

VOLUME VII. APPOINTMENT OF COUNSEL
IN CRIMINAL CASES

Section A. Guidelines for the Administration of the Criminal Justice Act and Related Statutes

INTRODUCTION

Pursuant to approval of the Judicial Conference of the United States, the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes* are provided.

Questions concerning the *Guidelines* and suggestions for improvement of the information should be directed to:

Defender Services Division
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Washington, DC 20544

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TABLE OF CONTENTS

PAGE

Chapter I. CRIMINAL JUSTICE ACT AND RELATED STATUTES

CRIMINAL JUSTICE ACT (PUBLIC LAW 88-455, APPROVED AUGUST 20, 1964), TITLE 18, UNITED STATES CODE, SECTION 3006A, AS AMENDED BY PUBLIC LAW 90-578, APPROVED OCTOBER 17, 1968; PUBLIC LAW 91-447, APPROVED OCTOBER 14, 1970; PUBLIC LAW 93-412, APPROVED SEPTEMBER 3, 1974; PUBLIC LAW 97-164, APPROVED APRIL 2, 1982; PUBLIC LAW 98-473, APPROVED OCTOBER 12, 1984, PUBLIC LAW 99-651, APPROVED NOVEMBER 14, 1986; PUBLIC LAW 100-182, APPROVED DECEMBER 7, 1987; PUBLIC LAW 100-690, APPROVED NOVEMBER 18, 1988; PUBLIC LAW 104-132, APPROVED APRIL 24, 1996; PUBLIC LAW 105-119, APPROVED NOVEMBER 26, 1997; PUBLIC LAW 106-113, APPROVED NOVEMBER 29, 1999; PUBLIC LAW 106-518, APPROVED NOVEMBER 13, 2000 1

18 U.S.C. § 3005 (ACT OF JUNE 25, 1948, CHAPTER 645, 62 STAT. 814), AS AMENDED BY PUBLIC LAW 103-322, APPROVED SEPTEMBER 13, 1994 11

SELECTED PROVISIONS OF THE ANTI-DRUG ABUSE ACT OF 1988, PUBLIC LAW 100-690, CODIFIED IN PART IN TITLE 21, UNITED STATES CODE, SECTION 848(q), APPROVED NOVEMBER 18, 1988, AS AMENDED BY THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996, PUBLIC LAW 104-132, APPROVED APRIL 24, 1996 12

SELECTED PROVISIONS OF THE CIVIL ASSET FORFEITURE REFORM ACT OF 2000 (PUBLIC LAW 106-185, APPROVED APRIL 25, 2000), CODIFIED IN PART IN TITLE 18, UNITED STATES CODE, SECTION 983 14

Chapter II. APPOINTMENT AND PAYMENT OF COUNSEL

Part A. Eligibility for Representation Under the Act

2.01 District Plans 1

2.02 Criminal Justice Act Forms 7

2.03 Fact-finding 7

2.04 Standards for Eligibility 8

2.05 Partial Eligibility	8
2.06 Family Resources	9
 Part B. <u>Appointment of Counsel</u>	
2.10 Appointment of Counsel to Represent More Than One Individual in a Particular Case	9
2.11 Compensation of Co-Counsel	9
2.12 Continuity of Representation	9
2.13 Other Appointments	10
2.14 Appointment of Counsel in Habeas Corpus and Proceedings under Section 2255, Title 28, United States Code	10
2.15 Forms for the Appointment of Counsel	11
2.16 Waiver of Counsel	11
2.17 Standby Counsel	11
2.18 Termination of Appointment	11
2.19 Federal Defender Organizations	12
 Part C. <u>Compensation and Expenses of Appointed Counsel</u>	
2.20 Forms to be used	12
2.21 Time Limits	12
2.22 Limitations	12
2.23 Prior Authorization by Court to Counsel to Incur Expenses	20
2.24 Proration of Claims	20
2.25 Substitution of Counsel	20

2.26 Travel Time	20
2.27 Reimbursable Out-of-Pocket Expenses	21
2.28 Non-reimbursable Items	22
2.29 Writ of Certiorari	23
2.30 Interim Payments to Counsel	23
2.31 Law Student and Computer Assisted Legal Research	24
2.32 Record Keeping	24

Chapter III. AUTHORIZATION AND PAYMENT FOR INVESTIGATIVE,
EXPERT OR OTHER SERVICES

Part A. General

3.01 Availability	1
3.02 Limitations	2
3.03 <i>Ex Parte</i> Applications	3
3.04 Claims for Services Other than Counsel	3
3.05 Forms for the Authorization and Payment for Services Other than Counsel	3
3.06 Interim Payments	4
3.07 Review of Vouchers	4

Part B. Policies Regarding Investigative, Expert and Other Services

3.10 Investigators	5
3.11 Psychiatrists, Psychologists	5
Summary Chart - Responsibility for Payment of Psychiatric and Related Expert Services	8

3.12 Transcripts	10
3.13 Fact Witnesses and Depositions	12
3.14 Guardian Ad Litem	13
3.15 Commercial Computer Assisted Legal Research Services	13
3.16 Other Services and Computer Hardware and Software	14
3.17 Reimbursement of Expenses	15

Chapter IV. DEFENDER ORGANIZATIONS

4.01 Statutory Authority	1
4.02 Types of Defender Organizations	2
4.03 Transcripts, Investigative, Expert and Other Services	5
4.04 Assignment of Cases	6
4.05 Apportionment of Cases Between Defender Organizations and the Panel	6
_____ 4.06 Participation as <i>Amicus Curiae</i>	7

Chapter V. MISCELLANEOUS PROCEDURES

5.01 Procedures for the Release of Information Pertaining to Activities Under the Criminal Justice Act and Related Statutes	1
5.02 Annual Report of Attorneys Claiming Compensation for More Than One Thousand Hours	4

**Chapter VI. REPRESENTATION IN FEDERAL DEATH PENALTY CASES
AND IN FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS**

6.01 Appointment of Counsel in Capital Cases	1
6.02 Compensation of Appointed Counsel in Capital Cases	5
6.03 Authorization and Payment for Investigative, Expert and Other Services in Capital Cases	8

<u>Appendix A</u> - Criminal Justice Act Forms	A-1
<u>Appendix B</u> - Location Codes	B-1
<u>Appendix C</u> - Suggested Form for Advance Authorization for Investigative, Expert or Other Services	C-1
Model Order Authorizing the Acquisition of Computer [Hardware and/or Software] Under the Criminal Justice Act	C-3
<u>Appendix D</u> - Community Defender Organization: Grant and Conditions	D-1
<u>Appendix E</u> - Interim Payments to Counsel	
In non-death penalty cases	E-1
In death penalty cases	E-7
<u>Appendix F</u> - Interim Payments for Services Other than Counsel	
In non-death penalty cases	F-1
In death penalty cases (commenced or appeal perfected <u>before</u> 4/24/96)	F-7
In death penalty cases (commenced or appeal perfected <u>on or after</u> 4/24/96)	F-12
<u>Appendix G</u> - Model Criminal Justice Act Plan	G-1
Model Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act	G-12
<u>Appendix H</u> - Insanity Defense Reform Act of 1984	H-1
<u>Appendix I</u> - Federal Death Penalty Cases	I-1
Recommendations adopted by the Judicial Conference, and accompanying commentary, from the report of the Defender Services Committee's Subcommittee on Federal Death Penalty Cases entitled, <i>Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation</i>	I-1

**Section B. Regulations for the Appointment of Counsel
and Guardians Ad Litem Pursuant to a Prisoner Transfer Treaty
(18 U.S.C. § 4109(a)(2) and (b))**

General Provisions 1

Appointment of Counsel and Guardians ad litem in
Prisoner Transfer Proceedings to the United States 2

Compensation and Reimbursement of Expenses 4

Appendix A A-1

Appendix B B-1

Appendix C C-1

Appendix D D-1

Appendix E E-1

CHAPTER I. CRIMINAL JUSTICE ACT AND RELATED STATUTES

CRIMINAL JUSTICE ACT (PUBLIC LAW 88-455, APPROVED AUGUST 20, 1964), TITLE 18, UNITED STATES CODE, SECTION 3006A, AS AMENDED BY PUBLIC LAW 90-578, APPROVED OCTOBER 17, 1968; PUBLIC LAW 91-447, APPROVED OCTOBER 14, 1970; PUBLIC LAW 93-412, APPROVED SEPTEMBER 3, 1974; PUBLIC LAW 97-164, APPROVED APRIL 2, 1982; PUBLIC LAW 98-473, APPROVED OCTOBER 12, 1984; PUBLIC LAW 99-651, APPROVED NOVEMBER 14, 1986; PUBLIC LAW 100-182, APPROVED DECEMBER 7, 1987; PUBLIC LAW 100-690, APPROVED NOVEMBER 18, 1988; PUBLIC LAW 104-132, APPROVED APRIL 24, 1996; PUBLIC LAW 105-119, APPROVED NOVEMBER 26, 1997; PUBLIC LAW 106-113, APPROVED NOVEMBER 29, 1999; PUBLIC LAW 106-518, APPROVED NOVEMBER 13, 2000.

3006A. Adequate representation of defendants

- (a) **Choice of plan.**—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:
- (1) Representation shall be provided for any financially eligible person who—
- (A) is charged with a felony or with a Class A misdemeanor;
 - (B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;
 - (C) is charged with a violation of probation;
 - (D) is under arrest, when such representation is required by law;
 - (E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - (F) is subject to a mental condition hearing under chapter 313 of this title;
 - (G) is in custody as a material witness;
 - (H) is entitled to appointment of counsel under the sixth amendment to the Constitution;
 - (I) faces loss of liberty in a case, and Federal law requires the appointment of counsel; or
 - (J) is entitled to the appointment of counsel under Section 4109 of this title.

- (2) Whenever the United States magistrate or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who—
 - (A) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or
 - (B) is seeking relief under section 2241, 2254, or 2255 of title 28.
- (3) Private attorneys shall be appointed in a substantial proportion of the cases. Each plan may include, in addition to the provisions for private attorneys, either of the following or both:
 - (A) Attorneys furnished by a bar association or a legal aid agency.
 - (B) Attorneys furnished by a defender organization established in accordance with the provisions of subsection (g).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

- (b) **Appointment of counsel.**—Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every case in which a person entitled to representation under a plan approved under subsection (a) appears without counsel, the United States magistrate or the court shall advise the person that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the person waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

- (c) **Duration and substitution of appointments.**—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.
- (d) **Payment for representation.**—
- (1) **Hourly rate.**—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding \$60 per hour for time expended in court or before a United States magistrate and \$40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that a higher rate of not in excess of \$75 per hour is justified for a circuit or for particular districts within a circuit, for time expended in court or before a United States magistrate and for time expended out of court. The Judicial Conference shall develop guidelines for determining the maximum hourly rates for each circuit in accordance with the preceding sentence, with variations by district, where appropriate, taking into account such factors as the minimum range of the prevailing hourly rates for qualified attorneys in the district in which the representation is provided and the recommendations of the judicial councils of the circuits. Not less than 3 years after the effective date of the Criminal Justice Act Revision of 1986, the Judicial Conference is authorized to raise the maximum hourly rates specified in this paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay under the General Schedule made pursuant to section 5305 of title 5 on or after such effective date. After the rates are raised under the preceding sentence, such maximum hourly rates may be raised at intervals of not less than 1 year each, up to the aggregate of the overall average percentages of such adjustments made since the last raise was made under this paragraph. Attorneys may be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States

magistrate or the court, and the costs of defending actions alleging malpractice of counsel in furnishing representational services under this section. No reimbursement for expenses in defending against malpractice claims shall be made if a judgment of malpractice is rendered against the counsel furnishing representational services under this section. The United States magistrate or the court shall make determinations relating to reimbursement of expenses under this paragraph.

