

**REVISED PLAN OF THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964
(U.S.C. § 3006A, AS AMENDED)**

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INTRODUCTION

The judges of the United States District Court for the Eastern District of New York, pursuant to the Criminal Justice Act of 1964 (18 U.S.C. §3006A), as amended, (“the Act”), have adopted the following Plan for furnishing representation for persons financially unable to obtain adequate representation.

Representation under the Plan shall include the appointment of counsel and the furnishing of investigative, expert, and other services necessary for an adequate defense.

I. PROVISION FOR FURNISHING COUNSEL

A. Legal Services

This Plan provides for the furnishing of legal services by a Community Defender Organization as provided in 18 U.S.C. §3006(h)(2)(B) and for the continued appointment and compensation of private counsel from a list maintained by the Clerk of Court in a substantial proportion of cases. The attorneys whose names appear on the list shall be selected by the Court in accordance with procedures in this Plan.

B. Court's Discretion

The Court, in its discretion, will determine whether any party entitled to representation will be represented by the Community Defender Organization or by private attorney.

Insofar as practicable, private attorney appointments will be made in at least 25 percent of the case. A "case" shall be any proceeding actually docketed in the court or a "new trial" as defined in 18 U.S.C. §3006A(d)(5).

C. Community Defender Organization

The Legal Aid Society of New York, a non-profit defense counsel service, acting through its Federal Defender Services Unit, is authorized by this Plan to serve as a Community Defender Organization and is eligible to furnish attorneys and to receive payments under 18 U.S.C. §3006A(h)(2)(B). The Certificate of Incorporation and the By-Laws of the Legal Aid Society are incorporated by reference in this plan, with the same force and effect as though fully set forth therein.

II. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA Panel

1. Approval - The Court shall establish a panel of private attorneys ("the CJA Panel") who

are eligible and willing to be appointed to provide representation under the Act. The Panel Selection Committee established under section II B below shall approve attorneys for membership on the panel. A copy of the panel list shall be maintained by the clerk and be furnished to each judge and magistrate judge. Members of the CJA Panel shall serve at the pleasure of the Court.

2. Size of Panel - The panel shall be large enough to provide sufficient experienced attorneys to handle the caseload under the Act, but small enough to provide panel members with adequate appointments to maintain a high proficiency in Federal criminal defense work. The size of the CJA Panel shall be set by the Court on an annual basis.

3. Eligibility - Attorneys who serve on the CJA Panel must be members in good standing of the bar of this Court and have demonstrated experience in and knowledge of the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

4. Terms - Attorneys appointed to the CJA Panel shall serve a term of three years. Membership in the CJA Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges or by the Panel Selection Committee, as they, in their sole discretion, may determine.

5. Retention of Appointed Counsel - Counsel appointed pursuant to this Plan shall report to the judicial officer presiding any attempt to retain him or her as counsel for a fee. If such counsel is subsequently retained by or on behalf of the person he or she was assigned to represent, without permission of the assigned magistrate judge or the district judge, he or she shall immediately notify the magistrate judge or the district judge of that fact. The magistrate judge or district judge may thereupon recommend to the Board of Judges or the Panel Selection Committee that membership of that counsel in the CJA Panel be terminated and that his or her name be stricken from the Panel list.

6. Reappointment - A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment for an additional three-year term within four months of the expiration of his or her current term. Applications for reappointment will be reviewed on an annual basis along with all other applications for appointment to the panel.

7. Application - Application forms for membership on the CJA Panel shall be made available on request by the Clerk of the Court. Completed applications shall be submitted to the clerk, who will transmit them to the chair of the Panel Selection committee. Applications and reappointment applications will be reviewed at regular intervals as scheduled by the Court or the Panel Selection Committee.

B. Panel Selection Committee

1. Membership - A Panel Selection Committee, consisting of one district judge, one magistrate judge, the Federal Defender, one criminal defense attorney, and the Clerk of the Court, is hereby established. The district judge shall chair the Committee.

