

APPENDIX II

A PLAN FOR THE UNITED STATES COURT OF APPEALS FOR THE THIRD JUDICIAL CIRCUIT PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED BY THE ACT OF OCTOBER 14, 1970

The Judicial Council of the Third Circuit, pursuant to the provisions of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended by the Act of October 14, 1970 (P.L. 91-447, 91st Cong., 84 Stat. 916), for the purpose of supplementing the plans approved by the District Courts within the Circuit, adopts the plan set out hereinafter to provide and secure adequate representation on appeal for any person described in 18 U.S.C. § 3006A(a), who is financially unable to employ counsel.

I. PANELS OF ATTORNEYS

1. The Clerk of this Court, pursuant to the supervision of the Court of Appeals and subject to its direction, shall prepare and maintain a panel of practicing attorneys in each of the following areas: (a) in the areas in and around Newark, Trenton and Camden, in the District of New Jersey; (b) in the areas in and around Philadelphia, Media and Easton, in the Eastern District of Pennsylvania; (c) in the areas in and around Scranton, Wilkes-Barre, Lewisburg and Harrisburg, in the Middle District of Pennsylvania; (d) in the areas in and around Pittsburgh and Erie, in the Western District of Pennsylvania; (e) in the areas in and around Wilmington, Dover and Georgetown, in the District of Delaware; and (f) in St. Thomas and St. Croix in the Virgin Islands.

2. Attorneys may be added or removed from the panels at any time as the Court of Appeals shall see fit. The Clerk of the Court shall accept applications for designation to the panels and submit these names to the Court for its consideration and approval. The Clerk shall also receive recommendations of attorneys to be added to the panels.

II. DETERMINATION OF NEED FOR APPOINTED COUNSEL

1. The test is whether the defendant is or is not financially able to secure competent representation by counsel and to obtain an adequate defense. Indigency is not the test.

2. In every direct criminal appeal, whether taken by the defendant or the United States, if the defendant does not appear to be represented, he shall be promptly notified by the clerk that he has the right to be represented and that counsel will be appointed for him if he is financially unable to employ counsel.

3. In a case where the request for the appointment of an attorney pursuant to the Act is made for the first time on appeal, or if the court has reason to believe that the appellant is financially able to employ counsel, the court prior to making an appointment of counsel for him shall inquire into his financial status and shall make a finding as to whether or not the appellant is or is not financially able to employ counsel. In making the determination, such forms as may be prepared and furnished by the Administrative Office of the United States Courts shall be used for the purpose of eliciting pertinent information on such inquiry.

4. In cases where the appellant was found by the District Court to be financially unable to employ counsel, the Court of Appeals may accept this finding and appoint an attorney without further proof.

5. The Court may at any time after appointment of counsel, reexamine the financial status of the appellant. If it is found that the appellant is financially able to obtain counsel or make partial payment for his representation, the appointment may be terminated or partial payment required to be made, as authorized by 18 U.S.C. § 3006A(f).

III. APPOINTMENT OF COUNSEL

1. Counsel appointed under the Act by the trial court shall be deemed to have been designated under the Act to continue on appeal unless otherwise relieved by order of the Court of Appeals. For administrative purposes, an order (CJA Form 20) will be entered continuing the appointment at the time the appeal is docketed.

2. In all cases on appeal in which the appointment of an attorney under the Act is required or in which pursuant to 18 U.S.C. § 3006A(g) the Court determines that the appointment of an attorney is required in the interests of justice, the appointment shall be made by the Court from the panel in the manner which it deems advisable. Privately retained counsel representing the defendant in the trial court may, in appropriate cases, be designated under the Act to continue on appeal. In those cases where it becomes necessary to appoint new counsel on appeal, such appointment shall occur at the time that the appeal is docketed or at such later time as the Court finds that the defendant has become financially unable to pay counsel whom he has previously retained. Such appointment may be made retroactive to include any representation in the Court of Appeals furnished pursuant to this Plan prior to appointment.

3. In appeals of multiple defendant cases, one or more attorneys may be appointed to represent all appellants, but where circumstances warrant, such as conflicting interests of different appellants, separate counsel may be appointed for each of the appellants or any one of them.

4. The Court, in its discretion, may at any state of the appeal proceedings, substitute one appointed counsel for another.

5. The selection of counsel shall be the sole and exclusive responsibility of the Court, and no appellant entitled to representation under the Act shall be permitted to make the selection of an attorney to represent him.

6. If, after an adverse decision by the Court of Appeals, a review by the Supreme Court of the United States is to be sought, the appointed attorney shall if requested to do so after communication with the person for whom the attorney is appointed, prepare a petition for writ of certiorari and other necessary and appropriate documents in connection therewith.

7. If defendant in the trial court is appellee in the Court of Appeals, the same tests for determination of indigency and appointment of counsel will apply as if defendant were appellant in this Court.

IV. PAYMENT

1. An attorney appointed pursuant to this Plan shall at the conclusion of the representation or any segment thereof, be compensated upon the submission of his claim in accordance with the rules, regulations and forms prescribed by the Administrative Office of the United States Courts, and supported by a written statement specifying the time expended, services rendered, and expense incurred while the case was pending in the Court of Appeals. The Court in each instance shall fix the compensation and reimbursement to be paid to the attorney as provided for in the Act.

2. All claims for compensation and reimbursement for expenses reasonably incurred pursuant to representation under the Criminal Justice Act shall be itemized and prepared on prescribed forms and filed with the Clerk of this Court. All such claims must be filed promptly and in any event not later than 45 days after the conclusion of the attorney's representation.

3. Except as authorized or directed by the Court, no appointed attorney and no person or organization authorized by the Court to furnish representation under the Act, shall request or accept any payment or promise of payment for representation of an appellant.

4. The Clerk of the Court of Appeals shall forthwith forward all approved statements to the Administrative Office of the United States Courts for payment.

V. RULES AND REPORTS

The Judicial Council shall submit a report on the appointment of counsel under the Act to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. This Plan shall be subject to such rules and regulations of the Judicial Conference of the United States governing the operation of plans under the Act as may be issued from time to time.

VI. FORMS

The standard forms prepared and furnished by the Administrative Office shall be used, where applicable, in all proceedings under this Plan. Any revisions of these forms or any additional forms that may be prescribed by the Administrative Office under the authority of the Judicial Conference of the United States or the Committee of the Conference to Implement the Criminal Justice Act of 1964 shall likewise be used, where applicable, in all proceedings under this Plan.

VII. EFFECTIVE DATE

This Plan, shall be, and become, effective on September 1, 1971.