- (2) **Maximum amounts.**—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$5,200 for each attorney in a case in which one or more felonies are charged, and \$1,500 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$3,700 for each attorney in each court. For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. For representation of such a petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court. For representation of an offender before the United States Parole Commission in a proceeding under section 4106A of this title, the compensation shall not exceed \$1,200 for each attorney in each proceeding; for representation of an offender in an appeal from a determination of such Commission under such section the compensation shall not exceed \$3,900 for each attorney in each court. For any other representation required or authorized by this section, the compensation shall not exceed \$1,200 for each attorney in each proceeding.
- (3) **Waiving maximum amounts.**—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, 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 circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

(4) Disclosure of fees.—

(A) In general.—Subject to subparagraphs (B) through (E), the amounts paid under this subsection for services in any case shall be made available to the public by the court upon the court's approval of the payment.

(B) Pre-trial or trial in progress.—If a trial is in pre-trial status or still in progress and after considering the defendant's interests as set forth in subparagraph (D), the court shall—

(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court; and

(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

(I) Arraignment and or plea.

(II) Bail and detention hearings.

(III) Motions.

(IV) Hearings.

(V) Interviews and conferences.

(VI) Obtaining and reviewing records.

(VII) Legal research and brief writing.

(VIII) Travel time.

(IX) Investigative work.

(X) Experts.

(XI) Trial and appeals.

(XII) Other.

(C) Trial completed.—

(i) In general.—If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant's interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.

(ii) Protection of the rights of the defendant.—If the court determines that the defendant's interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).

- (D) Considerations.**—The interests referred to in subparagraphs (B) and (C) are—
- (i)** to protect any person’s 5th amendment right against self-incrimination;
 - (ii)** to protect the defendant’s 6th amendment rights to effective assistance of counsel;
 - (iii)** the defendant’s attorney-client privilege;
 - (iv)** the work product privilege of the defendant’s counsel;
 - (v)** the safety of any person; and
 - (vi)** any other interest that justice may require, except that the amount of the fees shall not be considered a reason justifying any limited disclosure under section 3006A(d)(4) of title 18, United States Code.¹
- (E) Notice.**—The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court until such time as the appeals process is completed, unless the court determines that none of the defendant’s interests set forth in subparagraph (D) will be compromised.
- (F) Effective date.**—The amendment made by paragraph (4) shall become effective 60 days after enactment of this Act, will apply only to cases filed on or after the effective date, and shall be in effect for no longer than 24 months after the effective date.²

¹ The last clause of subparagraph (D)(vi) applies only to death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, and where the case was filed on or after January 25, 1998, and before January 25, 2000. See Fiscal Year 2000 Judiciary Appropriations Act, Pub. L. No. 106-113, 113 Stat. 1501, approved November 29, 1999; Fiscal Year 1998 Judiciary Appropriations Act, Pub. L. No. 105-119, 111 Stat. 2440, approved November 26, 1997.

² The amendment to paragraph (d)(4), regarding disclosure of amounts paid to court appointed attorneys, applies to cases filed on or after January 25, 1998, and before January 25, 2000. Fiscal Year 1998 Judiciary Appropriations Act, Pub. L. No. 105-119, 111 Stat. 2440, approved November 26, 1997.

- (5) **Filing claims.**—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and the court, and to each appellate court before which the attorney provided representation to the person involved. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate, the district court, or an appellate court, claims shall be submitted to the district court which shall fix the compensation and reimbursement to be paid.
- (6) **New trials.**—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.
- (7) **Proceedings before appellate courts.**—If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefore and without filing the affidavit required by section 1915(a) of title 28.
- (e) **Services other than counsel.**—
- (1) **Upon request.**—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States magistrate if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

- (2) **Without prior request.**—
- (A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph (B) of this paragraph, the total cost of services obtained without prior authorization may not exceed \$300 and expenses reasonably incurred.
- (B) The court, or the United States magistrate (if the services were rendered in a case disposed of entirely before the United States magistrate), may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds \$300.
- (3) **Maximum amounts.**—Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed \$1,000, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.
- (4) **Disclosure of fees.**—The amounts paid under this subsection for services in any case shall be made available to the public.
- (f) **Receipt of other payments.**—Whenever the United States magistrate or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(g) Defender organization.—

(1) Qualifications.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. In the event that adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

(2) Types of defender organizations.—

(A) Federal Public Defender Organization.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. An organization for a district or part of a district or two adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the court of appeals of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. Nothing contained herein shall be deemed to authorize more than one Federal Public Defender within a single judicial district. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the court of appeals of the circuit for incompetency, misconduct in office, or neglect of duty. Upon the expiration of his term, a Federal Public Defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of his office until his successor is appointed, or until one year after the expiration of such Defender's term, whichever is earlier. The compensation of the Federal Public Defender shall be fixed by the court of appeals of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the court of appeals of the circuit and other personnel in such number as may be approved by the Director of the

Administrative Office of the United States Courts.
Compensation paid to such attorneys and other personnel of the

organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience of the Office of the United States Attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit, in accordance with section 605 of title 28, a budget for each organization for each fiscal year and shall out of the appropriations therefore make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

- (B) Community Defender Organization.**—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by any group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States:
- (i)** receive an initial grant for expenses necessary to establish the organization; and
 - (ii)** in lieu of payments under subsection (d) or (e), receive periodic sustaining grants to provide representation and other expenses pursuant to this section.
- (3) Malpractice and negligence suits.**—The Director of the Administrative Office of the United States Courts shall, to the extent the Director considers appropriate, provide representation for and hold harmless, or provide liability insurance for, any person who is an officer or employee of a Federal Public Defender Organization established under this subsection, or a Community Defender Organization established under this subsection

which is receiving periodic sustaining grants, for money damages for injury, loss of liberty, loss of property, or personal injury or death arising from malpractice or negligence of any such officer or employee in furnishing representational services under this section while acting within the scope of that person's office or employment.

- (h) **Rules and reports.**—Each district court and court of appeals of a circuit shall submit a report on the appointment of counsel within its jurisdiction 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. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.
- (i) **Appropriations.**—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section, including funds for the continuing education and training of persons providing representational services under this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.
- (j) **Districts included.**—As used in this section, the term "district court" means each district court of the United States created by chapter 5 of title 28, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, and the District Court of Guam.
- (k) **Applicability in the District of Columbia.**—The provisions of this section shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this section shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

18 U.S.C. § 3005 (ACT OF JUNE 25, 1948, CHAPTER 645, 62 STAT. 814), AS AMENDED BY PUBLIC LAW 103-322, APPROVED SEPTEMBER 13, 1994.

Counsel and witnesses in capital cases

Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel; and the court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases, and who shall have free access to the accused at all reasonable hours. In assigning counsel under this section, the court shall consider the

recommendation of the Federal Public Defender organization, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. The defendant shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution.

SELECTED PROVISIONS OF THE ANTI-DRUG ABUSE ACT OF 1988, PUBLIC LAW 100-690, CODIFIED IN PART IN TITLE 21, UNITED STATES CODE, SECTION 848(q), APPROVED NOVEMBER 18, 1988, AS AMENDED BY THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996, PUBLIC LAW 104-132, APPROVED APRIL 24, 1996.

848 (q). Appeal in capital cases; counsel for financially unable defendants

- (4) (A) Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time either—
- (i) before judgment; or
 - (ii) after the entry of a judgment imposing a sentence of death but before the execution of that judgment; shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (5), (6), (7), (8), and (9).
- (B) In any post conviction proceeding under section 2254 or 2255 of Title 28, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (5), (6), (7), (8), and (9).
- (5) If the appointment is made before judgment, at least one attorney so appointed must have been admitted to practice in the court in which the prosecution is to be tried for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court.
- (6) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

- (7) With respect to paragraphs (5) and (6), the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.
- (8) Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.
- (9) Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under paragraph (10). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.
- (10) (A) Compensation shall be paid to attorneys appointed under this subsection at a rate of not more than \$125 per hour for in-court and out-of-court time. Not less than 3 years after the date of the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, the Judicial Conference is authorized to raise the maximum for hourly payment specified in the paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay for the General Schedule made pursuant to section 5305 of title 5 on or after such date. After the rates are raised under the preceding sentence, such hourly range may be raised at intervals of not less than one year, up to the aggregate of the overall average percentages of such adjustments made since the last raise under this paragraph.
- (B) Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9) shall not exceed \$7,500 in any case, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge, if the services were rendered in connection with the case disposed of entirely before such magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

- (C) The amounts paid under this paragraph for services in any case shall be disclosed to the public, after the disposition of the petition.

SELECTED PROVISIONS OF THE CIVIL ASSET FORFEITURE REFORM ACT OF 2000 (PUBLIC LAW 106-185, APPROVED APRIL 25, 2000), CODIFIED IN PART IN TITLE 18, UNITED STATES CODE, SECTION 983.

Sec. 983. General rules for civil forfeiture proceedings

* * *

(b) REPRESENTATION.--

(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as--

- (i)** the person's standing to contest the forfeiture; and
- (ii)** whether the claim appears to be made in good faith.

* * *

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

CHAPTER II

APPOINTMENT AND PAYMENT OF COUNSEL

<u>CONTENTS</u>	<u>PAGE</u>
<u>Part A. Eligibility for Representation Under the Act</u>	
2.01 District Plans	1
2.02 Criminal Justice Act Forms	7
2.03 Fact-finding	7
2.04 Standards for Eligibility	8
2.05 Partial Eligibility	8
2.06 Family Resources	9
<u>Part B. Appointment of Counsel</u>	
2.10 Appointment of Counsel to Represent More Than One Individual in a Particular Case	9
2.11 Compensation of Co-Counsel	9
2.12 Continuity of Representation	9
2.13 Other Appointments	10
2.14 Appointment of Counsel in Habeas Corpus and Proceedings under Section 2255, Title 28, United States Code	10
2.15 Forms for the Appointment of Counsel	11
2.16 Waiver of Counsel	11
2.17 Standby Counsel	11
2.18 Termination of Appointment	11

<u>CONTENTS</u>	<u>PAGE</u>
2.19 Federal Defender Organizations	12
<u>Part C. Compensation and Expenses of Appointed Counsel</u>	
2.20 Forms to be Used	12
2.21 Time Limits	12
2.22 Limitations	12
2.23 Prior Authorization by Court to Counsel to Incur Expenses	20
2.24 Proration of Claims	20
2.25 Substitution of Counsel	20
2.26 Travel Time	20
2.27 Reimbursable Out-of-Pocket Expenses	21
2.28 Non-reimbursable Items	22
2.29 Writ of Certiorari	23
2.30 Interim Payments to Counsel	23
2.31 Law Student and Computer Assisted Legal Research	24
2.32 Record Keeping	24

CHAPTER II. APPOINTMENT AND PAYMENT OF COUNSEL

Part A. Eligibility for Representation Under the Act

2.01 District Plans

A. Each district court, with the approval of the judicial council, is required to have a plan for furnishing representation for any person financially unable to obtain adequate representation. A copy of a "Model Criminal Justice Act Plan" is included as Appendix G.

