

# UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## CRIMINAL JUSTICE ACT PLAN

### PREAMBLE

Pursuant to the Criminal Justice Act (hereinafter referred to as either “Act” or “CJA”), 18 U.S.C. § 3006A, and the Guidelines for the Administration of the Criminal Justice Act, Vol. VII, *Guide to Judiciary Policies and Procedures*, this Court adopts the following Plan for furnishing appellate representation to all persons who are financially eligible for representation under the CJA and related statutes. This Plan formally amends the Criminal Justice Act Plan adopted by the Sixth Circuit Judicial Council on February 11, 1971.

#### **I. Appointment Of Counsel**

Counsel appointed by the district court must continue to represent the client until relieved by the United States Court of Appeals for the Sixth Circuit. 6th Cir. R. 101(a). While the Sixth Circuit recognizes that there may be benefits to maintaining continuity of counsel, it also recognizes that the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. In adjudicating trial counsel’s request to withdraw as appellate counsel, the Sixth Circuit will give considerable deference to trial counsel as to whether his or her continuing to act as appellate counsel is (1) in the best interests of the client; and (2) consistent with counsel’s professional skills and obligations. Consequently, substitution of counsel shall not reflect negatively in anyway on the conduct of the lawyer involved. The Court will require, however, that trial counsel perfect the appeal prior to seeking to withdraw.

Once the notice of appeal has been filed and trial counsel seeks to withdraw as counsel of record, only the United States Court of Appeals for the Sixth Circuit may assign or relieve appellate counsel. Furthermore, absent a change in financial conditions, any determination that a person is eligible for representation by appointed counsel made in the district court shall continue on appeal. Even if trial counsel seeks to withdraw as counsel of record, in its discretion, the Court may continue the appointment of trial counsel or may appoint any Federal Public or Community Defender office located in the Circuit or any lawyer from the Court’s Criminal Justice Act Panel (CJA Panel) to represent the indigent on appeal.

Should one or both attorneys who represented a capital defendant in the district court not continue as appellate counsel, the Court may consult with the state public defender’s office in the state where the case originated or a Federal Public Defender or Community Defender Capital Habeas Unit located in the district in which the case was litigated in order to locate death penalty qualified counsel to appoint on appeal. After this consultation, the Court may: (1) appoint and compensate under the Act, an attorney or attorneys from a state public defender’s office located in the state where the case originated; (2) appoint an attorney or attorneys from a Federal Public Defender or Community Defender Capital Habeas Unit located in the district in which the case was litigated; or (3) appoint counsel from the CJA Panel, giving consideration to the extent of counsel’s experience

litigating capital appellate issues in the Circuit.

The selection of counsel shall be the exclusive responsibility of the Court and no indigent defendant will be permitted to select his or her own attorney from the CJA Panel.

## **II. Composition of Panel of Private Attorneys**

### *A. CJA Panel*

The Court will establish and maintain a panel of private attorneys (the CJA Panel) who are both eligible and willing to accept appointments in cases where representation is required under 18 U.S.C. § 3006A. These attorneys, along with attorneys from any Federal Public or Community Defender office located in the Circuit, shall constitute the core group from which appointments shall be made. The Court shall approve private attorneys for membership on the CJA Panel after receiving recommendations from the Standing Criminal Justice Act Committee (Standing Committee), established pursuant to Section III of this Plan.

### *B. Size*

The CJA Panel shall be large enough to provide as sufficient number of experienced attorneys who can handle the CJA caseload, yet small enough so that CJA Panel members will receive an adequate number of appointments to ensure that their proficiency in litigating federal criminal appeals is maintained. The CJA Panel will include adequate attorney representation from each of the districts in the Circuit. The Standing Committee will view applications for membership on the CJA Panel with the express goal of identifying qualified appellate counsel from each district in the Circuit.

### *C. Eligibility*

To be eligible for service on the CJA Panel, lawyers must be members in good standing of the Sixth Circuit's bar and maintain an office within the Circuit. Members of the CJA Panel must have a working knowledge of the Federal Rules of Appellate Procedure, Federal Rules of Evidence, Federal Rules of Criminal Procedure, United States Sentencing Guidelines, and the habeas corpus provisions found in Title 28 of the United States Code. CJA Panel members must also be willing to accept at least one appellate appointment each year.

### *D. Term of Service*

There are no fixed terms for panel membership. Continued membership shall be in the discretion of the Clerk of Court, in consultation with the Standing Committee.

