

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CRIMINAL JUSTICE ACT PLAN

PREAMBLE

In accordance with the Criminal Justice Act (the “Act” or “CJA”), 18 U.S.C. § 3006A, and the Guidelines for the Administration of the Criminal Justice Act, Vol. VII, *Guide to Judiciary Policy*, 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 May 7, 2008.

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. 12(c)(1). 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 any way 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, the Court in its discretion 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 defendant on appeal.

Should one or both attorneys who represented a capital defendant in the district court not continue as appellate counsel, the Court may consider a variety of resources for a recommendation: **the** Defender Services Office of the Administrative Office of the U.S. Courts, the state public defender’s office in the state where the case originated, a Federal Public Defender or Community Defender Capital Habeas Unit located in the district in which the case was litigated, or qualified counsel from the CJA list. 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 Appellate Attorneys

A. CJA Appellate Panel

The Court will establish and maintain a panel of private attorneys and state and federal public defenders (the CJA Panel) who are both eligible and willing to accept appellate 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 under Section III of this Plan.

B. Size

The CJA Panel shall be large enough to provide a sufficient number of experienced attorneys who can handle the CJA caseload yet small enough to monitor for quality and proficiency. 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, ideally excellent, appellate counsel from each district in the Circuit, whether measured by number of cases argued or other qualifications.

C. Eligibility

To be eligible for service on the CJA Panel, lawyers must be members in good standing of the Sixth Circuit's bar. 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, the habeas corpus provisions found in Title 28 of the United States Code, and the CJA Guidelines in Volume 7 of the *Guide to Judiciary Policy*.

Before becoming a member of the CJA Panel, each attorney must participate in the Circuit's training program.

D. Term of Service

There are no fixed terms for panel membership. Continued membership shall be in the discretion of the 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. 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 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 and an attorney's experience. 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 appreciative of the time and commitment required to accept appellate appointments. Membership on the CJA Panel is not a property right, however. The refusal to accept appointments on a consistent basis may lead the Court to assume that the attorney has resigned from the panel. Counsel may also be removed from the panel for any other reason. Such removal shall be in the discretion of the Court in consultation with the Standing Committee. The attorney will be notified in writing of any change in status.

For every case in which a CJA attorney represents an indigent defendant on appeal, whether the case is argued orally or not, the Clerk shall 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 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 who has been removed from the CJA Panel based on a failure to accept appointments 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 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 shall appoint the Standing Committee which shall be composed of circuit judges. 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 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. The Standing Committee shall review new applications on a quarterly basis.

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 under the Act to apprise the Court of his or her client's change of financial circumstances that would affect their entitlement to representation under 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 under 18 U.S.C. § 3006A(c) or require the defendant to make partial payment for services rendered under 18 U.S.C. § 3006A(f).

V. Petition for a 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. 12(c)(5). 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 non-frivolous grounds for seeking Supreme Court review, 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. 6th Cir. R. 12(c)(4). 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 under any provision of the Act must conform to the highest standards of professional conduct, including, but not limited to, their State's ethical and professional requirements and 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 using eVoucher. All claims must be supported by appropriate documentation and must be prepared consistent with the directives found in the *Guide to Judiciary Policy* and on the 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 will use the Standard for Voucher Review in the *Guide to Judiciary Policy*. 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

The Court shall review this Plan at least every five years. Amendments 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 Judicial Council of the Sixth Circuit of the United States did receive and approve via mail ballot dated June 28, 2023, the foregoing revised Criminal Justice Act Plan for the United States Court of Appeals for the Sixth Circuit. The revised plan shall become effective upon the date of this approval.

This 13th day of July 2023.

A handwritten signature in blue ink that reads "Jeffrey S. Sutton". The signature is written in a cursive style and is contained within a rectangular box.

Jeffrey S. Sutton, Chief Judge