- (1) Representation shall be provided for any financially eligible person who:
 - (i) is charged with a felony or with a Class A misdemeanor;
 - (ii) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, U.S.C. (see 18 U.S.C. § 5034 with regard to appointment of counsel; for appointment of a guardian ad litem, see paragraph 3.14);
 - (iii) is charged with a violation of probation;
 - (iv) is under arrest, when such representation is required by law;
 - (v) is entitled to appointment of counsel in parole proceedings; [The reference to representation at parole proceedings was deleted from the Criminal Justice Act in accordance with the November 1, 1987 repeal of chapter 311 of title 18 United States Code. However, the savings provisions of the Sentencing Reform Act of 1984, as amended by the Parole Commission Phaseout Act of 1996, state that existing law pertaining to parole will remain effective for fifteen years after November 1, 1987, with regard to persons specified in the savings provisions, and certain laws relating to parole will remain effective until the expiration of the sentence received by other persons specified in the savings provisions. This includes laws governing the right to counsel in parole proceedings.];
 - (vi) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release (see, e.g., *Criminal Monetary Penalties: A Guide to the Probation Officer's Role*, Monograph 114, Chap. VI);
 - (vii) is subject to a mental condition hearing under chapter 313 of title

18, U.S.C. (see paragraphs 2.13 F and 2.22 B(2)(vi)(f), and Appendix H);

- (viii) is in custody as a material witness;
 - (ix) is entitled to appointment of counsel under the sixth amendment to the Constitution, or faces loss of liberty in a case and federal law requires the appointment of counsel. This provision obviates the need for future amendments to the Criminal Justice Act each time the right to counsel may be extended to new situations by judicial decision or federal statutes. It also eliminates any doubt as to the application of the Act with respect to appointment of counsel for patients pursuant to title III of the Narcotic Addict Rehabilitation Act of 1966 (Ch. 2, title 42, U.S.C.) or for juveniles pursuant to the Federal Juvenile Delinquency Act (Ch. 403, title 18, U.S.C.);
 - (x) is seeking to set aside or vacate a death sentence in proceedings under section 2254 or 2255 of title 28, U.S.C.; and
 - (xi) is entitled to appointment of counsel in connection with prisoner transfer proceedings under section 4109 of title 18, U.S.C.
- (2) Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- (i) is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized; or
 - (ii) is seeking relief under section 2241, 2254, or 2255 of title 28 (but see paragraph 2.01 A(1)(x) regarding the mandatory appointment of counsel in death penalty habeas corpus cases and paragraph 2.14 regarding the requirement for appointment of counsel for an evidentiary hearing).

- B. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:
- (1) attorneys furnished by a bar association or a legal aid agency; or
 - (2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (g) of the Act.

- C. Each plan should contain a provision to the effect:

"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."

- D. Composition and Management of the Panel of Private Attorneys (CJA Panel). The CJA Panel must be designated or approved by the court. The membership of the panel should be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members receive an adequate number of appointments to maintain their proficiency in criminal defense work and thereby provide a high quality of representation. Members should serve at the pleasure of the court.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet 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 hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments 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.

Administration and management of the CJA Panel should be centralized in one organizational element (such as the Clerk's Office or, where appropriate, the Federal Defender Organization) to ensure that counsel is appointed as expeditiously as possible, appointments are equitably distributed, and information on availability of counsel is maintained.

Appointments should be made in a manner which results in both a balanced distribution of appointments and compensation among members of the CJA Panel, and quality representation for each CJA defendant. These objectives can be accomplished by making appointments on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations.

A copy of a "Model Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act" is included as an appendix to the "Model Criminal Justice Act Plan" in Appendix G, at page G-12.

- E. Cases or proceedings which are not covered by or compensable under the Act include the following:
- (1) Petty offenses (Class B or C misdemeanors or infractions), except where confinement is authorized by statute and the judge or magistrate determines that appointment of counsel is required in the interest of justice;
 - (2) Corporate defendant cases;
 - (3) Prisoners bringing civil rights actions under 42 U.S.C. § 1983. Care should be taken to ensure that a prisoner is not denied the appointment of counsel due to the mislabeling of his action as "civil rights" when the proceedings could also be considered as seeking relief under 28 U.S.C. § 2254;
 - (4) Civil actions to protect federal jurors' employment. The appointment and compensation of attorneys in such actions are under the authority of 28 U.S.C. § 1875, not 18 U.S.C. § 3006A;
 - (5) Administrative deportation proceedings before the Immigration and Naturalization Service.

F. Other cases or proceedings which may be covered or compensable under the Act include, but are not limited to the following (see also paragraph 2.22 B(2)):

- (1) Counsel may be appointed under the Act for a person charged with civil or criminal contempt who faces loss of liberty.
- (2) Upon application of a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, counsel may be appointed where there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty.
- (3) Counsel may be appointed for financially eligible persons proposed by the U.S. Attorney for processing under a "pretrial diversion" program.
- (4) Counsel may be appointed for persons held for international extradition under chapter 209, title 18, United States Code.
- (5) Representation may be furnished for financially eligible persons in "ancillary matters appropriate to the proceedings" pursuant to subsection (c) of the Act.

In determining whether a matter is ancillary to the proceedings, the court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal criminal charge.

In determining whether representation in an ancillary matter is appropriate to the proceedings, the court should consider whether such representation is reasonably necessary to accomplish, *inter alia*, one of the following objectives:

- (i) to protect a Constitutional right;
- (ii) to contribute in some significant way to the defense of the principal criminal charge;

- (iii) to aid in preparation for the trial or disposition of the principal criminal charge;
- (iv) to enforce the terms of a plea agreement in the principal criminal charge;
- (v) to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding pursuant to 21 U.S.C. §881, 19 U.S.C. §1602 or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act and paragraph 2.04 of these Guidelines; or
- (vi) to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property pursuant to Fed. R. Crim. P. 41(e), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act and paragraph 2.04 of these Guidelines.

The scope of representation in the ancillary matter should extend only to the part of the ancillary matter that relates to the principal criminal charge and to the correlative objective sought to be achieved in providing the representation (e.g., a CJA defendant in a criminal stock fraud case should be represented by CJA counsel at the defendant's deposition in a parallel civil fraud action for the limited purpose of advising him concerning his Fifth Amendment rights.)

Representation in an ancillary matter shall be compensable as part of the representation in the principal matter for which counsel has been appointed and shall not be considered a separate appointment for which a separate compensation maximum would be applicable under paragraph 2.22 B of these Guidelines. A private panel attorney appointed under the Act may obtain, through an *ex parte* application to the court, a preliminary determination that the representation to be provided in an ancillary matter is appropriate to the principal criminal proceeding and compensable under subsection (c) of the Act and this guideline. However, failure to obtain such a preliminary determination shall not bar the court from approving compensation for representation in an ancillary matter provided that the services and compensation related thereto are justified in a memorandum submitted by the attorney to the court at the conclusion of the principal criminal matter and the presiding judicial officer finds that such representation was appropriate.

- (6) Under 18 U.S.C. § 983(b)(1), if a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of title 18, United States Code, in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

In determining whether to authorize counsel to represent a person in a judicial civil forfeiture proceeding under a civil forfeiture statute, the court shall take into account such factors as:

- (i) the person's standing to contest the forfeiture; and
- (ii) whether the claim appears to be made in good faith.

2.02 Criminal Justice Act Forms. The Judicial Conference of the United States, at its meeting in January 1965, approved the recommendation of its Committee to Implement the Criminal Justice Act of 1964, that every district incorporate in its plan a requirement that the standard forms, approved by the Conference, be used. (Copies of the pertinent forms are included in Appendix A.)

2.03 Fact-finding

- A. A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before a federal judge or magistrate, when formally charged, or when otherwise entitled to counsel under the Act, whichever occurs earliest. The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or magistrate after making appropriate inquiries concerning the person's financial condition.
- B. Unless it will result in undue delay, factfinding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. Other officers or employees of the court (i.e., clerk, deputy clerk, or Pretrial 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 United States 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.

- C. 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 determinations, if appropriate, shall be made at other stages of the proceedings in which the person seeking counsel is a party.

2.04 Standards for Eligibility. A person is "financially unable to obtain counsel" within the meaning of subsection (b) of the Act if his net financial resources and income are insufficient to enable him to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to (a) the cost of providing the person and his dependents with the necessities of life, and (b) the cost of the defendant's bail bond if financial conditions are imposed, or the amount of the case deposit defendant is required to make to secure his release on bond.

Any doubts as to a person's eligibility should be resolved in his favor; erroneous determinations of eligibility may be corrected at a later time. At the time of determining eligibility, the judge or magistrate should inform the person of the penalties for making a false statement, and of his obligation to inform the court and his attorney of any change in his financial status. Prior to sentencing, the court should consider pertinent information contained in the presentence report, the court's intention with respect to fines and restitution, and all other available data bearing on the individual's financial condition in order to make a final determination concerning whether the individual then has funds available to pay for some or all of the costs of representation. At the time of sentencing, in appropriate circumstances, it should order the individual to reimburse the CJA appropriation for such costs. (See paragraph 2.22 E). Future earnings should not be considered or subject to a reimbursement order, however, other income or after-acquired assets which will be received within one hundred eighty days after the date of the court's reimbursement order may be available as a source of reimbursement.

2.05 Partial Eligibility. If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide him and his dependents with the necessities of life and to provide the defendant's release on bond, but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under the Act and should direct him to pay the available excess funds to the Clerk of the Court at the time of such appointment or from time to time thereafter. Such funds shall be held subject to the provisions of subsection (f). The judicial officer may increase or decrease the amount of such payments, and impose such other conditions from time to time as may be appropriate. With respect to the disposition of such funds, refer to paragraph 2.22 E of these Guidelines.

2.06 Family Resources. The initial determination of eligibility should be made without regard

to the financial ability of the person's family unless his family indicates willingness and financial ability to retain counsel promptly. At or following the appointment of counsel, the judicial officer may inquire into the financial situation of the person's spouse (or parents, if he is a juvenile) and if such spouse or parents indicate their willingness to pay all or part of the costs of counsel, the judicial officer may direct deposit or reimbursement.

Part B. Appointment of Counsel

2.10 Appointment of Counsel to Represent More Than One Individual in a Particular Case. Unless good cause is shown or in the absence of a waiver on the record by the defendants, in a criminal prosecution involving more than one defendant, or where separate charges arising out of the same or similar transactions are concurrently pending against two or more defendants, separate counsel should normally be appointed for each defendant. If an attorney is appointed to represent more than one person, a separate order of appointment shall be entered with respect to each person. An attorney who represents joint defendants may be compensated for his services up to the statutory maximum for each person represented, unless the case involves extended or complex representation (see paragraph 2.24 of these Guidelines).

2.11 Compensation of Co-counsel.

A. Without appointment. Unless appointed in accordance with paragraphs 2.11 B or 6.01 A, co-counsel or associate attorneys may not be compensated under the Act. However, an appointed counsel may claim compensation for services furnished by a partner or associate or, with prior authorization by the court, counsel who is not a partner or associate, within the maximum compensation allowed by the Act, separately identifying the provider of each service.

B. With appointment. In an extremely difficult case where the court finds it in the interest of justice to appoint an additional attorney, each attorney is eligible to receive the maximum compensation allowable under the Act. The finding of the court that the appointment of an additional attorney in a difficult case was necessary and in the interest of justice shall appear on the Order of Appointment. (See paragraph 6.01 A for appointment of more than one attorney in capital cases.)

2.12 Continuity of Representation. If the attorney appointed by the United States magistrate judge is to continue to represent the defendant in the district court, no

additional appointment by the district court should be made, except on appeal from a judgment rendered by the magistrate judge in a misdemeanor case.

