

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE

U.S. DISTRICT COURT  
W.D.N.Y. - WESTER

CRIMINAL JUSTICE ACT PLAN FOR THE  
WESTERN DISTRICT OF NEW YORK

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ORDER

On April 3, 1998, after obtaining Judicial Council approval, the Court filed a new Criminal Justice Act Plan ("Plan") for furnishing counsel to those financially unable to obtain adequate representation in criminal proceedings, pursuant to 18 U.S.C. § 3006A.


Section VII(A) of the Plan requires the appointment of a Panel Selection Committee and, therefore, the Court hereby appoints the following to serve on the Panel Selection Committee until further order of the Court:

Honorable Jonathan W. Feldman  
Honorable Leslie G. Foschio  
William Clauss, Esq.  
James P. Harrington, Esq.  
Rodney O. Personious, Esq.  
David Rothenberg, Esq.  
John F. Speranza, Esq.

This committee shall commence its duties immediately.

FOR THE COURT

Dated: April 16, 1998



DAVID G. LARIMER  
CHIEF JUDGE

UNITED STATES DISTRICT COURT

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U.S. DISTRICT COURT  
W.D.N.Y. - BUFFALO

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**CRIMINAL JUSTICE ACT PLAN**

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 and the Guidelines for the Administration of the Criminal Justice Act, the United States District Court for the Western District of New York adopts this Plan for furnishing representation to any person eligible for such assistance in accordance with the CJA.

II. DEFINITIONS

- A. The term "CJA" means the Criminal Justice Act of - 1964, 18 U.S.C. § 3006A.
- B. The term "Guidelines" means the Guidelines for the Administration of the Criminal Justice Act, Volume VII of the Guide to Judiciary Policies and Procedures, as promulgated by the Judicial Conference of the United States.

- C. The term "Court" means the Judges of the United States District Court for the Western District of New York.
- D. The term "District" means the geographical boundaries of the United States District Court for the Western District of New York.
- E. The term "Plan" means the Criminal Justice Act Plan for the United States District Court for the Western District of New York as stated herein.
- F. The term "Judge" means a United States District Judge, Senior District Judge and Magistrate Judge of the Court, unless stated otherwise.
- G. The term "Committee" means the Panel Selection Committee as established by the Plan.
- H. The term "Person(s)" shall mean any natural person or corporation.
- I. The term "Representation" includes legal counsel and investigative, expert and other services.

### III. STATEMENT OF POLICY

- A. It is the policy of the Court that the purposes of the CJA shall be fully achieved so that all persons eligible

to obtain representation in criminal proceedings shall receive such assistance and that accused persons shall have the assistance of counsel including services as necessary to provide an adequate defense. The Plan shall be administered in accordance with the Guidelines as adopted and amended by the Judicial Conference of the United States.

- B. The Court, Clerk of the Court, the Federal Public Defender Organization and any attorney appointed under this Plan shall comply with the Guidelines and this Plan. The Clerk shall provide each member of a Panel, established under this Plan, or any other attorney appointed as counsel under the CJA and this Plan with a then current copy of this Plan. The Clerk shall maintain a current copy of the CJA Guidelines for use by any Panel member.

#### IV. PROVISION OF REPRESENTATION

- A. Representation shall be provided for any financially eligible person who:

- (1) is charged with a felony or Class A misdemeanor;
- (2) is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- (3) is under arrest, when such representation is required by law;
- (4) is charged with a violation of probation, parole or supervised release, or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of probation, parole or supervised release;
- (5) is subject to a mental condition hearing under Chapter 313 of Title 18 of the United States Code;
- (6) is in custody as a material witness;
- (7) is charged with a capital offense or is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255;
- (8) 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 18 U.S.C. § 4109;

- (9) is the subject of a federal grand jury subpoena  
and risks self-incrimination, loss of liberty or  
contempt of court;
- (10) is the subject of federal law enforcement  
investigation and faces a substantial risk of  
federal charges;
- (11) is entitled to appointment of counsel under the  
Sixth Amendment to the Constitution; or
- (12) faces loss of liberty in a case, and federal law  
requires the appointment of counsel.

B. Whenever a Judge determines that the interest of  
justice requires it, representation may be provided for  
an eligible person who:

- (1) is charged with a petty offense (Class B or C  
misdemeanor, or an infraction) for which a  
sentence to confinement is authorized;
- (2) is seeking relief, other than to set aside or  
vacate a death sentence, under 28 U.S.C.  
§§ 2242, 2254 or 2255; or

- (3) is proposed by the United States Attorney for processing under a pretrial diversion program.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

- A. The Court finds that the Federal Public Defender Organization of the Western District of New York previously established in this District pursuant to the CJA, is an effective component in the provision of legal assistance in this District as required by the CJA and Guidelines and shall continue to provide such services to eligible persons in this District under the CJA, Guidelines and the Plan. The Federal Public Defender Organization shall be capable of providing representation throughout the District and shall maintain offices in Buffalo and Rochester, New York.
- B. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization. It will be the responsibility of the Federal Public Defender to designate the staff attorney who will handle a case assigned to the Public Defender Organization.