2. Duties of Committee

a. The Panel Selection Committee will meet at least annually to consider applications to fill the vacancies created by the expiration of terms each year. The Committee shall review the qualifications of the applicants and recommend the appointment of those best qualified.

b. The Committee shall also continually review the operation and administration of the panel and recommend to the Court any changes deemed necessary regarding the appointment process or panel management.

- c. Whenever the size of the panel is significantly reduced by vacancies, the Committee may solicit applications to fill the vacancies, convene a special meeting to review the applicants, and recommend new members to the Court.

III. SELECTION FOR APPOINTMENT

A. Maintenance of List and Distribution of Appointments

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

B. Method of Selection

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

Upon the determination of a need for the appointment of counsel (Section IV), the judge or magistrate judge shall notify the Clerk of Court of the need for counsel and the nature of the case.

The Clerk of Court shall advise the district judge or magistrate judge as to the distribution of cases,

where appropriate, between the Federal Public Defender and the panel of private attorneys. If a judicial officer decides to appoint an attorney from the panel, the Clerk shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing district judge or magistrate judge.

During weekends, holidays, or other non-working hours of the Clerk of Court's Office, the presiding district judge or magistrate judge may appoint any attorney from the list. When members of the CJA Panel are appointed out of sequence, the appointing district judge or magistrate judge shall notify the Clerk of Court of the name of the attorney appointed and the date of the appointment.

IV. DETERMINATION OF NEED FOR COUNSEL

A. Appearing before a Magistrate Judge or a District Judge in a Criminal Case

If any person is charged with a felony or misdemeanor (other than a petty offense for which he or she does not face imprisonment); or with juvenile delinquency (see 18 U.S.C. §5034); or with a violation of probation; or who is entitled to appointment of counsel in parole proceedings, pursuant to Chapter 311 of Title 18 U.S.C.; or for whom the Sixth Amendment to the Constitution requires the appointment of counsel; or for whom in a case in which he faces loss of liberty, any federal law requires the appointment of counsel, and such defendant appears without counsel, the magistrate judge or district judge shall advise the defendant of his or her right to counsel.

Whenever such a person states that he or she is financially unable to obtain counsel, and applies for the appointment of counsel, it shall be the duty of the judge or magistrate judge to inquire whether such

person is financially able to obtain counsel.

All statements made by such person in such inquiry shall be either (a) by affidavit sworn to before a district judge, magistrate judge, Court Clerk, or deputy clerk, or notary public, or (b) under oath in open court before a judge or magistrate judge.

If on the basis of such inquiry, the district judge or magistrate judge finds that such person is financially unable to obtain counsel, he shall appoint counsel for such person. The district judge or the magistrate judge shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when a conflict of interest exists in having one attorney represent more than one defendant, or when other good cause is shown.

B. Representation Required by Law

When a person arrested has been represented by counsel under circumstances where representation is required by law prior to appearing before a judicial officer, such counsel, if appointed by a judge or magistrate judge, may subsequently apply to the Court for approval or compensation. If the Court finds the person has been and is financially unavailable to obtain an adequate defense, and that representation was required by law, compensation will be made retroactive to cover out-of-court time expended by the attorney during the arrest period. In addition, the services rendered from the time of the initial presentation before a district judge or magistrate judge will be compensated.

The Court may make retroactive appointment of counsel where an attorney will continue to represent the party in criminal proceedings in this Court. If the person represented is unavailable at the time counsel applies to the Court for approval of compensation, the attorney may nevertheless submit his or her

claim to the Court for approval based upon the client's financial condition and upon showing that such representation was required by law.

C. Discretionary Appointments

Any person in custody as a material witness, or seeking relief under 28 U.S.C. §§2241, 2254, or 2255 of Title 28 or 18 U.S.C. §4245 may apply to the Court or a magistrate judge for representation based on a showing (1) that the interests of justice so require and (2) that such person is financially unable to obtain representation. The application must be verified and in the form prescribed by the Judicial Conference of the United States. If the party is not before the Court, the judicial officer may, without requiring personal appearance of the party, act on the basis of the form alone supplemented by any information made available by an officer, custodian or other responsible person. This information must be made available to the party. The Court may approve the representation if in the interest of justice or if the person is financially unable to obtain representation.