An order extending Appointment on Appeal (CJA 20) should be executed for each appellant for whom counsel was appointed by a United States district judge or magistrate judge for representation at the trial level. In a federal capital prosecution, or a proceeding pursuant to 28 U.S.C. § 2254 or 2255 challenging a death sentence, the appointment should be made on a CJA 30.

Absent special circumstances, whenever a case is transferred to another district, such as under Rules 20, 21, and 40, Federal Rules of Criminal Procedure, appointment of counsel should be made in the transferee district.

2.13 Other Appointments. A new appointment on CJA Form 20 should be made for each person represented in the following proceedings:

- A. New trial after motion, mistrial, reversal, or remand on appeal;
- B. Probation revocation proceedings;
- C. Appeal, including interlocutory appeals;
- D. Bail appeals to a Court of Appeals;
- E. Extraordinary writs;
- F. Mental condition hearings pursuant to section 4243 (Hospitalization of a Person Found Not Guilty only by Reason of Insanity), 4245 (Hospitalization of an Imprisoned Person Suffering From Mental Disease or Defect), and 4246 (Hospitalization of a Person Due for Release but Suffering From Mental Disease or Defect) of title 18, United States Code. (See also paragraph 2.22 B(2)(vi)(f) and Appendix H infra.)

2.14 Appointment of Counsel in Habeas Corpus and Proceedings under Section 2255, Title 28, United States Code. While the Rules for sections 2254 and 2255 of title 28, United States Code, mention the appointment of counsel only with regard to discovery and evidentiary hearings, the Criminal Justice Act, subsection (a)(2)(B), permits discretionary appointment at any stage of the proceedings, in the interest of justice. (See paragraph 2.01 A(2)(ii)). In addition, 21 U.S.C. §848(q)(4) requires the appointment of one or more attorneys in death penalty federal habeas corpus cases. (See paragraph 6.01 A.)

- 2.15 Forms for the Appointment of Counsel. Forms for the Appointment of Counsel, together with instructions for the execution and distribution thereof, are included in Appendix A.
- 2.16 Waiver of Counsel. A waiver of assigned counsel by a defendant should be in writing. If the defendant refuses to sign the waiver, the judge or magistrate should certify thereto. No standard form has been prescribed for this purpose. If an appointment of counsel has been made previously, the CJA appointment form and the waiver should be forwarded to the Administrative Office.
- 2.17 Standby Counsel. Criminal defendants have both a constitutional and statutory right to self-representation in federal court. [See Faretta v. California, 422 U.S. 806 (1975); 28 U.S.C. §1654]. In some cases, however, the judge or magistrate may find it necessary to appoint "standby" counsel to be available to assist a *pro se* defendant in his or her defense and also to protect the integrity and ensure the continuity of the judicial proceedings. [See McKaskle v. Wiggins, 465 U.S. 168 (1984); Faretta, supra]. The CJA, however, provides that "[u]nless the (financially eligible) person waives representation by counsel... [the court] shall appoint counsel to represent him." While the court has inherent authority to appoint standby 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 financially eligible *pro se* defendant agrees to be represented, at least in part, by standby counsel, compensation may be provided under the CJA. Similarly, if at any time during the course of the proceedings the services of standby counsel are accepted by a financially eligible *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. §3109. Accordingly, an appointment pursuant to this section may be made regardless of whether the defendant is financially able to obtain adequate representation. In such cases, compensation will be determined by the judicial officer in accordance with CJA hourly rates and case compensation maximums. The Defender Services Division of the Administrative Office should be consulted regarding appointment and payment procedures. If, during the course of the proceedings, a *pro se* defendant who is financially able to retain counsel elects to do so, the court's appointment of an attorney pursuant to §3109 shall be terminated.

- 2.18 Termination of Appointment. In any case in which appointment of counsel has been made and the court subsequently finds that the person is financially able to obtain counsel, such appointment should be terminated. (Use CJA Form 7, Appendix A.)

- 2.19 Federal Defender Organizations. When cases are assigned to a Federal Public or Community Defender Organization, the appointment should be made in the name of the Organization (i.e., the Federal Public Defender or Community Defender), rather than in the name of an individual staff attorney within the Organization. (see paragraph 4.04 of these Guidelines).

Part C. Compensation and Expenses of Appointed Counsel

- 2.20 Forms to be Used. Forms for the compensation and reimbursement of expenses to appointed counsel, together with instructions for the execution and distribution thereof, are included in Appendix A. A copy of all supporting documents which itemize or expand the amounts shown on the face of CJA Form 20 must be attached to at least copies numbered 1 and 2.

2.21 Time Limits.

- A. Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The clerks of the concerned courts should ensure that attorneys are complying with the prescribed limits. Every effort should be made to have counsel submit the claim as soon as possible upon completion of services rendered.
- B. Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.

2.22 Limitations.

A. Hourly Rates.

- (1) In General. Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel may not exceed \$60 per hour for time expended in court or before a United States magistrate and \$40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that higher maximum rates not to exceed \$75 per hour are justified for particular places of holding court. (See paragraph 6.02 A regarding compensation of counsel in federal capital cases and death penalty federal habeas corpus proceedings and paragraphs 2.22 A(2) and (3) regarding adjustment of hourly rates.)
- (2) Establishment of Alternative Hourly Rates for Particular Districts or Circuits.
- (a) Judicial Conference Authority. Subsection (d)(1) of the Act, as

amended by the CJA Revision of 1986, authorizes the Judicial Conference to establish higher maximum hourly rates not to exceed \$75, for particular districts or circuits.

The "alternative" rate provision is intended to be utilized by the Judicial Conference if it determines that circumstances existing in particular districts or circuits warrant an exception from the general hourly maximums of \$60 per hour for in-court time and \$40 per hour for out-of-court time.

To ensure the reasonable exercise of the Judicial Conference's alternative rate setting authority, Congress directed that the Conference develop guidelines for determining the rates.

(b) General Considerations.

- (i) In setting the higher maximum rates, the Judicial Conference may retain or eliminate the in-court/out-of-court hourly rate differential.
- (ii) With respect to representation before the court of appeal, the attorney compensation should be determined based on the higher rate of the maximum hourly rates for the district in which a lawyer maintains his or her principal office or for the district out of which the case arose.

(c) Factors to be Considered in Setting Alternative Rates. In determining whether higher rates are justified, and if so, what such rates shall be, the Judicial Conference may consider the following:

- (1) The minimum range of the prevailing hourly rates for qualified attorneys in the particular district or circuit. In determining the minimum range, the following may be taken into consideration: Any surveys that have been conducted by state and local bar associations, management consulting firms, federal, state and local government agencies, or other organizations regarding hourly rates for in-court and out-of-court time and per diem charges for representation in trial charged by qualified criminal defense lawyers in the relevant area.
- (ii) Overhead costs incurred by criminal practitioners in the area for which an increase is sought including data regarding the average costs for secretarial and clerical personnel, and average lease costs.

- (iii) The ability of the court to recruit and retain qualified private attorneys to serve on the court's CJA panel when compensation is limited to the general hourly maximums, including whether and to what degree the locality has experienced a drop in panel membership and the incidence of refusal by panel members to accept appointments.
 - (iv) The recommendations of the judicial councils of the circuits.
- (d) Procedures. The Judicial Conference has established the following procedures to be followed in connection with requests for alternative rates:
- (i) The Defender Services Division of the Administrative Office shall conduct studies of the reasonableness of CJA hourly rates in judicial districts and report its findings to the Judicial Conference Committee on Defender Services. The studies should consider the factors enumerated in paragraph 2.22A(2)(c), as well as any other relevant information. The Defender Services Division shall conduct periodic reevaluations of the CJA rates in districts in which the maximum alternative rates have not been established.
 - (ii) Chief judges of districts or judicial councils of circuits may submit requests and justifications for approval or modification of alternative hourly rates to the Defender Services Division.
 - (iii) The Committee on Defender Services will review the studies of the Defender Services Division and requests from districts and circuit councils, and make recommendations to the Judicial Conference regarding the establishment of alternative rates in particular districts or circuits.
 - (iv) The Judicial Conference will consider the requests and recommendations, and make the final determinations on rate adjustments and amounts.
- (3) Annual Increase in Hourly Rate Maximums. Subsection (d)(1) of the Act, as amended by the CJA Revision of 1986, also authorizes the Judicial Conference to increase annually all hourly rate maximums by an amount not to exceed the federal pay comparability raises given to federal

employees, beginning three years after the Act's March 14, 1987 effective date. Hourly rate maximums, including established alternative rates, will be adjusted automatically each year in accordance with any federal pay comparability adjustment, contingent upon the availability of sufficient funds. The new rates will apply with respect to services performed on or after the effective date.

B. Case Compensation Maximums.

(1) General.

- (i) Applicability and Exclusions. The Federal Courts Improvement Act of 2000, effective November 13, 2000, amended subsection (d)(2) of the CJA to increase the case compensation maximum amounts for attorneys. The new case compensation maximum amounts are indicated in paragraph 2.22 B(2) below. All compensation limits are for each attorney in each case. The case compensation limits are not applicable in federal capital cases and in death penalty federal habeas corpus proceedings. (See paragraph 6.02 A.) As further explained in paragraph 2.22 B(3), the CJA places limitations on the general authority of presiding judicial officers to unilaterally approve attorney compensation. Payments above case compensation limits referred to in subparagraph (2) below may be authorized when certified by the presiding judicial officer and approved by the chief judge of the circuit. The chief judge of the circuit is permitted to delegate this approval authority to another active circuit judge. Presiding judicial officers should certify excess compensation payments to counsel whenever in their judgment the case involves extended or complex representation and the amount certified is necessary to provide fair compensation. (See paragraph 2.22 B(3)). Case compensation limits apply only to attorney fees. There is no limit on the presiding judicial officer's authority to approve the reimbursement of expenses of counsel and the chief judge of the circuit has no role in authorizing the payment of such expenses. (See paragraph 2.27 for an explanation of reimbursable out-of-pocket expenses.)
- (ii) Change in Offense Classification Level. If a case is disposed of at an offense level lower than the offense originally charged, the compensation maximum is determined by the higher offense level.
- (iii) More than One Counsel. In difficult cases in which the court finds it necessary to appoint more than one attorney, the limitations

apply to each attorney.

- (2) Specific Proceedings.
- (i) Felonies [except federal capital prosecutions].
- \$5,200 for trial court level.
\$3,700 for appeal.
- (ii) Misdemeanors [including petty offenses (class B or C misdemeanors or infractions) as set forth in subsection (a)(2)(A) of the Act].
- \$1,500 for trial court level.
\$3,700 for appeal.
- (iii) Proceedings under section 4106A of title 18, United States Code [in connection with paroled prisoners transferred to the United States].
- \$1,200 for representation before the United States Parole Commission.
\$3,900 for appeal.
- (iv) Proceedings under sections 4107 or 4108 of title 18, United States Code [for counsel and guardians ad litem providing services in connection with prisoner transfer proceedings. See Regulations for the Appointment of Counsel Pursuant to a Prisoner Transfer Treaty, which appears at Section B of this Volume, regarding appointment of counsel or guardians ad litem under 18 U.S.C. §4109].
- \$1,500 for each verification proceeding.
- (v) Pre-Trial Diversion.
- \$5,200 if offense alleged by the U.S. Attorney is a felony.
\$1,500 if offense alleged by the U.S. Attorney is a misdemeanor.
- (vi) Proceedings under section 983 of title 18, United States Code [for services provided by counsel appointed under 18 U.S.C. §983(b)(1) in connection with certain judicial civil forfeiture proceedings].

\$5,200 for trial court level.
\$3,700 for appeal.

(vii) Non-capital Post-Conviction Proceedings under sections 2241, 2254 or 2255 of title 18, United States Code.

