

ADDENDUM FOUR

ELEVENTH CIRCUIT PLAN UNDER THE CRIMINAL JUSTICE ACT

The U.S. Court of Appeals for the Eleventh Circuit, with the approval of the judicial council, adopts this plan for furnishing representation for persons financially unable to obtain adequate representation in the cases and situations described in 18 U.S.C. § 3006A(a), as amended. This plan supplements the CJA plans of the several districts of the circuit concerning provisions for representation on appeal and the guidelines set forth in Volume 7 of the Guide to Judiciary Policy. These guidelines are available on the internet via a link on the court of appeals web site at www.ca11.uscourts.gov, and for inspection in the office of the clerk of each court within the circuit, in the Circuit Library, and in the satellite libraries maintained throughout the circuit.

(a) Philosophy of the Act.

Hourly rates of compensation fixed by the amended Act are designated and intended to be maximum rates and should be so treated. The rates were not intended to change the basic and underlying philosophy of the Act that the bar of the nation owes a responsibility to represent persons financially unable to retain counsel. The compensation provided under the Act is not intended to equate with private counsel fees.

(b) Relation to District Court Plans.

The provisions of the plans of the various district courts within the Eleventh Circuit shall also be applicable on appeals from such courts except insofar as they may be inconsistent with some provision of this plan, in which case this plan shall prevail.

(c) Determination of Need.

In determining need for appointment of counsel under the Act, the court shall not be governed by a requirement of indigency on the part of the party but rather within the spirit and purpose of the Act by financial inability to employ counsel and by congressional intent in formulating this program.

(d) Appointment of Counsel.

(1) Pursuant to subsection (b) of the Act, counsel furnishing representation under this plan shall be selected from the panels of attorneys designated or approved by the district courts of the Eleventh Circuit, which are hereby approved by this court, or from a bar association, legal aid agency, or federal public defender organization or community defender organization approved by a district court plan and authorized to furnish representation under the Act. In addition, when the interests of justice require, any judge of this court may appoint competent counsel not otherwise included in the preceding categories. In accordance, however, with subsection (a)(3) of the Act and with the directives of the Judicial Conference of the United

States, at least 25% of all such appointments shall be assigned to members of the private bar. The clerk of this court shall ensure that the proration guideline is satisfied. All qualified attorneys shall be encouraged to participate in the furnishing of representation under the Act without regard to race, color, religion, sex, age, national origin, or disabling condition.

(2) If a party was represented in the district court by counsel appointed under the Act, such counsel shall be mindful of the obligation and responsibility to continue representation on appeal until either successor counsel is appointed under the Act or counsel is relieved by order of this court. See § (e)(1) below. Retained counsel for a criminal defendant has an obligation to continue to represent that defendant until successor counsel either enters an appearance or is appointed under the Act, and may not abandon or cease representation of a defendant except upon order of this court. Unless approved in advance by this court, the district court is not authorized to appoint counsel on appeal to represent a defendant who was represented in the district court by retained counsel without first conducting an *in camera* review of the financial circumstances of the defendant and of the fee arrangements between the defendant and retained trial counsel. Appointment of counsel on appeal may be requested in this court by filing an appropriate motion supported by an affidavit which substantially complies with Form 4 in the Appendix to the FRAP Rules. Also see § (e)(1) of this plan.

(3) In all classes of cases to which the Act applies (except classes enumerated in subsection (a)(2)(B) of the Act or arising under 18 U.S.C. § 4245) where an appellant was not represented by counsel in the court below, the clerk shall notify the appellant of the right to be represented on appeal by counsel and that an attorney will be appointed as a representative if appellant is financially unable to obtain representation.

(4) Any person subject to revocation of parole, in custody as a material witness, or seeking relief under 28 U.S.C. § 2241, § 2254 or § 2255, or 18 U.S.C. § 4245 may apply to this court to be furnished representation. The court may approve such representation on a determination that the interests of justice so require and that the person is financially unable to obtain representation.

(5) In all cases under the Act in which the party has been found by the district court to be financially unable to obtain representation, the court of appeals may accept this finding and appoint an attorney without further proof. Counsel appointed under the Act are under a continuing duty to disclose to this court any change in defendant's circumstances which may render them ineligible for continued representation under the Act.