V. APPOINTMENT OF COUNSEL

A. Judicial Officer Appointments

In every criminal case in which a party may be entitled to representation under the Act and that party appears without counsel before a magistrate judge or district judge, it is the duty of the magistrate judge or district judge not only to advise the party of his or her right to counsel throughout the case, but also promptly to appoint counsel to represent the party if the magistrate judge or district judge finds that the party is financially unable to obtain an attorney, unless the party waives his or her right to be represented by counsel.

If a judicial officer, the United States Attorney, or other law enforcement officer, a Parole Board representative, an appointed attorney, or a representative of a Bar association challenges the claimed financial inability of a party to employ a lawyer, the determination of the defendant's right to have appointed counsel shall be made by a judge of this Court or by the magistrate judge assigned to the case.

The judicial officer shall, in appointing counsel use the Community Defender Organization or select a private attorney from the panel as approved by the Court, except in extraordinary circumstances where it becomes necessary to make another selection of a member of the Bar of this Court. The party shall not have the right to select appointed counsel from the Community Defender Organization or from the panel of attorneys, or otherwise.

Counsel appointed by a judicial officer shall, unless excused by order of court, continue to act for the party throughout the proceedings in this Court. An appointed attorney shall not delegate any substantive tasks in connection with 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.

If a criminal defendant enters a plea of guilty or is convicted following trial, appointed counsel shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested by the defendant, or upon the Court's own application, counsel must file a timely Notice of Appeal. When an appeal is taken, appointed trial court counsel shall continue to represent the appellant unless or until he or she has been appointed as appellate counsel or has been notified that his or her services are not longer required.

If at any stage of the proceedings, counsel appointed by a judicial officer in any proceedings wishes

to be relieved, he or she shall inform the magistrate judge or district judge before whom the case is pending.

The judicial officer may, in the interests of justice, substitute one appointed counsel for another.

B. Special Circumstances

If the judicial officer shall find that a defendant could be more adequately represented by counsel other than a member of the Community Defender Organization or the panel of attorneys, he or she may request the Chief Judge to add such counsel to the panel, stating briefly the reason therefor, and upon the granting of the request the district judge or magistrate judge may appoint such counsel for such limited purpose.

If after appointment counsel learns that a client is financially able to pay all or part of the fee for legal representation and the source of the attorney's information is not a privileged communication, counsel shall so advise the Court. The Court will take appropriate action, including but not limited to: permitting assigned counsel to continue to represent the defendant with all or part of the cost defrayed by the defendant; terminating the appointment of counsel; or ordering any funds available to the party to be paid as provided in 18 U.S.C. §3006A(f) as the interests of justice may dictate. Any amount paid by the party will be considered by the court in determining the total compensation allowed to the attorney.

C. The Clerk

The Clerk of the Court shall provide defendants the appropriate forms and affidavits pertaining to financial liability. If no affidavit of financial inability to employ counsel has been filed with the clerk, he shall promptly send the party a form affidavit to complete and return.

As soon as the clerk receives an affidavit of financial inability to employ counsel, whether with the notice or subsequently, he shall promptly arrange for the appointment of counsel. If the clerk becomes

aware that a party wishes to apply for discretionary appointment of counsel, he shall promptly send such party the appropriate CJA forms to be executed and filed.

The clerk shall screen each claim for compensation and reimbursement of expenses for accuracy and compliance with all relevant guidelines.

D. Redetermination of Need

If at any stage of the proceedings, a judicial officer finds that a party for whom counsel has not previously been appointed but who had retained his or her own attorney is financially unable to provide for continued representation, the magistrate judge or district judge may appoint counsel for the party. The Court will not ordinarily appoint the same attorney.

No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a defendant, unless such payment is approved by an order of the Court.