\$5,200 for trial court level.

\$3,700 for appeal.

(viii) Other Representations required or authorized by the CJA.

\$1,200 for trial court level.

\$1,200 for each level of appeal.

[This category includes but is not limited to the following representations:

- (a) Probation Violation;
- (b) Supervised Release Hearing [for persons charged with a violation of supervised release or facing modification, reduction or enlargement of a condition or extension or revocation of a term of supervised release];
- (c) Parole Proceedings under chapter 311 of title 18, U.S.C.;
- (d) Material Witness in Custody;
- (e) Mental Condition Hearings Pursuant to chapter 313 of title 18, U.S.C. [with the exception of hearings pursuant to sections 4241 and 4244 of title 18, U.S.C., which are considered part of the case in chief with no separate compensation maximums applying. (A chart detailing the treatment for the purpose of compensation of representation at each hearing pursuant to chapter 313 is included as Appendix H.)];
- (f) Civil or Criminal Contempt [Where the person faces loss of liberty];
- (g) Witness [before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, where there is a reason to believe either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty];

- (h) International Extradition [under chapter 209 of title 18, U.S.C.].
 - (ix) Ancillary Matters. Representation in ancillary matters shall be compensable as part of the representation in the principal matter for which counsel has been appointed, and shall not be considered a separate appointment for which a separate compensation maximum would apply.
- (3) Waiving Case Compensation Maximums. Payments in excess of CJA compensation maximums may be made to provide fair compensation in cases involving extended or complex representation when so certified by the court or magistrate and approved by the chief judge of the circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated).

In determining if an excess payment is warranted, the court or magistrate and the chief judge of the circuit (or an active circuit judge to whom excess compensation approval authority has been delegated) should make a threshold determination as to whether the case is either extended or complex. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex." If more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings, the case is "extended."

After establishing that a case is extended or complex, the approving judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be useful in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

C. Supporting Memorandum.

- (1) Claim for Less than the Case Compensation Maximum. In any case in which the total compensation claimed is less than the statutory case compensation maximum, counsel may be required to submit a memorandum supporting and justifying the compensation claimed, whenever called for by local rule, standing order, or by the presiding judicial officer.

- (2) Claim for More than the Case Compensation Maximum. In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation. Upon preliminary approval of such claim by the presiding judicial officer, the court should furnish to the chief judge of the circuit a memorandum containing its recommendation and a detailed statement of reasons.
- D. Reduction of CJA Compensation Vouchers by the Reviewing Judicial Officer. The Criminal Justice Act provides that the reviewing judicial officer shall fix the compensation and reimbursement to be paid to appointed counsel. In cases where the amount approved is less than was requested by appointed counsel, the judicial officer may wish to notify appointed counsel that his or her claim for compensation and/or reimbursement has been reduced, and to provide an explanation of the reasons for the reduction.
- E. Payments by a Defendant Under Subsection (f) of the Act. No appointed attorney shall accept a payment from or on behalf of the person represented without authorization by a United States district or circuit judge or magistrate on CJA Form 7. If such payment is authorized, it shall be deducted from the fee to be approved by the court under subsection (d) of the Act. In this regard, the combined payment to any one attorney for compensation from both the person represented and the government shall be subject to applicable dollar limitations, unless excess compensation is approved under subsection (d)(3) of the Act. Whenever the court finds that funds are available for payment from or on behalf of a person represented and directs that such funds be paid to the court for deposit in the Treasury, payment should be made by a check or money order drawn to the order of the clerk of court, who will deposit all monies received to the credit of the Treasury and credit such sums to the CJA appropriation. Subsection (f) of the Act does not authorize a judicial officer to require reimbursement as a condition of probation, and the Judicial Conference believes that reimbursement of the cost of representation under the Act should not be made a condition of probation under any other authority.
- F. Services Before United States Magistrate Judges. Magistrate judges may only approve vouchers for services rendered in connection with a case disposed of entirely before the magistrate judge.

2.23 Prior Authorization by Court to Counsel to Incur Expenses. Court plans may require advance authorization for such items as counsel's expenses over stipulated amounts or counsel's travel in excess of stipulated distances. Such advance authorization need not be submitted to the Administrative Office.

2.24 Proration of Claims. When a defendant is charged in one indictment with severable counts, one voucher should be submitted and one maximum applied under subsection (d)(2) of the Act, whether or not the counts are severed for trial. When a defendant is charged in two or more indictments (other than a superseding indictment or information), a separate voucher should be submitted, and a separate maximum applied under subsection (d)(2) of the Act, for each indictment, whether or not the indictments are consolidated for trial.

Where single counsel is appointed to represent multiple defendants, separate vouchers should be submitted, and a separate maximum applied under subsection (d)(2) of the Act, for each defendant represented.

Whenever appointed counsel submit separate vouchers, as provided by this paragraph, time spent in common on more than one indictment or case must be prorated among the indictments or cases on which the time was spent; and each indictment or case must be cross-referenced on the vouchers. Time spent exclusively on any one indictment or case may properly be charged on the voucher for that indictment or case.

2.25 Substitution of Counsel. If an attorney is substituted for an attorney previously appointed for a defendant in the same case, the total compensation which may be paid both attorneys shall not exceed the statutory maximum for one defendant, unless the case involves extended or complex representation. In such cases, vouchers for attorney's services shall not be approved by a judicial officer until the conclusion of the trial so that the judicial officer may make such apportionment between the attorneys as may be just.

2.26 Travel Time. Compensation shall 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 subsection (d) of the Act for "time reasonably expended out of court."

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.

2.27 Reimbursable Out-of-Pocket Expenses. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services under subsection (e) of the Act shall not be considered out-of-pocket expenses.

A. Reimbursement for Transcripts.

(1) Generally, court reporters or reporting services which furnish court authorized transcripts in CJA cases claim and receive compensation for their services on the CJA Form 24, "Authorization and Voucher for Payment of Transcript," (See paragraph 3.12 of these Guidelines). While this is the preferred method for payment of transcripts, if assigned counsel has elected to pay for the court authorized transcripts "out-of-pocket," the cost may be claimed as a reimbursable expense, as provided for in subsection (d)(1) of the Criminal Justice Act. However, unlike most reimbursable expenses, which should be claimed on the CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel," reimbursement to the attorney who has paid for the transcript as an "out-of-pocket" expense should be claimed on a CJA Form 24. (See Appendix A).

(2) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17b of Fed. R. Crim. P. (but when witness is an expert, then the Administrative Office will pay out of CJA funds)(53 Comp. Gen. 638 (1974)).

B. Travel Expenses. Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute

reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, attorneys must contact the clerk of the court and obtain prior approval from the presiding judicial officer.

- C. Interim Reimbursement for Expenses. Where it is considered necessary and appropriate in a specific case, the presiding judge or magistrate judge may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case. Interim reimbursement should be authorized when counsel's reasonably-incurred, out-of-pocket expenses for duplication of discoverable materials made available by the prosecution exceed \$500.
- D. Other. This would include items such as telephone toll calls, telegrams, copying (except printing -- see paragraph 2.28 D below) and photographs.

2.28 Non-reimbursable Items. Appointed counsel may not claim reimbursement for the following:

- A. General Office Overhead. General office overhead includes general office expenses which would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses. Therefore, except in extraordinary circumstances (see paragraph 3.16), personnel, rent, telephone service, and secretarial expenses associated with CJA representation, whether work is performed by counsel or other personnel, are not reimbursable.
- B. Items and Services of Personal Nature. The cost of items of a personal nature purchased for or on behalf of the person represented, such as purchasing new clothing or having clothing cleaned, getting a haircut, furnishing cigarettes, candy or meals, etc. Also, the cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation, such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, assisting the defendant in executing the conditions of probation, providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant's arrest, etc.

- C. Filing Fees. Attorneys should not be required to pay a filing fee in a Criminal Justice Act case inasmuch as such payment and reimbursement thereof is tantamount to the Government billing itself to accomplish a transfer of appropriated funds into the General Fund of the Treasury.
- D. Printing of Briefs. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable; however, the cost of mimeographing, "xeroxing," or similar copying service is reimbursable.
- E. Service of Process. Witness fees, travel costs, and expenses for service of subpoenas on fact witnesses, are not payable out of the CJA appropriation but are governed by Rule 17, Fed. R. Crim. P. and 28 U.S.C. §1825.
- F. Taxes. Taxes paid on attorney compensation received pursuant to CJA, whether based on income, sales or gross receipts, are not reimbursable expenses.

2.29 Writ of Certiorari. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court.

2.30 Interim Payments to Counsel.

- A. Non-Death Penalty Cases. Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments to counsel. Appendix E (pages E-1 through E-6) contains instructions on the procedures for effecting interim payments to counsel, as well as a sample memorandum order on this subject which provides for two alternative payment methods. The payment options provided in the order are designed to strike a balance between the interest in relieving court-appointed attorneys of financial hardships 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. Other interim payment arrangements which effectuate this balance may be devised in consultation with the Defender Services Division of the Administrative Office of the United States Courts.
- B. Death Penalty Cases. Presiding judicial officers are urged to permit interim payments in death penalty cases. Since the Anti-Drug Abuse Act of 1988 effectively repealed the CJA hourly rates and case maximums with respect to death penalty cases, a separate set of procedures and a separate memorandum order

should be used in those cases. These procedures and sample memorandum order

are set forth in Appendix E, beginning on page E-7.

2.31 Law Student and Computer Assisted Legal Research

- A. Law Student. In some districts and circuits, arrangements have been made for the use of qualified law students to assist assigned counsel in trial preparation and in drafting briefs and arguments on appeal. Payment under the CJA in such instances may be made to assigned counsel only for compensable time spent by counsel plus allowable expenses. Allowable expenses for the attorney may include compensation paid to law students for legal research, but do not include reimbursement for expenses incurred by a law student in assisting appointed counsel.
- B. Computer Assisted Legal Research. The cost of use, by appointed counsel, of computer assisted legal research equipment, may be allowed as a reimbursable out-of-pocket expense, provided that the total amount approved for computer assisted legal research does not exceed the total amount of attorney compensation that reasonably would have been approved if counsel had performed the research manually. Whenever appointed counsel incurs charges for computer assisted legal research, counsel should attach to the compensation voucher the following:
- 1) a brief statement setting forth the issue or issues that were the subject matter of the research; and
 - 2) an estimate of the number of hours of attorney-time that would have been required to do the research manually; and
 - 3) a copy of the bill and receipt for the use of the equipment 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).

(See paragraph 3.15 concerning claims for compensation for computer assisted legal research services performed by employees of commercial legal research firms or organizations).

- 2.32 Record Keeping. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

CHAPTER III

**AUTHORIZATION AND PAYMENT FOR INVESTIGATIVE,
EXPERT AND OTHER SERVICES**

CONTENTS

	<u>PAGE</u>
<u>Part A. General</u>	
3.01 Availability	1
3.02 Limitations	2
3.03 <i>Ex Parte</i> Applications	3
3.04 Claims for Services Other than Counsel	3
3.05 Forms for the Authorization and Payment for Services Other than Counsel	3
3.06 Interim Payments	4
3.07 Review of Vouchers	4
<u>Part B. Policies Regarding Investigative, Expert and Other Services</u>	
3.10 Investigators	5
3.11 Psychiatrists, Psychologists	5
Summary Chart - Responsibility for Payment of Psychiatric and Related Expert Services	8
3.12 Transcripts	10
3.13 Fact Witnesses and Depositions	12
3.14 Guardian Ad Litem	13
3.15 Commercial Computer Assisted Legal Research Services	13
3.16 Other Services and Computer Hardware and Software	14
3.17 Reimbursement of Expenses	15

CHAPTER III. AUTHORIZATION AND PAYMENT FOR INVESTIGATIVE,
EXPERT OR OTHER SERVICES

Part A. General.