(6) In all cases appealed by counsel appointed by the district court under the Act, if such counsel has not previously been relieved by this court, the clerk shall continue trial counsel's appointment for purposes of further representation on appeal.

(7) The court or any judge thereof who resides in the state in which is located the district court from which the appeal is taken may enter an appropriate order appointing any new counsel required by order of the court to be provided on appeal for a party financially unable to obtain counsel.

(8) In cases where appointment of counsel under the Act is to be made for the first time on appeal, before submitting the order of appointment to the appropriate judge of this court, the clerk shall request the party to execute an affidavit specifying the party's financial inability to employ counsel. Upon the party's return of the duly executed affidavit, the clerk will serve a copy upon opposing counsel, with advice that within 14 days (unless this time is extended by the court or the clerk for the court), counsel may furnish proof that the affidavit is false. Further action may thereafter be taken or directed by the appropriate judge upon receiving the clerk's submission of the available papers and evidence.

(9) If at any stage of the proceedings on appeal the court finds a party is financially unable to pay counsel already retained by the party, the court may appoint counsel as provided in subsection (b) of the Act and authorize payment as provided in subsection (d) of the Act, pursuant to subsection (c) of the Act.

(10) In appeals under the Act involving more than one party, if the court finds the need, because of conflicting interests of parties or because circumstances otherwise warrant, separate counsel may be appointed for any one or more of the parties as required for their adequate representation.

(11) The court may at its discretion and in the interest of justice substitute one appointed counsel for another at any stage of the proceedings on appeal.

(12) The court may at its discretion and where circumstances warrant make appointments of counsel retroactive so as to include representation furnished prior to appointment, and it may authorize compensation therefor pursuant to subsections (c) and (d) of the Act.

(e) Withdrawal or Release of Appointed Counsel.

(1) As stated in § (d)(2) of this plan, counsel appointed under the Act to represent a party in district court shall continue such representation until either successor counsel is appointed under the Act or counsel is relieved by order of the court of appeals.

(2) If trial counsel appointed under the Act by the district court wishes to be relieved from the duty of representing the party on appeal, counsel shall file with the clerk of the court of appeals an original and one copy of a motion asking for such relief and stating the grounds therefor, but shall nevertheless continue to represent the party on appeal until relieved by the court of appeals. The district court may also relieve counsel appointed under the Act provided it substitutes counsel as provided under subsection (c) of the Act. Also see § (d)(2) of this plan.

(3) If a party for whom counsel was appointed by the district court under the Act wishes appointed counsel relieved and replacement counsel appointed, the party shall file with the clerk of the court of appeals a motion requesting such relief, and the clerk shall submit this motion to the court for ruling.

(f) Duties of Appointed Counsel.

(1) In all cases appealed under the Act or in forma pauperis where trial counsel has been appointed by the district court under the Act, the appointed counsel shall file with the district court the appropriate CJA Form 24 for the court reporter's furnishing the transcript of testimony at the expense of the United States.

(2) Appointed counsel shall furnish the party represented, upon written request, with a copy of motion papers and briefs filed for the party on the appeal, and shall send the party a copy of the court's decision when issued; the clerk will send appointed counsel an extra copy of the decision for this purpose.

(3) If oral argument is scheduled, appointed counsel shall appear unless otherwise directed by the court.

(4) Appointed counsel shall advise the party represented in each case covered by the Act that, if the party wishes to appeal to the court of appeals or file a petition for a writ of certiorari with the Supreme Court, the right exists under the Act to do so without prepayment of fees and costs or giving security therefor and without filing the affidavit of financial inability to pay such costs required by 28 U.S.C. § 1915(a).

(5) If the decision of this court is adverse to the client, counsel shall inform the client of the right to file a petition for rehearing or petition for rehearing en banc in this court, or to petition the Supreme Court of the United States for a writ of certiorari. Counsel shall file a petition for rehearing, a petition for rehearing en banc, or a petition for a writ of certiorari if requested to do so by the client in writing, but only if in counsel's considered judgment sufficient grounds exist. Sufficient grounds for requesting rehearing en banc do not exist unless the suggestion would satisfy the standards of FRAP 35(a). See 11th Cir. R. 35-3. Sufficient grounds for filing a petition for a writ of certiorari do not exist unless in counsel's considered judgment there are grounds that are not frivolous and are consistent with the standards for filing a petition under the Rules of the Supreme Court and applicable case law. If counsel concludes that there are *not* sufficient grounds to seek further review of a type requested by the client, counsel shall so inform the client and shall advise the client that such review will not be sought by counsel. In such circumstances, counsel is not required to move to withdraw. If the client petitions the Supreme Court of the United States for a writ of certiorari, and the Supreme Court grants certiorari and remands the matter to this court for further consideration, counsel shall resume representation of the client in proceedings before this court.

