Panel attorneys;
- (b) the fairness or functioning of the CJA Panel appointment process;
- (c) and the processing and payment of CJA vouchers.

b. If, at any time during the course of a year, the number of vacancies significantly decreases the size of the CJA Panel, such that it affects the ability of the panel to provide representation to indigent defendants under the CJA, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the court for approval.

C. Selection for Appointment.

1. Maintenance of CJA Panel and Distribution of Appointments. The clerk of the court shall maintain a list or automated program which contains pertinent data for all attorneys included on the CJA Panel. Panel members are responsible for keeping all contact information current. The clerk shall maintain a record of assignments to CJA panel attorneys, and when appropriate, statistical data reflecting the number of total appointments, appointments by attorney, and allocation of appointments between the Federal Defender office and the CJA Panel.

2. Method of Selection. Counsel appointed from the CJA panel will be selected by rotation, except when an attorney is not available, or when it is the judgment of the court that the selection of specific counsel is in the interest of justice, judicial economy or continuity of representation. The goal of this procedure is a fairly

balanced distribution of appointments and compensation among the members of the CJA Panel and quality of representation for each CJA defendant.

VI. DURATION AND SUBSTITUTION OF APPOINTMENTS

A. Duration and Substitutions. 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.

B. Appeals. 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.

C. Change in Defendant's Financial Eligibility.

1. 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.

2. 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.

VII. PAYMENT FOR REPRESENTATION BY PANEL ATTORNEYS

Compensation. A panel attorney appointed to represent a defendant will be compensated at the rate allowed for the time reasonably expended on the representation and will be reimbursed for actual expenses reasonably incurred consistent with the applicable rules, regulations or statutes.

A. The Court will look to the *Guide to Judiciary Policies and Procedures*, Volume VII, *Guideline for the Administration of the Criminal Justice Act (Guideline)* for guidance in matters of attorney compensation, expenses and the cost of experts and outside services.

1. Rates. 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. Charges in excess of the statutory maximum shall only be sought in complex or extended cases.

2. Case Budgeting. A case budget shall be submitted to the court, ex parte, in representations that appear likely to become extraordinary in terms of potential cost. “Extraordinary” means a representation in which attorney hours are expected to exceed 300 hours or total expenditures for counsel and services in addition to counsel (e.g. experts, interpreters, investigators, travel expenses) are expected to exceed \$30,000 on behalf of an individual CJA defendant.

3. Claims. A claim for compensation and reimbursement must be made promptly after the conclusion of the criminal proceeding. Each claim must be made using the appropriate CJA form as designated by the Administrative Office of the United States Courts, specifying the time expended, services rendered and actual expenses incurred, along with the amount of any compensation and reimbursement applied for or received in the same case from any other source. The Court will, 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. If the court determines that a claim should be reduced, appointed counsel should be provided (a) prior notice of the proposed reduction with a brief oral or written statement of the reason(s) for it, and (b) an opportunity to address the matter. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.

4. Excess. 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 or his or her designee.

With regard to the payment of certain expenses, counsel must: comply with the provisions of F.R.Crim.P., Rule 17(b) regarding the issuance of subpoenas; receive court approval for transcripts by submission of a CJA 24 Authorization and Voucher for Payment of Transcript; and, receive court approval for investigative, expert or other services by submission of a CJA 21 Authorization and Voucher for Expert and Other Services.

5. Record Keeping. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

B. 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.

1. Rates. A person or an organization rendering services to a defendant shall be compensated at the rate allowed by statute.

2. Claims. A claim for compensation for investigative, expert or other services, and for reimbursement, must be promptly made to the court by each organization or person who rendered them. Each claim must be made using the appropriate CJA form as designated by the Administrative Office of the United States Courts, specifying the time expended, services rendered and actual expenses incurred, along with the amount of any compensation and reimbursement applied for or received in the same case from any other source. The Court will, in each instance, determine the reasonable compensation for the services and direct payment to the organization or person who rendered them.

3. Changes to Defendant's Eligibility for Service. 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.

C. Reports; Vouchers and Claims for Payment; Forms.

1. Reports. 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.
2. Vouchers and Claims for Payment. 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.
3. Forms. 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.

VIII. MISCELLANEOUS.

Pretrial Services Interview. Whenever practical, and when it will not delay a defendant's initial appearance, appointed counsel may be provided to a defendant before the defendant's initial interview with a pretrial services or probation officer.

So ORDERED.
For the Court:

GEORGE Z. SINGAL
Chief Judge

Dated this 23rd day of September, 2008.