3.01 Availability.

- A. Investigative, expert or other services necessary to adequate representation, as authorized by subsection (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 subsection (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. The procedure outlined in paragraph 2.05 shall apply to such persons who are financially able to pay some, but unable to pay all, the costs of necessary services.
- B. 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 subsection (e) of the Criminal Justice Act.

The court should authorize subsection (e) services for *pro se* litigants and review and approve resulting claims in the same manner as is 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 subsection (a)(2) 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 subsection (e) services, the investigative, paralegal 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.

3.02 Limitations.

- A. With Prior Authorization. With prior authorization, compensation for investigative, expert and other services is limited to \$1,000 per organization or individual, exclusive of reimbursement for expenses reasonably occurred, per individual authorization to perform said service, except with regard to capital cases. (See paragraph 6.03 for guidelines applicable to capital cases.) A separate authorization should be obtained for each type of service for each person served, and for each defendant served, and for each case. While the contractor may be compensated separately for each defendant served, care should be taken to ensure that duplicate charges are not being made for the same services. If, pursuant to subsection (e) of the Act, such services are rendered by members of an organization such as a corporation, unincorporated association, or partnership (other than those created pursuant to subsection (g) of the Act), in their capacities as members of that organization, compensation shall be deemed to have been earned by the organization and shall be paid to it only once, per defendant served, in an amount not to exceed the statutory maximum of \$1,000, exclusive of reimbursement for expenses reasonably incurred. Payment in excess of the \$1,000 limit for services authorized prior to the performance thereof may be made when certified by the United States judge or magistrate and approved by the chief judge of the circuit (or an active circuit judge to whom excess compensation approval authority has been delegated) as being necessary to provide fair compensation for services of an unusual character or duration. If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or the active circuit judge to whom excess compensation approval authority has been delegated). See sample form, Appendix C.
- B. Without Prior Authorization. Subsection (e)(2)(A) of the Act authorizes the obtaining of investigative, expert and other services, without prior authorization but subject to subsequent review, providing the cost of the services obtained does not exceed \$300 plus expenses reasonably incurred (but see paragraph 6.03 A regarding obtaining investigative, expert, and other

services in capital cases). This \$300 limit may be waived however (see subsection (e)(2)(B) of the Act), if the presiding judge or magistrate judge (if the services were rendered in a case disposed of entirely before the magistrate judge) in the interest of justice, finds that timely procurement of necessary services could not await prior authorization.

- 3.03 Ex Parte Applications. *Ex parte* applications for services other than counsel under subsection (e) shall be heard *in camera*, and shall not be revealed without the consent of the defendant. The application shall be placed under seal until the final disposition of the case in the trial court, subject to further order of the court. Maintaining the secrecy of the application prevents the possibility that an open hearing may cause a defendant to reveal his or her defense. Appointed counsel shall not be required to submit evidence of a prior attempt to enter into a stipulation with the United States Attorney as a prerequisite to obtaining services under subsection (e). The court may encourage counsel to enter into stipulations, in the interest of expedition and economy, without, however, disclosing the contents or otherwise compromising the secret nature of the *ex parte* application.
- 3.04 Claims for Services Other than Counsel. All claims for services other than counsel, under subsection (e) of the Act, should include the following: a statement as to the type of, dates of, and time expended for, the services provided; an explanation of the fee arrangement (i.e., hourly rate, per diem rate, etc.); an itemized statement of all expenses for which reimbursement is claimed; and supporting documentation, where practicable, for all expenses of lodgings and subsistence, and for any expenses in excess of \$50.
- 3.05 Forms for the Authorization and Payment for Services Other than Counsel. Forms for the authorization and payment for services other than counsel, together with instructions for the execution and distribution thereof, are included in Appendix A.

3.06 Interim Payments.

- A. Non-Death Penalty Cases. Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments to an individual whose services are obtained pursuant to subsection (e) of the Act. Appendix F (pages F-1 through F-6) contains instructions on the procedures for effecting interim payments to persons other than counsel, as well as a sample memorandum order on this subject which provides for two alternative payment methods. The payment options provided in the order are designed to strike a balance between the interest in relieving providers of subsection (e) services of financial hardships 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. Other interim payment arrangements which effectuate this balance may be devised in consultation with the Defender Services Division of the Administrative Office of the United States Courts.

- B. Death Penalty Cases. Presiding judicial officers are urged to permit interim payment in death penalty cases. Because the CJA compensation maximum of \$1,000 for investigative, expert, and other services does not apply in capital cases, different procedures and memorandum orders must be used in those cases. (See paragraph 6.03 D.) These procedures and sample memorandum orders are also set forth in Appendix F, beginning on pages F-7 and F-11.

3.07 Review of Vouchers. Absent extraordinary circumstances, judges should act upon claims for compensation for investigative, expert or other services within 30 days of submission.

Part B. Policies Regarding Investigative, Expert and Other Services

3.10 Investigators. When necessary to an adequate representation as described above, the court may authorize, pursuant to subsection (e) of the Act, the services of an investigator.

3.11 Psychiatrists, Psychologists.

A. Type of Examinations. Chapter 313 of title 18, as amended by the Insanity Defense Reform Act of 1984 (Chapter IV of the Comprehensive Crime Control Act of 1984), provides for court-directed psychiatric or psychological examination of individuals in connection with the various proceedings to determine mental condition which are authorized under that chapter. The functions of these separate proceedings are to determine: (1) the mental competency of a defendant to stand trial (18 U.S.C. §4241); (2) insanity at the time of the offense (§4242); (3) the mental condition of an acquitted person hospitalized following a finding of not guilty only by reason of insanity (§4243); (4) the present mental condition of a convicted defendant (§4244); (5) the present mental condition of an imprisoned person who objects to transfer to a treatment facility (§4245); and (6) the present mental condition of a hospitalized person due for release (§4246).

In addition, mental condition examinations may be conducted for purposes other than those specified in chapter 313, e.g., to aid the defendant in preparing his defense.

B. Source of Payment. CJA funds are used to pay for psychiatric and related services obtained in accordance with subsection (e) of the CJA upon a determination that the services are "necessary for an adequate defense." These are "defense" services, where the defendant selects the expert and controls the disclosure of the expert's report. It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source other than the CJA appropriation. In these situations the court or the government selects the expert and persons other than the defendant also have access to the expert's report. The Department of Justice (DOJ) generally pays for these "non-defense" services. The chart on pages 8 and 9 of this chapter summarizes payment responsibility for the various circumstances in which psychiatric and related services are utilized.

- C. Limitation of Amount. The limitations of \$1,000 and \$300 contained in paragraph 3.02 of this chapter apply to compensation claims submitted by "defense" psychiatrists and related experts, to be paid out of the CJA appropriation. [See subparagraph (E) below, regarding "dual purpose" examinations.]
- D. Procedures for Payment.
- (1) CJA Appropriation. A CJA Form 21 (Authorization and Voucher for Expert and Other Services) should be submitted to the AO for all payments for "defense" services. In a death penalty case, CJA Form 31, "Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services" should be used. The CJA Form 21 or Form 31 should clearly describe the purpose of the expert's service. If separate vouchers are submitted for examination and testimony, they should be cross-referenced by voucher number.
 - (2) Department of Justice. Compensation claims for psychiatric and related services to be paid for by the DOJ should be referred to the U.S. Attorney or Assistant U.S. Attorney.
- E. Dual Purpose Examinations. On occasion, a psychiatrist or related expert will be asked to examine an individual for both a "defense" purpose and a "non-defense" purpose. In these cases the defense has waived the confidentiality of the "defense" portion of the examination. In such dual purpose examinations, for the convenience of the expert providing the service, the entire compensation claim may be submitted on a CJA Form 21, or, in a death penalty proceeding, CJA Form 31. The AO will pay the expert the total amount approved and obtain reimbursement to the CJA appropriation from the DOJ for one-half of the cost. As a result of the AO's need to seek reimbursement from the DOJ, the CJA Form 21s and Form 31s for dual purpose examinations must be accompanied by separate court orders which indicate:
- (1) who requested the examination;
 - (2) the specific purpose(s) of the examination;
 - (3) to whom the examination is directed; and
 - (4) to whom copies of the report are to be given.

The limitation in subparagraph (C) above, applies to 50% of the claim for a dual purpose examination in which a portion of the examination is for "defense" purposes.

There also may be "dual purpose" examinations wherein both portions of the examination are chargeable to the same payment source; e.g., evaluation of competency to stand trial under 18 U.S.C. §4241 and evaluation of sanity at the time of the offense under 18 U.S.C. §4242. In this example, since the DOJ would be responsible for both portions of the examination, the entire compensation claim should be submitted to the U.S. Attorney or Assistant U.S. Attorney.

SUMMARY CHART

RESPONSIBILITY FOR PAYMENT OF PSYCHIATRIC AND RELATED EXPERT SERVICES

Type of Service	CJA	DOJ
1. To determine mental competency to stand trial, under 18 U.S.C. §4241		
a. Examination Costs		Yes, regardless of which party requests, including examination on court's own motion
b. Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
c. Testimony costs for examiner if called at trial	If witness appears on behalf of defense	If witness appears on behalf of government
2. To determine existence of insanity at time of offense, under §4242		
a. Examination costs		Yes
b. Testimony costs for examiner if called at trial		Yes, regardless of which party calls
3. To determine existence of insanity at time of offense, under CJA subsection (e)		
a. Examination costs	Yes	
b. Testimony costs for examiner if called at trial	Yes	
4. To determine mental condition of hospitalized person found not guilty only by reason of insanity, under §4243		
a. Examination costs		Yes
b. Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
5. To determine mental condition of convicted person suffering from mental disease or defect, under §4244		

SOURCE OF PAYMENT

Type of Service	CJA	DOJ
5 a. Examination costs		Yes
b. Testimony costs for examiner if called at hearing		Yes, regardless of which party calls
<hr/>		
6. To determine mental condition of imprisoned person, under §4245		
a. Examination costs		Yes, including costs of additional examiner selected by imprisoned person in accordance with §4247(b)
b. Testimony costs for examiner if called at hearing		Yes, regardless of which party calls, including additional examiner selected by imprisoned person in accordance with § 4247(b)
<hr/>		
7. To determine mental condition of hospitalized person due for release, under § 4246		
a. Examination costs		Yes, including costs of additional examiner selected by hospitalized person in accordance with § 4247(b)
b. Testimony costs for examiner if called at hearing		Yes, regardless of which party calls, including additional examiner selected by hospitalized person in accordance with § 4247(b)
<hr/>		
8. Examination of a person in custody as a material witness		Yes, under all circumstances
<hr/>		
9. Examination and testimony costs for expert witnesses not appointed under §§ 4241, 4242, 4243, 4244, 4245, 4246	If requested by the defense	If requested by the government, or if appointed as an independent expert on court's own motion under Fed. R. Evid. 706

3.12 Transcripts.

A. Authorization and Payment.

- (1) For panel attorneys, the preferred method for payment of transcripts is for the court reporter or reporting service to claim compensation directly for transcripts authorized by the court on a CJA Form 24, "Authorization and Voucher for Payment of Transcript." However, if assigned counsel elects to pay for the court authorized transcript, the attorney may seek reimbursement as an "out-of-pocket expense," and should use the CJA Form 24 for this purpose. (See paragraph 2.27 of these Guidelines.) Regardless of which method is used, the limitations of \$1,000 and \$300 mentioned in paragraph 3.02 of this chapter and \$7,500 mentioned in paragraph 6.03 B are inapplicable with regard to the cost of transcripts. (For procedures regarding federal defender organization transcript payments, see paragraph 4.03 A of these Guidelines.)
- (2) In order to obtain necessary parts of transcripts, or, if required, the entire transcript, in a direct appeal in a case in which counsel is assigned pursuant to the Criminal Justice Act, neither the Act nor Section 753 (f) of title 28, United States Code, as amended by Public Law 91-545, requires the signing of a pauper's oath or certification by the Court that the appeal is not frivolous.