(6) No appointed representative under this plan shall accept any payment from or on behalf of the person represented in this court without prior authorization by a United States circuit judge. All such authorized payments shall be received subject to the directions contained in any such order and pursuant to the provisions of subsection (f) of the Act.

(g) Payment of Claims for Compensation and Expenses.

(1) In all appeals covered by the Act, the court of appeals may authorize compensation for services and reimbursement of necessary expenses reasonably incurred in representing a party on appeal within the limitations of the Act, by any private attorney, bar association, legal aid agency, federal public defender organization or community defender organization appointed by the court. In fixing compensation the court will be mindful that the hourly rates of compensation allowed by the Act are intended as maximum rates. Hourly rates for representation on appeal shall in no event exceed the amounts fixed in the statutes. In fixing compensation the court may take into account factors other than the hours expended multiplied by the hourly rate allowed under the Act. Factors considered in authorizing fees include cases involving comparable issues, comparable records, comparable days at trial, work by other lawyers on the same case, and other matters where comparisons may be fairly drawn. Adequate compensation is the benchmark in making such awards.

(2) Except as provided in subsection (3) of this section, for representation of a party under the Act, compensation shall not exceed for each attorney in each court the amount fixed by statute.

(3) Payments for representation on appeal in excess of the total limitations contained in the Act may be made for extended or complex representation, provided payment is approved by the chief judge of the circuit or the chief judge's designee.

(4) Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal may be claimed by an appointed attorney or other legal representative under this plan. The clerk of court shall furnish each attorney or other representative at the time of appointment with information as to expenses currently allowable under the Act in accordance with rules, regulations and guidelines promulgated by the Judicial Conference of the United States. Per diem may not be claimed in lieu of actual travel and subsistence expenses. Meal and lodging expenses incurred incident to representation on appeal, necessary long distance telephone calls or telegrams, and the cost of photocopying (but not printing), are reimbursable expenses within the guidelines established by the court. Expenses of general office overhead, personal items, filing fees and expenses for printing of briefs are not reimbursable (parties represented in cases covered by the Act are not required to pay filing fees or to print their briefs on appeal). Expenses of travel by private automobile may be claimed on a straight mileage basis at the authorized rate. See § (b) of the guidelines, below. Parking fees and toll expenses are allowable. Transportation other than by private automobile may be claimed on an actual cost basis, but first class fare is not permitted unless absolutely necessary and documentation is provided that tourist or economy fares were not available.

(5) Unless otherwise ordered by the court for good cause shown, travel expenses other than those incurred in connection with attending oral argument will not be reimbursed without a prior *ex parte* application to and approval by the court.

(6) All claims for compensation and reimbursement of expenses for representation on appeal shall be itemized in detail and filed with the clerk of court on officially approved forms that the clerk's office will provide. A CJA voucher claiming compensation for time spent on appeal should be filed no later than 60 days after either issuance of mandate *or* filing with the U.S. Supreme Court of a petition for a writ of certiorari (whichever is later). Failure to file a CJA voucher within the time permitted by these rules **may result in a reduction in the fees awarded** pursuant to the Act.

(7) After approval of allowable compensation and reimbursable expenses payment will be made by the Administrative Office of the United States Courts.

(8) Time and expenses required for preparation of a petition for writ of certiorari, a response to a petition for a writ of certiorari, or a reply to a response to a petition for a writ of certiorari, should be claimed on the voucher as an expense incident to representation before the court of appeals rather than claimed in the Supreme Court. See § (f) (4), above.

(9) When it is considered necessary and appropriate in a specific case, the court on motion of counsel may approve interim payments under the Act. Such interim payments are designed to strike a balance between the interest in relieving court-appointed counsel of financial hardship in extended and complex cases, and the practical application of the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation. See § (g) (3), above. Absent exceptional circumstances such interim compensation as may be approved will not ordinarily exceed the amounts specified in 18 U.S.C. § 3006A(d)(2). At the conclusion of representation, counsel should submit a final voucher claiming time and expenses not previously approved, including any amounts claimed on interim vouchers which were not compensated.