### *E. Application for Membership*

Applications to become a CJA Panel member will be available in the office of the Clerk

of Court and on the Circuit's website at [www.ca6.uscourts.gov](http://www.ca6.uscourts.gov). Completed applications must be submitted to the Clerk of Court for transmittal to the Standing Committee.

*F. Maintenance of the List*

The Clerk of Court shall maintain a public list of the members of the CJA Panel, including current street and email addresses and telephone numbers.

*G. Appointment Process*

Appointments from the list of the members of the CJA Panel will be made on a rotational basis, with due regard given to the nature and complexity of the case, an attorney's experience, and geographic considerations. The primary consideration shall be to ensure quality representation for all persons who are financially eligible for representation under the CJA and related statutes.

*H. Removal from the Panel*

The Court is very appreciative of the time and commitment required to accept appellate appointments. Membership on the CJA Panel is not a property right, however, and the refusal to accept appointments on a consistent basis will lead the Court to assume that the attorney has resigned from the panel. The attorney will be notified in writing of any change in status resulting from the failure to accept appointments.

Counsel may also be removed from the panel for any other reason. Such removal shall be in the discretion of the Clerk of Court, in consultation with the Standing Committee. For every case in which a CJA attorney represents an indigent on appeal, whether the case is argued orally or not, the Clerk is requested to provide the presiding judge with a rating sheet, the primary purpose of which is to determine whether the attorney's representation met prevailing professional standards. These evaluations shall be reviewed on an ongoing basis by a designee of the Clerk of Court. A rating at a less-than-professional level, or repeated marginal ratings, shall be referred to the Standing Committee, along with other ratings received by that attorney, for a recommendation as to whether the attorney should continue as a CJA Panel member.

Any attorney whose resignation is assumed because he or she has not accepted cases may file a request to return to active status. This request must include an explanation regarding counsel's refusal to accept appointments. The Standing Committee will make a recommendation to the Court on these requests for reinstatement.

Attorneys removed for any other reason may file a renewed application to be placed back on the CJA Panel no earlier than one year from the date of removal. In the renewed application, counsel must note the earlier removal and explain why they believe that they should be permitted to return to the panel. The Standing Committee will also make a recommendation to the Court on these requests for reinstatement.

### **III. Standing Criminal Justice Act Committee**

#### *A. Membership and Structure*

The Chief Judge of the Circuit or his designee, shall appoint the Standing Committee which shall be composed of one criminal defense lawyer from each of the districts comprising the Circuit and one member of the Court's Judicial Council. Non-Judicial Council members of the Standing Committee may be private attorneys or lawyers from the various Federal Public and Community Defender offices located in the Circuit and they should have experience litigating criminal appeals. The Standing Committee members shall serve staggered three year terms, and may serve two consecutive terms. The Chief Judge or his designee may also appoint a liaison to the Standing Committee from the Court's legal staff. This liaison will not be a Standing Committee member, but will be available to both the Court and members of the Committee for support and consultation. Finally, the Chief Judge or his designee shall appoint a chairperson for the Standing Committee.

#### *B. Duties*

The Standing Committee shall review the qualifications of applicants for membership on the CJA Panel, conduct further inquiries as may be necessary, and shall make recommendations to the Court for placement of attorneys on as well as removal of attorneys from the CJA Panel. The Standing Committee shall also review the operation of the appellate panel on a periodic basis and shall make recommendations to the Court regarding any necessary changes. At the Court's discretion, the Standing Committee may also investigate complaints concerning deficient performance by CJA Panel members and report its findings to the Court. The Standing Committee's recommendations to the Court on any issue shall remain confidential.

### **IV. Change in Financial Conditions**

If a party becomes financially unable to employ counsel on appeal and this determination is made before the notice of appeal is filed, a motion seeking a finding that the party is eligible for the appointment of counsel must be made in district court. 18 U.S.C. § 3006A. Because the district court must make factual findings regarding the defendant's financial eligibility, appropriate forms, such as a CJA 23 affidavit, should be filed in that court to assist in making this determination.

In cases where a request for the appointment of counsel under the Act is made for the first time after the notice of appeal is filed, the Chief Judge of the Circuit or his designee, before making the appointment, shall inquire into and make a finding as to whether the party applying for representation by the CJA Panel is financially able to employ counsel. Appropriate forms such as a CJA 23 affidavit shall be utilized in making this determination.

