

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Administrative Order 86- 3

IN RE: PLAN FOR THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA PURSUANT TO
THE CRIMINAL JUSTICE ACT OF 1964
AS AMENDED

The United States Judicial Conference at its meeting held September 1985, enacted amendments to the Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines). It being the Court's decision to modify the plan of the United States District Court for the Southern District of Florida pursuant to the Criminal Justice Act of 1964 as amended, subject to the approval of the Eleventh Circuit Judicial Council, as described in the amendment appended hereto and made a part of this Order, it is

ORDERED, ADJUDGED AND DECREED, that, effective immediately the Plan be amended to reflect the language herein set forth.

DONE AND ORDERED in the United States District Court for the Southern District of Florida, Miami, Florida, this 16 day of

January, 1986.

FOR THE COURT:



JAMES LAWRENCE KING
CHIEF UNITED STATES DISTRICT JUDGE

PROPOSED AMENDMENTS
JANUARY 7, 1986

PLAN OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA PURSUANT TO THE CRIMINAL
JUSTICE ACT OF 1964 AS AMENDED

Amendments Pursuant to instructions from the United States Judicial Conference at its September 1985 proceedings.

III. Panels of Counsel Available for Appointment. (Page 5)

(Amend Sub-section 5. to insert the following as paragraph 2.)

However, when the District Judge presiding over the case, or the Chief Judge, if a District Judge has not been assigned to the case, 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 his or her appointment, the attorney may be admitted to the CJA Panel pro hoc vice and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointment should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the District, should possess such qualities as would qualify him or her for admission to the District's CJA Panel in the ordinary course of panel selection.

Section XII. Discretionary Appointments. (Page 16)

(Amend this section to incorporate the following as paragraph 2.)

Criminal defendants have both a Constitutional and Statutory right to self representation in Federal Court. However, the Judge or Magistrate may find it necessary to appoint "Stand-by" counsel to be available to assist a pro se defendant in his or her defense and also to protect the integrity and insure the continuity of the judicial proceedings. The Criminal Justice Act, however, provides that "[u]nless the (financially eligible) defendant waives representation by counsel. . . [the Court] shall appoint counsel to represent him.". While the Court has inherent authority to appoint "stand-by" counsel, such appointments may not be made and counsel may not be compensated under the CJA unless the defendant qualifies for appointed counsel and representation is actually rendered by counsel. Accordingly, if a pro se defendant agrees to be represented, at least in part, by "stand-by" counsel, compensation may be provided under the CJA.

Similarly, if at any time during the course of the proceedings the services of "stand-by" counsel are accepted by the pro se defendant, a nunc pro tunc CJA appointment Order should be effected and counsel may be compensated under the CJA. On the other hand, in circumstances in which appointment is made under the Court's inherent authority, and counsel serves exclusively on behalf of the Court to protect the integrity and continuity of the proceedings, and does not represent the defendant, any compensation to be paid counsel shall be in the capacity of an "expert or consultant" pursuant to 5 U.S.C. Sec. 1309. In such cases, compensation will be determined by the Judicial Officer in an amount not to exceed the compensation ceiling applicable to experts and consultants employed by the Courts.

Section XIII. Determination of Need for Appointed Counsel: and Appointment. (Page 17)

(Sub-section 1 amended to read as follows)

1. Financial inability to secure counsel shall be determined by a Judge or United States Magistrate in a judicial inquiry. The defendant's representation shall be under oath. Indigency is not the test.

Unless it will result in undue delay, factfinding concerning the person's eligibility for appointment of counsel shall be completed prior to the person's first appearance in Court. Other officers or employees of the Court, i.e. Clerk, Deputy Clerk, or (Pre-trial Services Officer) may be designated by the Court to obtain or verify the facts upon which such determination is to be made. Relevant information bearing on the person's financial eligibility should be reflected on CJA Form 23 and the form shall be completed and executed before a judicial officer or employee. Employees of law enforcement agencies or U. S. Attorney offices should not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.

