

**JUDICIAL COUNCIL  
OF  
THE UNITED STATES ELEVENTH JUDICIAL CIRCUIT**

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12 January 2011

*VIA EMAIL*

Honorable Anne C. Conway  
Chief United States District Judge  
U. S. District Court, Middle District of Florida  
80 North Hughey Avenue, #300  
Orlando, FL 32801-2278

Dear Chief Judge Conway:

The revised Criminal Justice Act Plan for the Middle District of Florida that was submitted 25 October 2010, has been approved by the Judicial Council's Executive Committee on behalf of the full Council.

Sincerely,



Secretary to the Judicial Council

/kla

c: Members of the Judicial Council  
Ms. Sheryl L. Loesch, Clerk of Court

**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF FLORIDA**



**CRIMINAL JUSTICE ACT PLAN**

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## CHAPTER ONE

### **SECTION 1.01      AUTHORITY**

The Criminal Justice Act Plan, hereinafter referred to as the Plan, is adopted pursuant to the authority of the Criminal Justice Act of 1984, as subsequently amended by Acts of Congress and codified in Chapter 201 of Title 18, United States Code, and Volume VII of the Guide to Judiciary Policies and Procedures.

### **SECTION 1.02      EFFECTIVE DATE OF IMPLEMENTATION**

In accordance with 18 U.S.C. § 3006A(a), this Plan has been adopted by the United States District Court for the Middle District of Florida and will be implemented on the day the plan is approved by the Judicial Council of the Eleventh Circuit.

### **SECTION 1.03      COURT DEFINED**

Except as limited by specific statutory requirements, reference throughout this Plan to the “Court” shall mean that either a district judge or United States magistrate is authorized to perform the particular function.

### **SECTION 1.04      PROVISION FOR THE REPRESENTATION OF DEFENDANTS**

- (a)    Authorized Representation: In accordance with 18 U.S.C. § 3006A(a), this Plan is adopted to ensure the adequate representation of any person financially unable

to obtain adequate representation, and:

- (1) Who is charged with a felony and/or a misdemeanor (other than a petty offense as defined in Title 18 of the United States Code unless a loss of liberty is possible), or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation; or
- (2) Who is under arrest, when such representation is required by law; or
- (3) Who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided by 18 U.S.C. § 3006A(a)(1)(g); or
- (4) Whose mental condition is the subject of a hearing pursuant to Chapter 313 of Title 18, United States Code; or
- (5) For whom the Fifth or Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which the person faces loss of liberty, any Federal law requires the appointment of counsel.

(b) Scope of Representation: Representation provided under this Plan shall include counsel and investigative, expert, and/or other services necessary for an adequate defense.

(c) Source of Representation:

- (1) Federal Defender Organization: A Federal Public Defender Organization has been established to provide representation in accordance with 18 U.S.C. § 3006A(g)(2)(A). This Plan contemplates that

approximately 75% of the annual appointments, as calculated on a fiscal year basis, shall be assigned to the Federal Defender Organization.

- (2) Criminal Justice Act (CJA) Panel Attorneys: This Plan contemplates that approximately 25% of the annual appointments, calculated on a fiscal year basis, shall be assigned to CJA panel members.

Membership of the divisional CJA panels shall be established by:

- (A) Regular Panel Membership: In accordance with 18 U.S.C. § 3006A(b), each Division of this Court shall prepare and maintain a panel listing of attorneys who are willing to accept appointments in accordance with this Plan, and who are competent to give adequate representation to indigent defendants. Attorneys appointed to regular membership on the divisional CJA panels shall serve at the pleasure of the Court.