B. Apportionment of Costs. Routine apportionment of accelerated transcript costs among parties in CJA cases is prohibited. The following resolution was adopted by the Judicial Conference in March of 1980, and modified in September of 1986:

That the furnishing of accelerated transcript services in criminal proceedings should be discouraged; however, recognizing that there are some circumstances in which such transcript services are necessary and required by either the prosecution or the defense, or both, accelerated transcript services may be provided.

That in those cases where accelerated transcript services are provided, the party from whom the request or order emanates shall pay for the original, and if the requesting or ordering party is other than defense counsel appointed under the Criminal Justice Act, the CJA counsel shall be entitled to a copy at the copy rate.

That the present practice, in some districts, of routinely apportioning the total cost of accelerated transcript services equally among the parties should be abandoned.

C. Commercial Duplication in Multi-Defendant Cases.

- (1) In multi-defendant cases involving CJA defendants, no more than one transcript should be purchased from the court reporter on behalf of CJA defendants. One of the appointed counsel or the clerk of court should arrange for the duplication, at commercially competitive rates, of enough copies of the transcript for each of the CJA defendants for whom a transcript has been approved. The cost of such duplication will be charged to the CJA appropriation. This policy would not preclude the furnishing of duplication services by the court reporter at the commercially competitive rate.
- (2) In individual cases involving requests for accelerated transcripts, the court may grant an exception to the policy set forth in part (1) of this subparagraph based upon a finding that application of the policy will unreasonably impede the delivery of accelerated transcripts to persons proceeding under the CJA. Such finding should be reflected on the transcript voucher.

D. Standards for Transcripts of Other than Federal Court Proceedings. In negotiating agreements and contracts with regard to the provision of transcripts of other than federal court proceedings, including, for example, transcription or translation of wiretap recordings, it is recommended that the standards with respect to the size and format of a page should be the same as those used for transcripts of federal court proceedings, which are contained in the Court Reporters' Manual, Vol. VI, Guide to Judiciary Policies and Procedures, Chapter XVIII.

3.13 Fact Witnesses and Depositions

- A. Generally speaking, fees and expenses of fact witnesses for defendants proceeding under the CJA are paid by the Department of Justice. Fed. R. Crim. P., Rule 17(b); 28 U.S.C. § 1825. Section 1825 of Title 28, United States Code, specifically provides for the payment of witness fees by the Department of Justice in all federal criminal proceedings, and in proceedings for a writ of habeas corpus or in proceedings under section 2255 of that title upon certification of a federal public defender or assistant federal public defender, or clerk of court upon the affidavit of other counsel appointed under the Criminal Justice Act. If advance witness travel funds are required, the court should issue the subpoena order, so stating, to authorize the travel advance by the marshal. These expenses will not be paid from CJA funds.
- B. Depositions are now covered by the Federal Rules of Criminal Procedure, Rule 15, rather than 18 U.S.C. § 3503. Expenses incurred in the taking of fact witness depositions (notarial fees, interpreters, transcripts, etc.) are paid by the Department of Justice, regardless of which party requested the deposition. The costs of attendance of fact witnesses at the deposition are paid by the Department of Justice under Rule 17 (b); of expert witnesses for the defense, under the Criminal Justice Act. Expenses incident to attendance of counsel and the defendant at the deposition are paid by the Department of Justice if the Government is the requesting party; CJA if the depositions are at the instance of the defense. However, it should be noted that the presence of the defendant is not essential to defense depositions since the confrontation clause only requires the defendant's presence if the depositions are intended to be used against him.
- C. In habeas corpus and 28 U.S.C. § 2255 cases, the Court may order the state or the Government to pay the "expenses of travel and subsistence and fees of counsel" to attend the taking of a deposition at the request of the state or Government. Rules governing Sections 2254 and 2255 cases in U.S. District Courts, Rule 6.

3.14 Guardian Ad Litem.

- A. In Proceedings Involving Juveniles. A guardian ad litem appointed under 18 U.S.C. § 5034 is not eligible for compensation under the Criminal Justice Act or any other authority. Any person who is appointed as both counsel and guardian ad litem in one case under § 5034 should prorate time spent fulfilling the duties of these two offices. Only time spent as counsel on a case is compensable and should be reflected on the CJA claim.
- B. In Prisoner Transfer Proceedings. A guardian ad litem appointed in proceedings to verify consent of a minor or incompetent prisoner to transfer from the United States to a foreign country is eligible for compensation under the Criminal Justice Act pursuant to 18 U.S.C. § 4109(b). (See paragraph 2.22 B(2)(iv) regarding compensation limits and Regulations for the Appointment of Counsel Pursuant to a Prisoner Transfer Treaty, which appears at Section B of this Volume.)

3.15 Commercial Computer Assisted Legal Research Services. The court may 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 does not exceed the total amount of attorney compensation that would reasonably be approved if the appointed counsel had performed the research manually. Requests by counsel for authority 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 number of hours of attorney time that would be required to do the research manually.

Claims for compensation for such services should be submitted on CJA Form 21, "Authorization and Voucher for Expert and Other Services", or, in a death penalty proceeding, CJA Form 31, "Death Penalty Proceeding: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services". (See paragraph 2.31 concerning reimbursement for the cost of direct use, by appointed counsel, of computer assisted legal research equipment.)

- 3.16 Other Services and Computer Hardware and Software. In addition to investigators, psychiatrists, psychologists, and reporters, services other than counsel may include but not necessarily be limited to, interpreters, computer systems and automation litigation support personnel and experts, neurologists, and laboratory experts in the area of ballistics, fingerprinting, handwriting, etc.

The Administrative Office is authorized to pay out of Criminal Justice Act funds expenses of eligible defendants for stenographic and notarial expenses required to perpetuate and authenticate testimony of expert witnesses for such defendants.

Criminal Justice Act attorneys are expected to use their own office resources, including secretarial help, for work on CJA cases. (See paragraph 2.28 A.) However, unusual or extraordinary expenses of these types may be considered “other services necessary for an adequate defense” and may be paid from CJA funds under subsection (e) of the Act. In determining whether the expense is unusual or extraordinary, consideration should be given to whether the circumstances from which the need arose would normally result in an additional charge to a fee paying client over and above that charged for overhead expenses. (See Decision of the Comptroller General, B-139703, dated February 28, 1974, 53 Comp. Gen. 638.)

Providing an adequate defense case may require CJA panel attorneys to utilize computer hardware or software not typically available in a law office. In such cases, following the standards in the preceding paragraph, counsel may apply to the court for authorization of CJA funds for the acquisition of such property. Before seeking court approval for any computer hardware or software with a cost exceeding \$300, or for the utilization of computer systems or automation litigation support personnel or experts with an expected combined cost exceeding \$10,000, appointed counsel must consult the Defender Services Division for guidance and inform the court in writing of the Division’s advice and recommendation regarding counsel’s proposed expenditure. (A model order “Authorizing the Acquisition of Computer [Hardware and/or Software] under the Criminal Justice Act” is included in Appendix C.) The acquisition of the computer hardware and/or software, with CJA funds, shall be made by a federal defender organization designated by the Defender Services Division, or by the Division itself and shall remain the property of the United States. While computer hardware or software is being used by counsel, information contained on the hardware or software may be confidential work product and may also be protected by attorney-client privilege. Upon the completion of the case, the computer hardware and software must be returned in good condition, after all case-related materials have been removed, to a federal defender organization designated by the Division. Unless otherwise required by the court or law, counsel should retain copies, electronic or otherwise, of the case-related materials for the client’s file.

- 3.17 Reimbursement of Expenses. In determining the reasonableness of expenses of persons furnishing investigative, expert or other services, claimants and the court should be guided by the provisions of these Guidelines regarding reimbursement of expenses of counsel (see paragraphs 2.27 and 2.28). Gross receipts or other taxes levied on fees for expert services rendered pursuant to the CJA are not reimbursable expenses.

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, investigators and other service providers must contact the clerk of court and obtain prior approval from the presiding judicial officer.

CHAPTER IV. DEFENDER ORGANIZATIONS

CONTENTS

	<u>PAGE</u>
4.01 Statutory Authority	1
4.02 Types of Defender Organizations	2
4.03 Transcripts, Investigative, Expert and Other Services	5
4.04 Assignment of Cases	6
4.05 Apportionment of Cases Between Defender Organizations and the Panel	6
4.06 Participation as <i>Amicus Curiae</i>	7

CHAPTER IV. DEFENDER ORGANIZATIONS

- 4.01 A. Statutory Authority. Subsection (g) of the Criminal Justice Act, as amended, is intended to provide an option for the establishment of a public defender organization or community defender organization. A district, or part of a district in which at least two hundred persons annually require the appointment of counsel, may establish a defender organization. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility. If an eligible court desires to provide for representation by a public defender organization or a community defender organization as provided under subsection (g), the court will be guided by the provisions of subsection (a) of the Criminal Justice Act which provides that each district court shall place in operation its own plan for furnishing representation under the terms of the Act, after the approval of the plan by the judicial council of the circuit and pursuant to rules and regulations established by the Judicial Conference of the United States. It is intended that all provisions of the Act shall be administered efficiently and economically. Subsection (g) is intended to provide an option in the plan for the establishment of a public defender organization or community defender organization. Only one such organization should be approved for any district or part of a district in the absence of a clearly demonstrated showing of the need and feasibility of more than one such organization. It is the sense of the Conference that competitive organizations in the area should be avoided. The statute clearly provides that there shall be only one public defender for any district.
- B. Judicial Conference Policy. The Judicial Conference has recommended that the Criminal Justice Act be amended to: 1) eliminate the requirement that a district receive at least 200 CJA appointments annually in order to qualify for the establishment of a Federal Public Defender Organization or a Community Defender Organization; and, 2) require that a Federal Public Defender Organization or Community Defender Organization be established in all judicial districts, or combination of districts, where such an organization would be cost effective, where more than a specified number of appointments is made each year, or where the interests of effective representation otherwise require establishment of such an office.

4.02 Types of Defender Organizations

A. Federal Public Defender Organizations.

- (1) In General. The organization shall consist of one or more full-time salaried attorneys. The Federal Public Defender shall be appointed by the Court of Appeals for a term of four years unless sooner removed. Upon the expiration of the term a Federal Public Defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of the office until a successor is appointed, or until one year after the expiration of such Defender's term, whichever is earlier.
- (2) Appointment of Federal Public Defender Organization Staff. The Federal Public Defender may appoint full-time attorneys in such number as may be approved by the court of appeals of the circuit and other personnel as approved by the Director of the Administrative Office of the United States Courts. The Federal Public Defender and his staff shall be subject to the provisions of sections 2104 and 2105 of title 5, United States Code.
- (3) Compensation of Federal Public Defender and Staff. The court of appeals of the circuit shall fix the compensation of the Federal Public Defender at a rate not to exceed the compensation received by the United States Attorney for the same district. In determining the rate of compensation of the Federal Public Defender, the court of appeals will take into account the size of the office, the number of employees required and the responsibilities of the public defender and his staff as compared with the same requirements and responsibilities of the United States Attorney and his staff.