- C. The Federal Public Defender shall comply with all reporting and other duties including reports of the Organization's activities, financial condition and budgets as required by the Administrative Office of the United States Courts and as provided in the Plan. Copies of such reports shall be furnished to the Court.

VI. ASSIGNMENT OF FEDERAL PUBLIC DEFENDER AND PRIVATE COUNSEL UNDER THE PLAN

Legal services to eligible persons shall be provided by both the Federal Public Defender Organization of this District and private counsel who are appointed from the Trial Panel and from the Appellate Panel as established under the Plan. It is the Court's intention that private counsel from the Trial and Appellate Panels will be assigned as counsel in a substantial portion of cases.

VII. ESTABLISHMENT OF PANEL SELECTION COMMITTEE

A. Membership

A Panel Selection Committee shall be established by the Court. The Committee shall consist of seven members as follows:



- (1) four experienced criminal defense attorneys from the private bar of the District - two from the Buffalo division of the District and two from the Rochester division;
- (2) two Judges of the Court; and
- (3) the Federal Public Defender for the District.

The private bar members of the Committee shall serve without compensation and at the pleasure of the Court. One of the four private attorney members of the Committee shall be the representative of the District to the National Conference of CJA Attorneys. The Federal Public Defender for the District shall be a permanent member of the Committee and shall serve as its secretary. The Committee shall select its own chairperson. The Committee may be expanded from time to time, at the discretion of the Court. Unless otherwise stated in this Plan, "the Committee" refers to the entire Committee or the Committee's designated subcommittee or representative.

B. Duties of the Committee

The Committee shall meet at least twice each calendar year to consider business pertinent to the administration of the Plan as determined by the Committee or as requested by the Court. Such business may include reviewing applications for admission to the Trial Panel, Appellate Panel and the respective Training Panels ("the Panels") as established by the Plan. The Committee shall review the qualifications of all such applicants, and recommend, for approval by the Court, those applicants meeting the criteria established by the Plan for admission to the Panels. The Committee may interview any applicant at its discretion. The Committee shall also review, at least once annually, the operation and administration of the Panels, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and management of the Panels, including removal of an attorney as a member of any Panels, and the general operation of the Plan. The Committee may also report to the Court as to the

continued availability of Panel members to accept appointments. The Committee shall also consider such other matters as are referred to the Committee by the Court.

### VIII. ESTABLISHMENT OF THE TRIAL PANEL

#### A. Eligibility

Any attorney who seeks appointment as a member of the Trial Panel must be admitted to practice before the Court and the United States Court of Appeals for the Second Circuit and be in good standing.

Such attorney must certify that he or she has read and can demonstrate knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Rules of Appellate Procedure, the United States Sentencing Guidelines, the Bail Reform Act of 1984, the Local Rules of Criminal Procedure and the Second Circuit Rules of Appellate Procedure.

Such attorney must have tried at least two felony cases to verdict in either state or federal court.

Alternatively, an applicant for appointment to the Trial Panel must have appeared as defense counsel of

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record in at least two federal felony cases from initial appearance or arraignment through sentencing and have other significant trial experience as determined by the Committee. Unless specifically permitted by the Court, applicants shall have their principal place of business within the Western District of New York.

B. Application for Trial Panel Membership

An attorney who wishes to serve on the Trial Panel under this Plan must submit a written application for Trial Panel Membership. This requirement applies to all attorneys regardless of whether they have previously taken assignments under the existing CJA Plan or not. Application forms for Trial Panel membership shall be available from the Clerk of the Court and the Federal Public Defender. Applications shall be submitted to the Federal Public Defender, who shall promptly forward all applications to the chairperson of the Committee.

C. Disputes

Any disputes regarding appointment to the Trial Panel must be submitted, in writing, to the Chief Judge for determination by the Court.