VI. INVESTIGATIVE, EXPERT AND OTHER SERVICES

A. Upon Request

Counsel for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense may request such services ex parte before a judicial officer having jurisdiction over the case. Such application shall be heard in camera and shall not be revealed without the consent of the defendant. On finding that the services are necessary and that the person is financially unable to afford them, the judicial officer shall authorize counsel to obtain them. An order setting forth the type, purpose, and limitations of such services will be issued by the Court. The district judge or magistrate judge may establish a limit on the amount that may be expended or committed for such services within the \$1000

maximum prescribed by 18 U.S.C. §3006A(e)(3).

B. Without Prior Request

Counsel appointed pursuant to this Plan may obtain, subject to later review, investigative, expert, or other services without prior judicial authorization if they are necessary for an adequate defense. The total cost of services so obtained may not exceed \$300 per individual or corporation providing the services (exclusive of reasonable expenses). However, in the interests of justice and upon finding that timely procurement of necessary services could not await prior authorization a district judge or magistrate judge (in a case disposed entirely by the magistrate judge) may approve payment for such services after they have been obtained, even if the cost of the services exceeds \$300.

C. Necessity of Affidavit

Statements made by or on behalf of the party in support of requests under ¶¶A and B supra shall be made or supported by affidavit.

VII. COMPENSATION

A. Payments to Counsel Appointed under Plan

Payment of fees and expenses to counsel under this plan and payment for investigative, expert, and other services authorized pursuant to Section V shall be made in accordance with the United States Judicial Conference Guidelines for the Administration of the Criminal Justice Act and with the fiscal policies of the Administrative Office of the United States Courts.

B. Schedule of Maximum Fees for Counsel and Other Services

The following fees are hereby prescribed for the Eastern District:

1. Maximum Hourly Rate for Counsel - The maximum hourly rate of attorneys shall not exceed \$90.00 per hour for time expended in court or before a magistrate judge or \$90.00 per hour for time reasonably expended out of court. In addition, such attorney or the organization furnishing the attorney shall be reimbursed for expenses reasonably incurred, including the cost of any necessary transcripts authorized by the district judge or magistrate judge.

2. Maximum Amounts for Counsel

- a. For representation of a defendant before a judicial officer of this Court, or both, the compensation paid any attorney shall not exceed \$3,500 for each attorney in a felony case or \$1,000 for each attorney in a misdemeanor case. Representation of a defendant in a new trial shall be considered a separate case for fee purposes.
- b. A maximum of \$750 per attorney is provided for any other representation required or authorized by this Plan.

Any request for compensation in excess of \$750 shall be accompanied by an affidavit of counsel detailing in both narrative and statistical form the services provided. Reasonable out-of-pocket expenses may be claimed if itemized and suitably documented. Expenses for investigative, expert and other services under section VI shall not be considered out-of-pocket expenses.

When warranted counsel claiming less than \$750 may be required by the presiding judicial officer to submit a memorandum justifying the compensation claimed.

3. Waiver of Limits on Counsel Fees - Payment in excess of any maximum provided above for counsel fees or for other services may be made for extended or complex representation whenever the district judge or magistrate judge (if the representation was entirely before the magistrate judge) certifies

that the amount sought is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Second Circuit or such active Circuit Judge to whom the Chief Judge has delegated approval authority. Counsel claiming such excess payment shall submit a detailed memorandum justifying counsel's claim that the representation was in an extended or complex case and that the excess payment is necessary to provide fair compensation.

VIII. FORMS

Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee, such forms shall be used by the Court, the Clerk of Court and counsel.

IX. RULES AND REPORTS

The Chief Judge on behalf of the Court may promulgate such rules as the Board of Judges of this Court adopts in furtherance of this Plan. The Chief Judge shall similarly make such reports on the implementation of the Act to the Judicial Conference of the United States or a committee thereof as are required or requested.

X. AMENDMENTS

Amendments to this Plan may be made from time to time by the Board of Judges of this Court, subject to the approval of the Judicial Council of the Second Circuit.

XI. EFFECTIVE DATE

This Plan as amended this 23rd day of May, 2000, shall take effect when approved by the Judicial

Council of the Second Circuit.

Amendments adopted by
the Board of Judges on
May 23, 2000

Approved by the
Second Circuit Judicial Council
on June 20, 2000