

PLAN TO IMPLEMENT THE CRIMINAL JUSTICE ACT OF 1964

INTRODUCTION

Pursuant to and in implementation of the Criminal Justice Act of 1964, Title 18 U.S.C. § 3006A, as amended by the Act of October 14, 1970 (P.L. 91-447, 91st Cong., 84 Stat. 916) (the Act), and as required by subsection (a) of the Act, the Judicial Council of the Eighth Federal Circuit and the Court of Appeals for the Eighth Circuit, for the purpose of supplementing the plans heretofore adopted by the several United States District Courts within the Eighth Circuit and approved in final form by the Judicial Council of the Eighth Circuit in compliance with the Act, does hereby adopt the following Plan for the representation on appeal of any person financially unable to obtain adequate representation in any of the following cases or circumstances:

(1) who is charged with a felony or misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1(3)), 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, and where a determination has been made by this Court that the interests of justice require representation and that such person is financially unable to obtain representation, or

(4) who is a person 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 re-

quires the appointment of counsel. Representation shall include counsel and investigative, expert, and other services necessary for an adequate representation.

I

STATEMENT OF POLICY

The Judicial Council recognizes that the successful operation of this Plan will require the active and continual cooperation of members of the bar, appropriate bar associations, legal aid agencies, and public defender groups.

The Plan shall be administered so that those accused of crime will not, because they are financially unable to pay for adequate representation, be deprived of any element of representation necessary to enable them to have a fair opportunity to be heard on appeal in this Court.

II

APPOINTMENT OF COUNSEL

1. In all cases on appeal, other than those set forth in paragraph (3) of the introduction to this Plan, where the defendant was represented in the District Court by court-appointed counsel, such counsel shall continue to represent the defendant on appeal. He shall file entry of appearance in the Court of Appeals as counsel, make timely docketing of the appeal, and prosecute the appeal with diligence. The defendant may file a written notice that he does not desire to appeal with the United States District Court. In such event there shall be no further obligation on counsel to proceed. Unless such notice is filed, court-appointed counsel shall continue to represent the defendant until relieved by this Court. Application by District Court counsel to be relieved, or by a defendant for relief of District Court counsel, shall be in writing and shall state the

reason for the request. Such applications are not encouraged and will be granted only for cause.

2. In situations where counsel is appointed by the District Court under the discretionary power conferred by Section G of the Act, counsel shall advise his client of his right to appeal, and if requested to do so, shall file notice of Appeal. Thereafter, application shall be made to this Court for appointment of counsel, and this Court shall determine whether an appointment is required.

3. Where District Court counsel is relieved from further representation, or where a defendant, who is eligible under the Act, seeks appointment of counsel for the first time on appeal, the Courts of Appeals will appoint counsel.

4. Appointments will be made by selection from a panel of attorneys in such manner as the Court deems advisable. Selection of counsel is the responsibility of the Court, and a defendant may not demand the appointment of a particular attorney to represent him.

5. In cases of multiple defendants who have been tried together, any appointment necessary to be made on appeal may be of one or more attorneys to represent all appellants, except that separate counsel will be appointed for appellants who have such conflicting interests that they cannot properly be represented by the same attorney, or when other good cause is shown.

6. The Court may, in the interests of justice, substitute one appointed counsel for another at any stage of the appeal proceedings.

III

PANEL OF ATTORNEYS

1. The Clerk of this Court, under the direction and supervision and with the approval of the Court, shall forthwith

prepare and maintain a panel of practicing attorneys, or attorneys from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan, in areas of the principal places of holding District Court within the Eighth Circuit, who are deemed competent to provide adequate representation on appeal for persons qualifying under the Act. The Clerk of this Court shall reexamine the panel of attorneys annually to assure that it is kept current at all times.

2. Attorneys in the Circuit whose names do not appear upon the panel may make application to be placed thereon, but the placing of a name upon the panel or its removal therefrom will not be controlled by whether the attorney is or is not desirous of being appointed as counsel under the Act. The obligation of members of the legal profession, when called upon to do so by the courts, to represent those charged with a criminal offense who are unable to obtain counsel, is traditional, and this responsibility on the part of the bar has not been lessened as to the federal courts by the passage of the Criminal Justice Act of 1964.

IV

DETERMINATION OF NEED FOR APPOINTMENT OR CONTINUANCE OF COUNSEL

1. In cases where District Court counsel is relieved from further representation by the Court of Appeals, the Court may accept the District Court's determination that the defendant is financially unable to obtain counsel and may make appointment of substituted counsel without further inquiry.

2. In cases where a defendant for the first time seeks appointment of counsel under the Act on appeal, the Court will make appropriate inquiry, and if satisfied that he is financially unable to obtain counsel, will appoint counsel to represent him.