- (1) Criteria For Panel Membership: The minimum criteria for membership on any divisional CJA Panel are that each attorney:

- (a) Be a member in good standing of the Bar of the United States District Court for the Middle District of Florida and the Florida Bar;
- (b) Have at least two years experience as an attorney licensed to practice in any state or the District of

Columbia;

- (c) Have sufficient competence to furnish high quality representation to criminal defendants in the District Court;
- (d) Be familiar with:
  - (1) the Federal Rules of Criminal Procedure;
  - (2) the Federal Rules of Evidence;
  - (3) the Bail Reform Act of 1984;
  - (4) the Federal Sentencing Guidelines; and,
  - (5) legislation, rules, or guidelines which supersede, amend, or supplement (1) through (4) above;
- (e) Have attended and completed at least one live or video-taped course or seminar on the topic of the Federal Sentencing Guidelines, and its application, within the twelve months prior to application. If such training course or seminar is not sponsored by the Jacksonville, Orlando, Tampa, or Ft. Myers Chapters of the Federal Bar Association, the program for the seminar or training must be approved by the Federal Public Defender of the

Middle District of Florida;

- (f) Have attended and completed at least one Public Defender-approved continuing legal education seminar on federal court criminal practice within the twelve months prior to application, or have reviewed an approved video presentation concerning criminal practice in the Middle District of Florida which shall be on file in each Federal Public Defender Office in the District; and
- (g) Have participated as counsel of record, either as prosecutor or defense attorney, in at least one criminal jury trial in any federal court.

Alternatively, this requirement may be satisfied by the applicant's having participated in a federal criminal jury trial by sitting "second chair" to a member of a divisional Mentor Panel; and

- (h) Effective July 1, 1997, all members of the CJA panel must attend and complete at least one continuing legal education program annually. The program must emphasize Federal Sentencing Guidelines and other aspects of federal criminal trial

practice and be approved by the Federal Public  
Defender of the Middle District of Florida.

- (2) The Federal Public Defender shall be responsible for certifying to the Court compliance by the applicant with the continuing education requirements of subsections (e), (f), and (h) hereof. In order to facilitate satisfaction of this oversight responsibility, the applicant shall be required to furnish written evidence of the applicant's attendance or participation in any such training course or seminar to the Federal Public Defender in such form or manner specified by the Federal Public Defender.
- (3) The Federal Public Defender shall be responsible for providing educational materials including the video presentation concerning criminal practice for the Middle District of Florida for use by CJA panel applicants and members, and other members of the Bar. Such training is important for enhancing the quality of representation of indigents and for making the CJA panel accessible to able attorneys who have limited federal criminal experience. Similarly, the Federal Public Defender shall serve as a central repository for materials which may be helpful to the

members of the CJA panel, such as legal memoranda on recurring issues and jury instructions.

(4) In considering an applicant for membership on the CJA panel, the Court may, in its discretion, waive any of the requirements of section (1)(b), (e), (f), (g), and (h).

(B) The Mentor Panel: The District Court shall establish a Mentor Panel in each Division consisting of attorneys with substantial experience in criminal matters in the District Court and who are willing to serve as “Mentors”. Membership on the Mentor Panel shall not preclude an attorney from also serving on the CJA Panel. Appointments to the Mentor Panels shall be made by the Chief Judge of the District, upon recommendations by the United States magistrates. The number of attorneys serving on the divisional Mentor Panels shall be determined by the Chief Judge, depending on the needs and workload of each division. Mentors shall serve for a term of three years. However, Mentors may be reappointed to succeeding terms at the discretion of the Chief Judge. The Federal Public Defender and his attorney assistants shall, by virtue of such positions, be members of the Mentor Panel in their respective divisions; provided, however, that any such attorney may “opt out” as a Mentor. Mentors, who shall serve without compensation, shall

be willing to:

- (1) Permit applicants for the CJA Panel who do not meet the minimal trial experience requirement to sit “second chair” during the trial of a federal criminal case (subject to the consent of the Mentor’s client and approval of the presiding judge) and furnish to the applicant at the conclusion of the trial a letter certifying that the applicant has done so;
- (2) Assist the Federal Public Defender and pertinent Federal Bar Association chapters in planning and/or participation in criminal justice training programs for CJA Panel attorneys and those who desire to become CJA Panel attorneys;
- (3) Advise and consult with CJA Panel members on matters of federal criminal procedure and practice, as well as on issues regarding ethical considerations; and,
- (4) Provide the Court with such assistance and advice as the Court may from time to time request regarding methods and means for enhancing the quality of criminal defense representation in the District.