GUIDELINES FOR COUNSEL SUPPLEMENTING THE ELEVENTH CIRCUIT PLAN UNDER THE CRIMINAL JUSTICE ACT

(a) Compensation for Legal Services.

(1) Maximum Compensation. Allowable compensation rates for counsel are set out in 18 U.S.C. § 3006A(d). The Judicial Council may from time to time authorize special rates of compensation for certain classes of cases, or for counsel practicing in certain locations. Special rates have been established for capital cases. Information regarding special rates is available from the clerk.

(2) Writ of Certiorari. Counsel claiming time and expenses for preparation of a petition for a writ of certiorari, a response to a petition for a writ of certiorari, or a reply to a response to a petition for a writ of certiorari, must include a copy of the petition, response, or reply with the voucher.

(3) Compensation for substitute attorneys. If an attorney is substituted for one previously appointed in the same case the total compensation that may be paid to both attorneys

shall not exceed the statutory maximum for one defendant, unless the case involves extended or complex representation. In such a case vouchers for counsels' services shall not be approved until the conclusion of the appeal.

(4) Itemized listing of hours expended. Counsel shall submit with the CJA voucher an itemized memorandum detailing how the hours claimed were expended.

(5) Travel time. Reasonable and necessary travel time consistent with guidelines established by the Judicial Conference of the United States is compensable at the out of court hourly rate.

(b) Compensation for Reimbursable Expenses.

(1) Travel and transportation expenses. Travel and transportation must be accomplished by the most economical means available. Only actual expenses may be claimed.

(i) Air transportation. The clerk's office will arrange for counsel to obtain air transportation at the government rate charged to the court's account. At the time the appeal is scheduled for oral argument, the clerk's office provides counsel with an Air Travel Authorization that may be used to obtain government rate airline tickets from the government's contract travel agency. If counsel decides not to make air travel arrangements in this manner, reimbursement for air travel may not exceed the government rate that could have been obtained by following the procedures provided by the clerk's office.

(ii) Automobile transportation. The total mileage cost shall not exceed the fare authorized for travel by tourist or economy air transport except in an emergency or for other compelling reasons. Travel by privately owned automobile shall not exceed the current government authorized rate for official travel per mile on a straight mileage basis, plus parking fees, ferry, bridge, road, and tunnel fares.

(iii) Local transportation. Local travel will be accomplished by the most economical means available and only actual expenses may be claimed. Transportation to and from an airport should be by airport shuttle, if available.

(iv) Meals and lodging. Reasonable compensation for hotel or motel accommodations and meals will be allowed on an actual expense basis subject to the limitations governing compensation for federal employees traveling to the same destination. Counsel will be notified by the clerk prior to the scheduled oral argument session of the current limitations. A copy of the hotel or motel bill shall be attached to the voucher.

(2) Photocopying. Actual costs not to exceed 25 cents per page will be paid if the copying bill is submitted. For in-house copying, actual costs not to exceed 15 cents per page will be paid.

(3) Express Mail and other special arrangements. For delivery of items that could have been mailed via U.S. Postal Service first class mail, additional expenses will be reimbursed only

if a satisfactory explanation is given why first class mail service was not utilized. In non-emergency cases routine documents such as briefs and motions should be prepared early enough to permit use of first class mail. (See also FRAP 25(a).)

(4) Computer Assisted Legal Research.

(i) By Court Appointed Counsel. The cost of use, by appointed counsel, of computer assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer assisted legal research, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

(ii) By Commercial Computer Assisted Legal Research Services. The court may in advance authorize counsel to obtain computer assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer assisted legal research services is reasonable. Requests by counsel for authorization to obtain such computer assisted legal research services should include the following:

a - a brief explanation of the need for the research services; and

b - an estimate of the charges.

(5) Miscellaneous Expenses. The lowest possible cost for expenses such as postage, telephone calls, brief supplies, and parking, shall be incurred.

(6) Briefs. Reimbursement will be provided only for the number of copies of briefs and appendices required by the rules to be filed and served, plus two copies for each party signing the brief. The number of copies and number of pages must be itemized on the voucher.