3. If at any stage of an appeal the defendant claims and the Court, on appropriate inquiry, finds that he is financially

unable to pay counsel whom he has retained, the Court may make such appointment of counsel for him as the interests of justice dictate.

4. The Court may at any time make examination or re-examination of the financial status of a defendant for whom counsel has been appointed, and if it is found that any funds are available for payment from or on behalf of the defendant, it may authorize or direct that such funds be paid to the appointed attorney or to the court for deposit in the Treasury, in accordance with the provisions of Section 2(f) of the Act.

5. It shall be the duty of counsel appointed under the Act to notify the Court of any information coming to his attention indicating that funds may be available for payment from or on behalf of the defendant. Counsel may not request or accept from anyone a promise or a payment of any nature in relation to his representation of a defendant, except as authorized or directed by the Court.

V

DUTY OF COUNSEL AS TO CERTIORARI

The representation of counsel on appeal, where the appeal has been unsuccessful, shall extend to his advising the defendant of the right to file a petition for certiorari in the Supreme Court of the United States; to his informing the defendant of his opinion as to the merit and likelihood of the success thereof; and to his preparing and filing such a petition if the defendant so requests.

VI

PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

1. An attorney, bar association, legal aid agency or community defender organization appointed by the Court pursuant

to the Plan shall be compensated for their services and reimbursed for their expenses reasonably incurred within the limitations and subject to the conditions of subsection (d) of the Act.

2. The hourly rates of compensation fixed by the Act are designated and intended to be maximum rates only and shall be treated as such. In no event may the hourly rates of compensation for services rendered in this Court exceed \$30 per hour for time expended in court and \$20 per hour for time reasonably expended out of court.

3. For services rendered in this Court on the main appeal from the judgment in a felony or misdemeanor case, the total compensation, exclusive of expenses, shall not exceed \$1,000 for each attorney, and on appeals under subsection (g) of the Act shall not exceed \$250 for each attorney, as provided in subsection (d)(2) of the Act. However, payments in excess of these limitations may be made to provide fair compensation in a case involving extended or complex representation when so certified by a United States Circuit Judge and approved by the Chief Judge of the Court.

4. No appointed representative under the Plan shall accept payment from or on behalf of the person represented in this Court without prior authorization by a United States Circuit Judge on the form provided for such purpose. All such authorized payments shall be received subject to the directions contained in such order and pursuant to the provisions of subsection (f) of the Act.

5. Each appointed representative under the Plan shall be entitled to reimbursement for expenses reasonably incurred for travel and out-of-pocket expenditures. Travel by privately-owned automobile should be claimed at the rate of 15 cents per mile, plus parking fees and tolls. Transportation other than by privately-owned automobile should be claimed on an actual cost basis. Per diem in lieu of subsistence is not allowable. Meals and lodging incurred in the representation, as well

as telephone toll calls, telegrams and copying (except printing) are reimbursable. Non-reimbursable items include general office overhead, personal items for the person represented, filing fees and printing. (A person represented under the Act is not required to pay filing fees.) Expense of printing briefs is not reimbursable, but the cost of Xeroxing or similar copying services is reimbursable.

6. All claims for compensation and reimbursement for expenses reasonably incurred shall be itemized and prepared on prescribed forms and filed with the Clerk of this Court. All such claims should be filed promptly and in any event not more than 30 days after the conclusion of the attorney's representation.

7. A panel of judges hearing an appeal, or any active member of the Court if designated by such panel, shall, in each instance, fix the compensation and allow the reimbursement for expenses to be paid to the appointed representative as provided in the Act. After such approval, the Clerk of this Court shall forthwith forward such claims to the Director of the Administrative Office of the United States Courts for payment.

8. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari shall be considered as applicable to the case before this Court, and should be vouchered as such.

VII

FORMS AND DIRECTION BY ADMINISTRATIVE OFFICE

1. All forms supplied by the Administrative Office of the United States Courts which it has been authorized to prescribe by the Judicial Conference of the United States or which it

has been requested to furnish by the Committee to Implement the Criminal Justice Act of 1964, as amended, shall be used in the operation of the plan whenever applicable to any of its incidents.

2. All requests by the Administrative Office for reports on the appointment of counsel or for other information in relation to the operation of the plan and all directions given by the Administrative Office as to the use of the forms supplied by it or as to the processing of approved claims for payment, shall be complied with by the Clerk on behalf of the Court.

VIII

OPERATION AND EFFECTIVE DATE OF PLAN

1. In the technical distinction existing between the Judicial Council and the Court of Appeals, the Court shall have the responsibility for the execution and operation of the plan.

2. The plan shall become effective on February 11, 1971, or at such later date as funds shall first become available through appropriation for its operation.

Adopted by the JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT and by the COURT OF APPEALS FOR THE EIGHTH CIRCUIT this 8th day of February, 1971.