(C) Panel Member Terms and Reappointment:

- (1) Members of the CJA Panel serve at the pleasure of the Court.

- (2) After three years of service on a CJA Panel, the Panel member may reapply and be reappointed for succeeding three-year terms if, in the discretion of the Board of Judges, that the member continues to meet the qualifications delineated in section (A)(1) above.
- (D) Pro Hac Vice Appointments: When the Court determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting the appointment, the attorney may be admitted to the CJA panel pro hac vice and appointed to represent the defendant. Such appointments shall be made only in exceptional and compelling circumstances. Attorneys appointed under the special provisions of this paragraph shall not thereby attain regular membership status on the CJA panel.
- (E) Removal: The Board of Judges, in its discretion, may remove a CJA panel attorney for conduct incompatible with the goals of the Criminal Justice Act, the requirements set out in section 1.04(c)(2) of this Plan, or the standards imposed by Local Rule 2.01. A complaint regarding a CJA panel attorney should be forwarded to the Chief Judge, who may refer the matter to the appropriate

committee (or subcommittee) for consideration. That committee (or subcommittee) may then make such inquiry as it deems warranted and issue a report and recommendation of action for the Board of Judges to consider. When a complaint is forwarded by the Chief Judge to a committee (or subcommittee) for consideration, a copy of the complaint shall be provided to the CJA panel attorney. The CJA panel attorney who is the subject of the complaint may submit a response to the Chair of committee (or subcommittee) within fourteen days from the certified mailing date of the complaint.

## CHAPTER TWO

### APPOINTMENT AND PAYMENT OF COUNSEL

#### **SECTION 2.01 MAINTENANCE OF THE DIVISIONAL CJA PANELS**

In accordance with Local Rule 6.01(c)(4) of the Middle District of Florida, responsibility for maintenance of the divisional CJA panels is delegated to the United States magistrates.

In this regard, the United States magistrates may make additions to, or deletions from, the approved CJA panel of attorneys. Such action should ensure that the CJA panel is large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small

enough so that panel members receive an adequate number of appointments to maintain their proficiency in criminal defense work.

## **SECTION 2.02      APPOINTMENT OF COUNSEL IN A CRIMINAL CASE**

- (a) Advice of Right to Counsel: The Court shall advise a defendant of the right to be represented by counsel and that counsel will be appointed if requested, and if the defendant is financially unable to obtain counsel, in every criminal case in which a defendant appears without counsel and is entitled to representation as provided in Chapter One of this Plan.
- (b) Fact Finding and Financial Inquiry: Unless representation by counsel is waived in writing by the defendant, the Court shall conduct a fact finding inquiry into the defendant's financial status. If, after appropriate inquiry, the Court determines that the defendant is financially unable to obtain counsel, counsel shall be appointed in accordance with this Plan.
- (c) Retroactive Appointment: Appointment of counsel may be made retroactive to include any representation furnished pursuant to the Plan prior to appointment.
- (d) Continuity and Duration of Appointment: A person for whom counsel is appointed shall be represented by such appointed counsel at every stage of the proceedings from initial appearance through appeal, including ancillary matters appropriate to the proceedings, until relieved and discharged by the Court or by the Court of Appeals.

- (e) Substitution of Appointed Counsel by the Court: The Court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.
- (f) Prohibition for Accepting Payment by Appointed Counsel: Unless permitted in advance by court order, counsel appointed under the provisions of this Plan may not require, request, or accept any payment or promise of payment for representing a party.
- (g) Responsibility of Appointed Counsel Upon Conviction: Prior to the entry of a plea of guilty or upon conviction following trial, appointed counsel shall advise the defendant of the right of appeal, if any, and of the right to counsel on appeal. If requested by defendant, appointed counsel shall file a timely notice of appeal and shall continue representation of the defendant throughout the appellate process.

## **SECTION 2.03 PARTIAL PAYMENT AND/OR REIMBURSEMENT FOR THE COST OF APPOINTED COUNSEL**

If at any time the Court finds that a person is financially able to obtain counsel or to make full or partial payment for representation, or that funds are available for payment from or on behalf of a person furnished representation, the Court may terminate the appointment of counsel and may direct or authorize payment as provided in 18 U.S.C. § 3006A(f).

