FILED
ADMINISTRATIVE MATTER

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

GENERAL ORDER NO. 99-16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ADOPTION OF CRIMINAL JUSTICE ACT ("CJA") PLAN	)	ORDER NO. 99-16

The judges of this Court, by mail vote taken pursuant to Second Amended Administrative Order No. 95-22, approved Administrative Order No. 98-23, Adoption of Criminal Justice Act ("CJA") Plan on November 5, 1998, subject to approval by the Judicial Council of the Sixth Circuit.

At the December 15, 1998 meeting of the Judicial Council of the Sixth Circuit, the Council modified and approved the Criminal Justice Act Plan (attached). Chief Judge George W. White submitted the modified Plan to Chief Judge Boyd F. Martin, Jr. on January 5, 1999; Chief Judge Martin signed the Plan, and it became effective, on January 26, 1999.

IT IS SO ORDERED.

FOR THE COURT

George W. White
Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), section 3006A of title 18, United States Code, 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 judges of the United States District Court for the District of Ohio adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The Court, its Clerk, the Federal Public Defender, the Ohio Public Defender, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of

the *CJA Guidelines* for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

A. "Representation" includes counsel and investigative, expert, and other services.

B. "Appointed attorney" includes private attorneys, the Federal Public Defender and staff attorneys for the Federal Public Defender Organization, and the Ohio Public Defender and staff attorneys of that organization.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

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 States 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, reduction, 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. faces loss of liberty in a case and federal law requires the appointment of counsel.

m. is entitled to appointment of counsel for an evidentiary hearing in actions under sections 2254 or 2255 of title 28, United States Code; or

n. is charged with criminal contempt or indirect civil contempt and who faces loss of liberty.

2. Discretionary. Whenever a judge or magistrate judge 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 direct civil contempt;

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 a 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. representation may also be furnished for financially eligible persons in appropriate ancillary matters or proceedings.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons:

1. as soon as feasible after they are taken into custody;
2. when possible, without undue delay, prior to or at their first appearance before a District Judge or Magistrate Judge;
3. at or prior to arraignment; or
4. when a District Judge or Magistrate Judge otherwise considers appointment of counsel appropriate under the Criminal Justice Act.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the Court to be extremely difficult. In a capital case, more than one attorney should be appointed.

2. Qualifications. Except as provided by section 848 (q)(7) of Title 21, United States Code, at least one attorney appointed in a capital case shall meet the qualification requirements set forth in sections 848 (q)(5) and (6) of Title 21, United States Code. Pursuant to section 848 (q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under sections 848(q)(5) and (6), 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 to the unique and complex nature of the litigation.

D. Eligibility for Representation

1. Fact finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a District Judge or Magistrate Judge after making appropriate inquiries concerning the person's financial condition.

2. Disclosure of Change in Eligibility. If, at any time after appointment, 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 his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

V. FEDERAL PUBLIC DEFENDER

A. Recognition of Existing Organization.

1. The Federal Public Defender of the Northern District of Ohio, previously established in this District pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.

2. The Federal Public Defender is capable of providing legal services throughout the district, in the Eastern and Western Divisions of the district.

B. Supervision of Defender Organization. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the Federal Public Defender shall be appointed in allcases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

VI. PRIVATE ATTORNEYS

A. Composition and Use of Panels of Private Attorneys.

1. CJA Panels.

a. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "[city] CJA Panel") who are eligible and desire to be appointed to provide representation under the Criminal Justice Act for each court location in the district which has a substantial number of criminal cases which require appointed counsel. In addition to panels established in each court location, the Court may establish panels of attorneys who are available for appointment in criminal cases arising in counties in the district which do not have a court location. The Court shall approve attorneys for membership on each panel after receiving recommendations from a "Panel Selection Committee," established pursuant to Section VI(A)(3) of this Plan. However, the Panel Selection Committee may approve membership of an attorney on a panel pending approval by the Court.

b. Eligibility. Attorneys who serve on a CJA panel must be members in good standing of the Federal Bar of this Court, have experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines and have five (5) years experience in felony trials in state or federal court. In addition, panel attorneys must certify completion of at least one seminar annually on federal criminal defense practice.

c. Length of Service. Members of a CJA panel shall serve at the pleasure of the Court and may be removed by the Court.

d. Application. Application forms for membership on a CJA panel shall be made available, upon request, by the Clerk of Court. Completed applications shall be submitted to the Clerk of Court who will transmit the applications to the Panel Selection Committee.

2. Use of CJA Panels.

Subsection (b) of the Act provides, in part, that:

> Counsel furnishing representation under the Plan shall be selected from a panel of attorneys designated or approved by the Court, or

from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan.

The Court shall make appointments of counsel under the CJA to the Office of the Federal Public Defender or to a private attorney selected from a CJA panel. The Federal Public Defender shall receive a substantial number of appointments, however, appointments of private panel attorneys shall be made to at least 25% of the defendants who require appointed counsel.

When the judge or magistrate judge presiding over a case determines that the appointment of an attorney who is not a member of a CJA panel is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to a CJA panel pro hac vice and appointed to represent the defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only when warranted by the special circumstances of a case. Further appointment of an attorney admitted pro hac vice to a CJA panel shall be made only after regular membership of said attorney on a CJA panel as provided in this Plan.

3. Panel Selection Committee.

   a. Membership. The Panel Selection Committee shall consist of one judge from each court location in the district. The Federal Public Defender shall serve as an ex-officio member.

   b. Duties.