IX. APPELLATE PANEL

A. Eligibility

An Appellate Panel shall be created, consisting of attorneys who wish to handle post-conviction matters only. An applicant for membership on the Appellate Panel must complete a written application, available through the Federal Public Defender or the Clerk of the Court. Applicants must be members in good standing of the bar of the District, and admitted to practice before United States Court of Appeals for the Second Circuit. An applicant must certify that the applicant has read and can demonstrate knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Rules of Appellate Procedure, the United States Sentencing Guidelines, the Bail Reform Act of 1984, the Local Rules of Criminal Procedure and the Second Circuit Rules of Appellate Procedure. An applicant must have been counsel of record in at least two state or federal direct criminal or habeas corpus appeals, which were briefed and argued by the applicant, and

shall submit to the Committee a recent writing sample.

B. Assignment

Assignment of cases to members of the Appellate Panel shall follow the same procedure as set forth in Section XI of this Plan. Members of the Appellate Panel are subject to Section XV and XVI of this Plan.

C. Disputes

Any disputes regarding appointment to the Appellate Panel must be submitted, in writing, to the Chief Judge for determination by the Court.

X. TRAINING PANELS

The Committee shall establish a Training Panel for attorneys whose current professional experience does not meet the requirements for membership on either the Trial Panel or the Appellate Panel.

A. Trial Panel

The Training Panel for trial work shall consist of attorneys admitted in the District who wish to accept misdemeanor assignments and who are willing to assist members of the Trial Panel in a "second chair"

capacity. Training Panel members may not receive assignments in felony cases. A Training Panel attorney may be appointed by a presiding Judge to provide legal representation for an eligible person where the criminal charge involved is solely a misdemeanor. A Training Panel attorney who assists on a "second chair" basis from jury selection through verdict in a federal felony trial may count such trial experience as the equivalent of having tried one felony case for the purpose of satisfying the requirements for membership on the Trial Panel. Prior service on the Training Panel is not a requirement for membership on the Trial Panel, nor will service on the Training Panel necessarily result in membership on the Trial Panel.

B. Appellate Panels

The Committee shall also establish a Training Panel for attorneys whose current professional experience does not meet the requirements for membership on the Appellate Panel. Training Panel members seeking membership on the Appellate Panel will be afforded an opportunity to assist a member of the

Appellate Panel in the briefing for argument of at least one direct felony conviction or federal habeas corpus appeal under standards as may be adopted by the Committee. The rendering of satisfactory assistance in a minimum of one appeal to the Court of Appeals for the Second Circuit under this section as determined by the Committee may be substituted for service as appellate counsel of record in one federal appeal for purposes of meeting the requirements for membership on the Appellate Panel as provided in this Plan. Prior service on the Training Panel is not a requirement for membership on the Appellate Panel, nor will service on the Training Panel necessarily result in membership on the Trial Panel.

C. - Eligibility for Training Panels

An applicant to a Training Panel must certify that he or she has read and can demonstrate knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Rules of Appellate Procedure, the United States Sentencing Guidelines, the Bail Reform Act of 1984, the Local Rules of Criminal Procedure and the Second Circuit Rules of



Appellate Procedure. Training Panel members shall comply with the requirements of Section XV of this Plan.

D. Disputes

Any disputes regarding eligibility for appointment to the Trial and Appellate Training Panels must be submitted, in writing, to the Chief Judge for determination by the Court.

XI. ASSIGNMENT OF CASES

A. Maintenance of Trial Panel List

The Court shall maintain a list of attorneys eligible for assignment as members of the Trial Panel with office addresses and telephone numbers for each attorney.

- A copy of this list shall be provided to each Judge.

The Court shall record all assignments to Trial Panel members and the Federal Public Defender.

B. Assignments from the Trial Panel

Upon determination by the Court of the need for the appointment of counsel under this Plan, the Judge shall obtain names from the Trial Panel in a sufficient number as determined by the Judge. The Judge

shall take all reasonable steps in the circumstances of the case to ensure that counsel is appointed expeditiously, that appointments from the Trial Panel are fairly distributed among all members of the Trial Panel and that information concerning the availability of counsel is maintained. It is the policy of the Court to seek a balanced distribution of appointments among the members of the Trial Panel.

XII. APPOINTMENT OF COUNSEL

- A. In every case in which appointment of counsel pursuant to 18 U.S.C. § 3006A and this Plan is authorized, it is the duty of the Judge to advise the person of the right to counsel. The Judge shall appoint counsel promptly if the party is financially unable to obtain an attorney unless the party waives his or her right to be represented by counsel.
- B. The Judge, when making the appointment, shall, in his or her discretion, appoint either the Federal Public Defender or a member of the Trial Panel, except in special circumstances where it becomes necessary to appoint some other member of the bar of the Court.

Such special circumstances include cases in which the Judge determines that the appointment of an attorney not a member of the Trial Panel is in the interest of justice, judicial economy or continuity of representation where permitted by the CJA or Guidelines and as determined by the Court, or when there are some other compelling circumstances warranting appointment of counsel who is not a member of the Federal Public Defender Office or the Trial Panel.