The Court may, at any time, examine or re-examine the financial status of the defendant. It is also incumbent on counsel appointed pursuant to the Act to apprise the Court of his or her client's change of financial circumstances that would impact their entitlement to representation pursuant to

the Act as long as the source of counsel's information is not a privileged communication with his or her client. If at any time the Court finds that the defendant is financially able to retain counsel or make partial payments for representation, the Court may deny or terminate an appointment pursuant to 18 U.S.C. § 3006A(c) or require the defendant to make partial payment for services rendered, pursuant to 18 U.S.C. § 3006A(f).

## **V. Petition For Writ of *Certiorari***

If the judgment of this Court is adverse to the client, the attorney must inform the client of the right to petition the Supreme Court of the United States for a writ of *certiorari*. The attorney must file a petition for a writ of *certiorari* if the client requests the attorney to seek this discretionary review, and, in the attorney's considered judgment, there are grounds for seeking Supreme Court review that are not frivolous and are consistent with the standards for filing a petition embodied by the Rules of the Supreme Court and applicable case law. 6th Cir. R. 101(g). If, on the other hand, the client requests that the attorney file a petition for a writ of *certiorari* and, in the attorney's considered judgment, there are no such grounds for seeking Supreme Court review that are not frivolous, the attorney should promptly so advise the client and submit to this Court a written motion for leave to withdraw from the representation after the entry of judgment. If this Court grants the attorney's motion and terminates the attorney's appointment, the attorney must so advise the client in writing as soon as possible. The attorney must also advise the client of his or her right to file a *pro se* petition for a writ of *certiorari*.

## **VI. Quality of Representation**

Attorneys appointed pursuant to any provision of the Act must conform to the highest standards of professional conduct, including, but not limited to, the provisions of the American Bar Association's Code of Professional Responsibility.

## **VII. Compensation**

### *A. Claims*

At the conclusion of the attorney's representation, all claims for compensation and expenses must be submitted to the Clerk of Court on the CJA 20 voucher enclosed with the appointment. All claims must be supported by appropriate documentation and must be prepared consistent with the directives found in the "CJA 20 Voucher Submission Instructions" that are posted on this Court's website.

In each case, the Court will fix the compensation to be paid the attorney as provided in the Act. Although the Act provides for limited compensation, the Court recognizes that the compensation afforded often does not reflect the true value of the services rendered. Consequently, it is the Court's policy not to cut or reduce claims which are reasonable and necessary.

In evaluating a CJA 20 voucher for approval, the Court may take into account, among other considerations: (1) the extent to which the time claimed for brief preparation corresponds to the number and complexity of issues in the brief(s), the length of the brief(s), and the length of the record; (2) whether appellate counsel was also trial counsel; (3) whether there were “associates” involved in the preparation of the brief(s) or whether there was only one lawyer who worked the case up for the appeal; (4) the overall quality of the brief(s) and argument; and (5) the overall reasonableness of the time requested. After considering these factors and others, if the Court determines that a claim must be reduced, it will provide the attorney notice of its intent to reduce the attorney’s claim and an opportunity to address this issue before final payment is made. Once the attorney is provided with notice of the Court’s intention to reduce the submitted claim, the attorney must submit his or her written response to support the claim within ten days.

The Court will process all claims for compensation and expenses that are submitted by CJA Panel attorneys as expeditiously as possible.

#### *B. Other Payments*

Except as authorized or directed by the Court, no person or organization authorized by the Court to furnish representation under the Act may request or accept any payment or promise of payment for representation from a source other than the Administrative Office of the United States Courts.

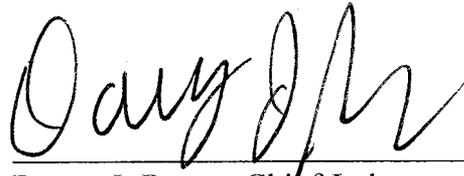
### **VIII. Amendments**

Amendments to this Plan may be made from time to time by the Court, subject to the Sixth Circuit Judicial Council’s approval.

## CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, *et seq*, the foregoing Amended Criminal Justice Act Plan for the United States Court of Appeals for the Sixth Circuit has been duly received and approved as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said Amended Plan shall become effective upon the date of this approval.

This 7th day of May, 2008.

A handwritten signature in black ink, appearing to read "Danny J. Boggs", written over a horizontal line.

Danny J. Boggs, Chief Judge  
United States Court of Appeals  
for the Sixth Circuit