      1. The Panel Selection Committee shall receive requests for panel membership, review the qualifications of applicants and recommend, for approval by the Court, applicants for membership on a CJA panel who meet the eligibility requirements set forth in Section VI(A)(1)(b) of this Plan.

      2. In carrying out its responsibility the Panel Selection Committee may solicit applications for membership on the CJA panels.

      3. The Panel Selection Committee shall review at least annually the eligibility and the distribution of appointments among members of a CJA panel and recommend to the Court amendments to this Plan in order to achieve its objectives.

4. The size of the CJA Panel in the various court locations shall be as follows:

Cleveland	70
Toledo	40
Akron/Youngstown	30

B. Selection for Appointment.

1. Maintenance of Lists and Distribution of Appointments.

The Clerk of Court shall maintain current lists of all attorneys who are members of a CJA panel, with current office addresses and telephone numbers, as well as written applications containing qualifications and experience and current information regarding the fulfillment of continuing legal education requirements established by this Plan.

The Clerk shall also maintain a record of all appointments to panel attorneys, which record shall include the name of the panel attorney appointed in a case, the date of the appointment and the judge or magistrate judge making the appointment. Statistical data reflecting the status of distribution of cases between the Office of the Federal Public Defender and panel attorneys shall also be maintained by the Clerk. The Federal Public Defender shall furnish the Clerk with statistics on appointments made to that office. The record of appointment of panel attorneys as provided herein shall be continuously updated and distributed at regular intervals to each judge and magistrate judge.

2. Method of Selection.

Appointments to attorneys on a CJA panel shall be made to achieve a balanced distribution of appointments among attorneys on each panel and quality representation of each CJA defendant. Appointments to attorneys from a CJA panel list shall be made on a rotational basis, subject to the discretion of the judge or magistrate judge to depart from the rotation due to the nature and complexity of the case, an attorney's experience, and geographical considerations. In the event that a judge or magistrate judge determines that a panel attorney is not timely available to accept an appointment, such unavailability shall be counted as an appointment.

In order to achieve a balanced distribution of appointments among attorneys on a CJA panel, the judge or magistrate judge making an appointment shall take into consideration the number of appointments made to any particular

attorney in a given calendar year in relation to the average number of appointments made to all attorneys on a panel for the current or previous calendar year.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254

Appointment of Counsel. The Court shall appoint the Ohio Public Defender and/or a member or members of the Supreme Court of Ohio *Statewide List of Attorneys Eligible to be Court-Appointed Counsel for Indigent Defendants in Capital Cases* who qualify for appointment under section 848(q) of Title 21, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of Title 28, United States Code.

VIII. DUTIES OF APPOINTED COUNSEL

A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of Code of Professional Responsibility adopted by the Supreme Court of the State of Ohio which has been adopted by this Court pursuant to LR 83.7 and LCrR 57.7, so far as they are not inconsistent with federal law.

C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.

D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed, until substitute counsel is appointed, or until otherwise relieved of professional responsibility by order of the Court.

E. Acceptance of Appointments. Attorneys on the CJA Panel List are expected to make themselves available to accept appointments and to serve as a mentor for less experienced counsel when called upon to do so.

IX. DUTIES OF THE PRETRIAL SERVICES OFFICE

Pretrial Services Interview. In recognition of the importance of the advice of counsel for persons being interviewed by pretrial services officers, before any such interview is

conducted in this district, the pretrial services officer shall notify the defendant of defendant's right to speak with an attorney before answering any questions and of defendant's right to have an attorney appointed to represent defendant during questioning if defendant cannot afford an attorney. Such notice shall be given in writing and in substantially the same format using standard AO form PS 1, attached hereto as Appendix I.

X. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines,* and, if correct, shall forward the claim form for the consideration of the appropriate District Judge or Magistrate Judge.

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

XI. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Sixth Circuit.

ON BEHALF OF THE DISTRICT COURT

_____ _____

GEORGE W. WHITE DATE
CHIEF JUDGE, DISTRICT

APPROVED BY THE JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

_____ _____

BOYCE F. MARTIN, JR. DATE
CHIEF JUDGE, CIRCUIT

PS 1
(Rev. 6/94)

APPENDIX I

PRETRIAL SERVICES

NOTICE TO DEFENDANT

I, _____,
Print Name (First, Middle, Last)

am being asked questions about myself by a pretrial services officer. I will not be questioned about the charges and I should avoid talking about them at this time. I understand that I am under no obligation to provide any information and do not have to answer any questions.

Any answers to these questions will be used by the court to decide whether I will be released or kept in jail pending any further proceedings. The information will be made available to the court, to my attorney, and to the prosecuting attorney.

Any information I provide should be truthful. Providing false information is a separate crime and could be used to deny my release before trial or increase my sentence if I am convicted.

If I am found guilty, either after trial or after pleading guilty, the information I provide here will be made available to a U.S. probation officer for the purpose of preparing a presentence report and may affect my sentence in this or another case.

I know I have the right to speak with a lawyer before answering any questions. If I cannot afford a lawyer, one will be appointed to represent me. Asking for a lawyer will not hurt my chance for pretrial release, but may delay the decision on whether or not I will be released until counsel is obtained.

I have read this form, or had it read to me, and I understand what it means.

I do _____ I do not _____ want a lawyer during this interview.

DATE: _____

_____
DEFENDANT'S SIGNATURE

_____
PRETRIAL SERVICES OFFICER

NOTES: _____

_____