- C. A defendant shall not have the right to select a particular attorney from the Federal Public Defender's Office or the Trial Panel or from the Appellate Panel.
- D. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they first appear before the Court, or when the Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs first.
- E. The determination of eligibility for representation under the CJA is a judicial function to be performed by the Court after making appropriate inquiries concerning the person's financial condition.

- F. If, at any time after the appointment of counsel, the Court finds that the defendant is financially able to obtain counsel or make partial payments for the representation, the Court may terminate the appointment of counsel or direct that any funds available to the defendant be paid, in a lump sum or by periodic payments, as provided in 18 U.S.C. § 3006A(f). 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.
- G. At any stage of the criminal proceedings, upon finding that the person is financially unable to continue to pay retained counsel, the Court may make an appointment of counsel in accordance with the general procedure set forth in this Plan. This proviso does not, however, relieve retained counsel from either his/her contractual obligations under the retainer agreement or his/her obligations under the



Code of Professional Responsibility. Also, this proviso does not alter the mandate of the Local Rules which require leave of Court to withdraw once a notice of appearance has been entered.

- H. Counsel appointed by a Judge shall, unless excused by order of the Court, continue to act for the represented party in all court proceedings and other matters for which counsel was assigned. In all criminal cases, counsel shall advise the defendant of the right to appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely notice of appeal and shall continue to represent the defendant on appeal unless or until counsel is relieved by the Court of Appeals. Counsel must also comply with all rules regarding appeal including, where appropriate, the preparation of a writ of certiorari and advice to a defendant regarding the right to proceed *pro se*.
- I. The Judge before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

XIII. INVESTIGATIVE, EXPERT AND OTHER SERVICES

Counsel, whether or not appointed under this Plan, for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense, may request such services by *ex parte* application to a Judge, as provided in 18 U.S.C. § 3006A(e) and any applicable guidelines established by the Judicial Conference of the United States. Upon finding that such services are necessary for adequate representation, and that the person is financially unable to obtain them, the Judge shall authorize counsel to obtain the services.

XIV. COMPENSATION

- A. Payments of fees and expenses to counsel appointed under this Plan, other than to the Federal Public Defender, including any payment for investigative, expert or other services incurred, shall be made in accordance with any statutory limitations and such rules, regulations and guidelines as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the policies of the Administrative Office of the

United States Courts. No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a party, unless such payment is approved by order of the Court. Payment in excess of any maximum amount provided by statute or otherwise may be made for extended or complex representation, whenever the Court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the Chief Judge of the Second Circuit or his/her designee.

- B. Claims for compensation of private attorneys providing representation under the Plan shall be submitted on the appropriate CJA form to the Clerk of the Court. The Clerk's office shall review the claim form for mathematical accuracy and for conformity with CJA Guidelines and, after such review, shall forward the claim form for the consideration of the presiding Judge.
- C. In the event the Judge shall find that the claim for compensation as submitted should be reduced, the

Judge may confer with counsel to resolve any questions concerning the claim. The Judge may also, in the Judge's discretion, refer the matter to the Committee for its review and recommendation. Any counsel whose request for fees has been reduced may promptly request review by the Judge or by the Committee which may, following a review of the request, in its discretion, submit a recommendation to the Judge regarding such request. The Judge shall make the final decision as to the fee request following consideration of counsel's submission concerning the request and the Committee's recommendation if such has been submitted to the Judge.

XV. CONTINUING LEGAL EDUCATION

- A. The Federal Public Defender shall regularly schedule and conduct continuing legal education programs for Panel attorneys for the purpose of enhancing their professional knowledge and skills. The Federal Public Defender shall present at least two training programs each calendar year, one of which will cover the fundamentals of federal criminal defense practice,



including sentencing law and practice under the federal sentencing guidelines. These programs will be conducted within the District, at a nominal cost to attendees.

- B. Each Trial Panel member shall be required to attend at least one of the annual training programs presented by the Federal Public Defender, or, in the alternative, to complete a minimum of six hours of federal criminal defense continuing legal education offered by a bona fide continuing legal education program each year, at his or her own expense, as a condition of maintaining membership on the Panel. Panel members or applicants for Panel membership must certify, on or before January 1st of each year, on forms available at the Federal Public Defender's office, that they have satisfied the continuing legal education requirements as stated herein.

XVI. REMOVAL FROM THE TRIAL, APPELLATE OR TRAINING PANELS

A. Mandatory Removal

Any member of the Trial, Appellate or Training Panels who is suspended or disbarred from the practice of

law by the state court to which such member is admitted or who is suspended or disbarred from this Court, shall be removed immediately from such Panels.