The person seeking appointment of counsel has the responsibility of providing the Court with sufficient and accurate information upon which the Court can make an eligibility determination. The prosecution and other interested entities may present to the Court information concerning the person's eligibility, but the judicial inquiry into financial eligibility shall not be utilized as a forum to discover whether the person has assets subject to forfeiture, or the ability to pay a fine, make restitution, or compensate another person pursuant to the Victim/Witness Protection Act or other purposes not related to the appointment of counsel. Such determination, if appropriate, shall be made at other stages of the proceedings in which the person seeking counsel is a party.

Section XV. Ex Parte Application for Investigation, Experts and Other Services. (Page 20)

(Insert the following language at the beginning of this Section.)

Eligibility. Investigative, expert or other services necessary to adequate representation, as authorized by Sub-section (e) of the Act, shall be available to persons who are eligible under the Act, including persons who have retained counsel but who are found by the Court to be financially unable to obtain the necessary services. In this connection, a person with retained counsel is financially unable to obtain the necessary services if his resources are in excess of the amount needed to provide him and his dependents with the necessities of life, provide defendant's release on bond, and pay a reasonable fee to his retained counsel, but are insufficient to pay for the necessary services. In responding to requests for Sub-section (e) services by a defendant represented by retained counsel, the Court should inquire into the fee arrangement between the retained attorney and the defendant. If the Court finds the fee arrangement unreasonable in relation to fees customarily paid to qualified practitioners in the community for services in criminal matters of similar duration and complexity, or that it was made with a gross disregard of the defendant's trial expenses, the Court may order the attorney to pay out of such fees all or such part of the costs and expenses as the Court may direct.

Persons who are eligible for representation under the Criminal Justice Act, but who have elected to proceed pro se, may, upon request, be authorized to obtain investigative, expert, and other services in accordance with Sub-section (e) of the Criminal Justice Act. The Court will authorize Sub-section (e) services for pro se litigants and review and approve resulting claims in the same manner as its practice with respect to requests made by Criminal Justice Act Panel attorneys. However, in matters in which appointment of counsel is discretionary pursuant to Sub-section (g) of the Act, the Court should make a threshold determination that the case is one in which the interests of justice would have justified the furnishing of representation, prior to approving the requested services for pro se litigants.

Although a Federal Defender organization may be requested to provide administrative assistance to pro se litigants who wish to

arrange for Sub-section (e) services, the investigative, para-legal, or other services or resources of the organization should ordinarily be employed only when the organization is appointed as counsel of record, responsible for the conduct of the litigation.

Section XVIII. Compensation. (Page 26)

(Insert as Sub-section 2(c) the following):

(c) Travel Time. Compensation may be approved for time spent in necessary and reasonable travel. Ordinarily, allowable time for travel includes only those hours actually spent in or awaiting transit. Accordingly, if a trip necessarily and reasonably requires overnight lodging, compensable travel time to the destination from the claimant's office would terminate upon arrival and check in at the hotel or other place of accommodation plus travel time returning directly to the claimant's office from said destination. Compensation for travel time shall be at a rate not to exceed the rate provided in Sub-section (d) of the Act for "time reasonably expended out of Court." Travel time to and from Court (or the place where service is rendered) may not be claimed if the round-trip time is less than one hour.

If such travel is made for purposes in addition to representing the person whom the attorney has been appointed to represent under the Act, the Court shall determine whether, in fairness to the appointed attorney, the travel time should be apportioned, and the appointed attorney compensated for that portion of the travel time reasonably attributable to the performance of the attorney's duties under the Act. In determining whether such travel time should be so apportioned, the Court may consider the time reasonably expended in the performance of the attorney's duties under the Act, in relation to the time expended furthering other purposes of the trip, the significance to the representation of the duties performed, and the likelihood that the attorney would have made the trip to perform the duties under the Act in the absence of the other purposes for making the trip.