If appointed counsel obtains information that a client is financially able to make payment,

in whole or in part, for legal or other services in connection with the representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall promptly advise the Court.

#### **SECTION 2.04      APPOINTMENT OF PREVIOUSLY RETAINED COUNSEL**

Pursuant to Local Rule 2.03(c) of the Middle District of Florida, after appearing in a criminal proceeding, retained counsel will not ordinarily be permitted to withdraw by reason of non-payment of attorney's fees. When retained counsel is permitted to withdraw after trial or, under exceptional circumstances, at some other stage of the proceeding, and the Court finds that the defendant is then qualified for the appointment of counsel pursuant to this Plan, counsel may so be appointed. If there are other persons in the same case or proceeding then being represented by appointed counsel, the same counsel may be appointed for the unrepresented defendant in the absence of a conflict of interest. Otherwise, the appointment shall be made as in the usual course of administering this Plan; previously retained counsel shall not be appointed as a matter of course.

**CHAPTER THREE**

**REQUEST FOR SERVICES OTHER THAN COUNSEL**

**SECTION 3.01      OBTAINING SERVICES OTHER THAN COUNSEL UPON  
REQUEST**

- (a) Eligibility: Counsel (whether appointed under the provisions of this Plan or privately retained) or persons who are otherwise eligible for representation under this Plan, but who have elected to proceed pro se, may request services in an ex parte application in accordance with 18 U.S.C. § 3006A(e)(1).
  
- (b) Ex Parte Application Procedure: Except as permitted by section 3.02 below, ex parte applications for expert, investigative, or other services necessary for an adequate defense shall be submitted to the Court prior to the performance of such services. The Court will consider the ex parte application and, upon finding that such services are necessary for an adequate defense and that the person is financially unable to obtain the services, may authorize the services.

**SECTION 3.02      OBTAINING SERVICES OTHER THAN COUNSEL WITHOUT  
OBTAINING COURT APPROVAL**

- (a) Eligibility: In accordance with 18 U.S.C. § 3006A(e)(2), only counsel appointed under the provisions of this Plan may obtain, subject to later review,

investigative, expert, or other services without prior authorization.

- (b) Procedure for Ratification of Expenses: Counsel may request ratification for compensation of services provided in accordance with this section by submitting an ex parte application to a district judge, or United States magistrate if the services rendered were in conjunction with a matter over which the United States magistrate has jurisdiction.

The Court will consider the ex parte application and, upon finding that such services are necessary for an adequate defense and that the person is financially unable to obtain the services, may authorize payment for the services subject to the limitations imposed by 18 U.S.C. § 3006A(e).

### **SECTION 3.03 WAIVER OF LIMITS TO THE FEDERAL PUBLIC DEFENDER ORGANIZATION**

The Federal Public Defender's organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this Chapter, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its budget authorization for these specific categories. In the event that such expenditures exceed budget authorization, applications must be made on an ex parte application basis in accordance with this Chapter, and shall be subject to the limitations imposed therein.

**CHAPTER FOUR**

**COMPENSATION TO CJA PANEL ATTORNEYS**

**SECTION 4.01 MANDATORY USE OF CJA FORMS**

Applications for compensation shall be submitted on the appropriate CJA Forms. Forms may be obtained during normal business hours from the Office of the Clerk of Court.

**SECTION 4.02 SCHEDULE OF MAXIMUM FEES AND EXPENSES FOR COUNSEL**

The fees payable to counsel appointed pursuant to this Plan, and the payment of expenses incurred in providing representation pursuant to such appointment, shall be made in such amounts and in the manner prescribed from time to time by the Criminal Justice Act, as amended, and in accordance with the rules, regulations, and guidelines prescribed from time to time by the Judicial Conference of the United States.

**DONE AND ORDERED on behalf of the Court** in Orlando, Florida, this 20<sup>th</sup> day of

James Arce, 2011.

  
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ANNE C. CONWAY  
CHIEF UNITED STATES DISTRICT JUDGE