B. Discretionary Removal

A member of the Trial, Appellate or Training Panels who refuses to accept an appointment, or who refuses to participate in the Mentor Program as established under Section XVII of this Plan, or who refuses or neglects to comply with the requirements concerning Continuing Legal Education at Section XV, without good cause, may be removed from such Panels. A Panel member may also be removed from the Panel for failure to represent his or her client in a vigorous, professional and ethical manner. In the event that a Judge determines that an attorney should be removed from the Panel, the matter shall be referred to the Committee for its review and recommendation. The member attorney shall have an opportunity to appear and be heard, with or without counsel, before the Committee. The Committee shall promptly review the matter and

report its recommendation to the Court. Upon consideration of the Committee's report, the Court may remove the attorney from the Panel.

C. Reapplication

Any attorney removed from the Panel may reapply one year after removal provided the requirements of Section VIII A of this Plan are satisfied.

XVII. MENTOR PROGRAM

- A. If requested by the Committee, a Trial or Appellate Panel member shall serve as a mentor to a Training Panel member. To fulfill this requirement, the Trial Panel member shall allow the Training Panel member to observe and to participate in, if appropriate, all aspects of a federal criminal case, including client conferences, decisions concerning defense strategy, motion and trial preparation and court appearances including hearings and trials.
- B. Appellate Panel members shall allow the Training Panel member to participate in client conferences, review and filing of the record on appeal, research and drafting briefs, pre-argument conferences, the

observation of oral argument, and, with approval of the Court of Appeals, oral argument.

- C. Trial and Appellate Panel members will be expected to agree to reasonable mentoring requests and endeavor to involve the Training Panel member as closely as possible in the substance of the representation. The Committee shall establish standards for the administration of this program.

#### XVIII. DEATH PENALTY CASES

Cases involving the death penalty, shall continue to be handled under the provisions of Section XI of the existing CJA Plan, adopted July 14, 1993, until further order of the Court.

#### XIX. FORMS

Where standard forms have been approved by the Judicial Conference of the United States, or an appropriate committee thereof, and have been distributed by the Administrative Office of the United States Courts, such forms shall be used by the Court, the Clerk, the Federal Public Defender Organization and appointed counsel.



XX. TRANSITION

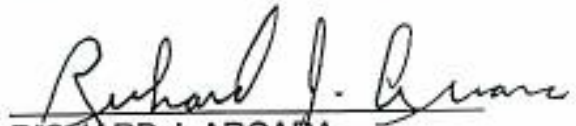
For a period of six (6) months, until a sufficiently large pool of Trial Panel attorneys has been created under this new Plan, appointments of counsel will continue to be made from attorneys taking assignments under the existing Plan. All other provisions of the new Plan shall take effect upon its approval by the Judicial Council of the Second Circuit.

XXI. EFFECTIVE DATE

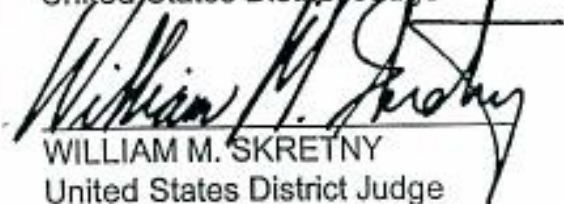
This Plan, adopted 27<sup>TH</sup> day of FEBRUARY, 1998, shall take effect when approved by the Judicial Council of the Second Circuit.



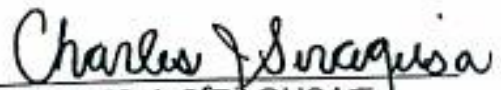
DAVID G. LARIMER  
Chief United States District Judge

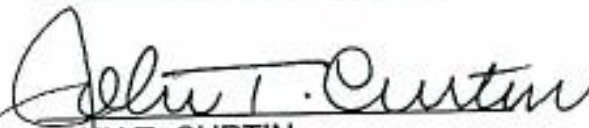


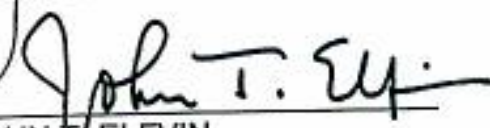
RICHARD J. ARCARA  
United States District Judge



WILLIAM M. SKRETNY  
United States District Judge

  
CHARLES J. STRAGUSA  
United States District Judge

  
JOHN T. CURTIN  
Senior United States District Judge

  
JOHN T. ELFVIN  
Senior United States District Judge

  
MICHAEL A. TELESKA  
Senior United States District Judge

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