The Federal Public Defender shall fix the compensation of assistant defenders and other personnel, at a rate not to exceed that paid to attorneys and other personnel of similar qualifications, experience, and responsibilities in the office of U.S. Attorney for the same district.

- (4) Appointment of a Committee to Assess the Qualifications of Candidates for the Position of Federal Public Defender and of the Federal Public Defender for Reappointment. In view of the intent of Congress to insulate the Federal Public Defender from the involvement of the district court before which the Defender principally practices, the recruitment and screening of candidates for the office of Federal Public Defender and the evaluation of Federal Public Defender performance prior to reappointment should be a function of the court of appeals rather than the district court. In carrying out this responsibility, the chief judge of the circuit should appoint a committee to assess the performance and potential for future performance of the Federal Public Defender candidates or incumbent Federal Public Defender. The committee should consist of persons knowledgeable in federal criminal defense issues, but should not include probation, pretrial services, enforcement or prosecutorial personnel.
- (5) Appointment of the Federal Public Defender. In recruiting and selecting candidates for the office of Federal Public Defender, the committee should seek attorneys with the following qualifications: (1) a member in good standing in the bar of the state in which he or she is admitted to practice; (2) a minimum of five years criminal practice experience, preferably with significant federal criminal trial experience, which demonstrates an ability to provide zealous representation of consistently high quality to criminal defendants; (3) the ability to effectively administer the office; (4) a reputation for integrity; and (5) a commitment to the representation of those unable to afford counsel. The committee should solicit the views of those in a position to evaluate the performance of the candidates, including, but not limited to judges and magistrate judges of courts in which the candidate has practiced.

A national vacancy notification effort consistent with equal employment opportunity standards should be undertaken in connection with the recruitment of candidates for vacant Federal Public Defender positions. The Defender Services Division of the Administrative Office of the United States Courts should be contacted for advice and financial support in this regard. The committee should screen applications and submit the names of 3 to 5 candidates ranked in order of preference to the district court for comment and recommendation. Pursuant to the provision of the Criminal Justice Act requiring the court of appeals to consider the recommendation of the district court or courts to be served, the recommendations of the

district court shall be included in the committee's report to the court of appeals, along with the committee's response to the district court's comments and recommendations, where appropriate.

When a candidate is selected, the Defender Services Division of the Administrative Office of the United States Courts should be notified promptly of the nominee so that it may initiate any background investigation requested by the court of appeals.

- (6) Reappointment of the Federal Public Defender. The committee should assess the quality of representation, level of commitment and service to clients, and administrative efficiency of the Federal Defender Office prior to deciding whether the reappointment of an incumbent Federal Public Defender is warranted. In this process, it should solicit the views of those in a position to evaluate the performance of the Federal Public Defender as well as the quality of the services provided by the Federal Public Defender Organization, including, but not limited to, judges and magistrate judges of courts served by the organization.

The Defender should be given an opportunity to respond to adverse comments, including adverse comments which would not influence the decision to reappoint, so that the Defender may benefit from constructive criticism. The committee shall not disclose the identity of any person who requests confidentiality, but shall provide the Defender with a general description of the source and nature of the comments.

The committee's report and assessment, including any recommendations from the district court to be served, should be considered by the court of appeals in determining whether to appoint or reappoint a particular individual as the Federal Public Defender.

- B. Community Defender Organizations. The Community Defender Organization shall be an organization, one of the stated purposes of which is to implement the aims and purposes of the Criminal Justice Act. Its bylaws must demonstrate that it is an organization with a professional and fiscal responsibility capable of providing adequate representation pursuant to the Act. The bylaws shall be an inherent part of the plan for the district authorizing a Community Defender Organization. It may operate either on the fee system or by way of grants to be approved by the Judicial Conference.

If a Community Defender Organization which has been approved under the plan for the district court, applies for any grant, it shall do so on a form prepared by the Director of the Administrative Office for the use of the Judicial Conference in considering applications for such grants. The receipt and use of grant funds shall be subject to the conditions set forth in Appendix D. Community Defender Organizations shall agree to and accept these conditions of grant prior to payments being made thereunder.

4.03 Transcripts, Investigative, Expert and Other Services.

A. Procedures for Payment of Transcripts.

- (1) General Authorization. All defender organizations have general authorization to procure transcripts, provided that total expenditures for transcripts (and other services) shall not exceed the budget or grant authorization for the other services budget category.

The limitations set forth in paragraph 3.02 above are inapplicable with regard to the cost of transcripts and do not apply to Federal Public or Community Defender Organizations.

The general authorization provided above includes supplemental funds approved for the other services object classification or funds transferred to that object classification from other classifications.

- (2) Funding Considerations. Once the Federal Public or Community Defender has obligated all funds in the other services object classification, it will be necessary to transfer funds from other object classifications or to seek supplemental funds to cover additional expenditures.

B. Procedures for Payment of Investigative, Expert and Other Services.

- (1) General Authorization. All defender organizations have general authorization to procure investigative, expert and other services as contemplated under subsection (e) of the Criminal Justice Act, as amended, provided that total expenditures for investigative, expert and other services shall not exceed the budget or grant authorization for these specific categories (object classifications).

The limitations set forth in paragraph 3.02 above, do not apply to Federal Public or Community Defender Organizations.

The general authorization provided above includes supplemental funds approved for the expert services object classification or funds transferred to that object classification from other classifications.

- (2) Funding Considerations. Once the Federal Public or Community Defender has obligated all funds in the expert services object classification, it will be necessary to transfer funds from other object classifications or to seek supplemental funds to cover additional expenditures.

4.04 Assignment of Cases. To ensure the effective supervision and management of the organization, Federal Public Defenders and Community Defenders should be responsible for the assignment of cases within their own offices. Accordingly, appointments by the judge or magistrate judge should be made in the name of the Organization (i.e., the Federal Public Defender or Community Defender), rather than in the name of an individual staff attorney within the Organization.

4.05 Apportionment of Cases Between Defender Organizations and the Panel. Recognizing that federal defender organizations consistently furnish high-quality representation to CJA defendants and provide a cost-effective alternative to representation by CJA panel attorneys, the Judicial Conference has recommended that courts take steps to increase the number of cases assigned to federal defender organizations.

In districts currently served by a defender organization these steps should include:

- (1) approval of additional assistant federal defender staff in appropriate circumstances; and
- (2) review and adjustment of district appointment procedures.

- 4.06 Participation as *Amicus Curiae*. Pursuant to governing court rules, Federal Public Defenders and Community Defenders may participate as *amicus curiae* in federal court at the invitation of the court, in death penalty habeas corpus cases, or on behalf of a client as an ancillary matter appropriate to the proceedings.

Chapter V. MISCELLANEOUS PROCEDURES

CONTENTS

	<u>PAGE</u>
_____ 5.01 Procedures for the Release of Information Pertaining to Activities Under the Criminal Justice Act and Related Statutes	1
5.02 Annual Report of Attorneys Claiming Compensation for More Than One Thousand Hours	4

CHAPTER V. MISCELLANEOUS PROCEDURES

5.01 Procedures for the Release of Information Pertaining to Activities Under the Criminal Justice Act and Related Statutes

_____A. General Principles.

Neither the Freedom of Information Act (5 U.S.C. § 552) nor the Privacy Act (5 U.S.C. § 552a) applies to the Judiciary and neither is applicable to requests for release to the public of records and information pertaining to activities under the Criminal Justice Act (CJA) and related statutes.

Generally, such information which is not otherwise routinely available to the public should be made available unless it is judicially placed under seal, or could reasonably be expected to unduly intrude upon the privacy of attorneys or defendants; compromise defense strategies, investigative procedures, attorney work product, the attorney-client relationship or privileged information provided by the defendant or other sources; or otherwise adversely affect the defendant's right to the effective assistance of counsel, a fair trial, or an impartial adjudication. (See 5 U.S.C. § 552(b).)

Upon request, or upon the court's own motion, documents pertaining to activities under the CJA and related statutes maintained in the clerk's open files, which are generally available to the public, may be judicially placed under seal or otherwise safeguarded until after all judicial proceedings, including appeals, in the case are completed and for such time thereafter as the court deems appropriate. Interested parties should be notified of any modification of such order.

Requests for release of information pertaining to activities under the CJA and related statutes in the custody of the Administrative Office will be disposed of in accordance with internal directives of that office.

B. Payment Information

For All Payments in Cases Commenced Before April 24, 1996:

The general principles regarding the release of information stated in subparagraph 5.01 A govern.

For Payments to Providers of Services other than Counsel in Cases Commenced on or after April 24, 1996, and for Payments to Attorneys in Cases Commenced on or after April 24, 1996 but before January 25, 1998:

The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, amended the CJA, 18 U.S.C. § 3006A, and the Anti-Drug Abuse Act of 1988 (ADAA), codified in part at 21 U.S.C. § 848(q), expressly to provide for disclosure to the public of the amounts paid for representation with respect to cases commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996. With respect to non-capital cases, the CJA, as amended, 18 U.S.C. § 3006A(d)(4) and (e)(4), provides that the amounts paid under those subsections in any case “shall be made available to the public.” With respect to capital cases, the ADAA, as amended, 21 U.S.C. § 848(q)(10)(C), provides that the amounts paid under that paragraph in any case “shall be disclosed to the public, after the disposition of the petition.” The timing of disclosure should be consistent with the principles stated in subparagraph 5.01 A. But see below regarding further legislation and requirements for payments to attorneys only in cases commenced on or after January 25, 1998.

For Payments to Attorneys Only in Cases Commenced on or after January 25, 1998:

The Fiscal Year 1998 Judiciary Appropriations Act, Pub. L. No. 105-119, 111 Stat. 2440, amended paragraph (d)(4) of the CJA, 18 U.S.C. § 3006A, to mandate disclosure of amounts paid to court appointed attorneys upon the court’s approval of the payment. The Fiscal Year 2000 Judiciary Appropriations Act, Pub. L. No. 106-113, 113 Stat. 1501, further amended paragraph (d)(4) to provide that, in death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason justifying limited disclosure. (Although amended paragraph (d)(4) expired on January 24, 2000, the guideline below continues to apply as a matter of Judicial Conference policy.) Prior to approving such payments, courts are required to provide reasonable notice of disclosure to counsel in order to allow the counsel to request the redaction of specific information based on the considerations set forth in subparagraph (d)(4)(D) of the CJA (and listed below in subparagraph 5.01B(2)(a)). To comply with this notice requirement, it is recommended that, contemporaneously with the issuance to counsel of the CJA 20 or CJA 30 form, courts give appointed counsel a copy of the form created and distributed by the Administrative Office (“Notice to Court Appointed Counsel of Public Disclosure of Attorney Fee Information”).

To satisfy the requirements of this law, courts may release copies of the payment vouchers (the top sheets of completed forms CJA 20 or CJA 30), redacted or unredacted, depending on the stage of the particular case and the statutory considerations involved.

Documentation submitted in support of, or attached to payment claims, is not covered by the law and need not be disclosed at any time.

Attorney payment information should be made available as follows:

(1) FOR ATTORNEY PAYMENTS APPROVED BEFORE OR DURING THE TRIAL: After redacting any detailed information provided to justify the expenses, the court shall make available to the public a copy of the voucher showing only the amounts approved for payment. Upon the completion of trial, an unredacted copy of the voucher may be released, depending on whether an appeal is being pursued and whether the court determines that one or more of the interests listed in subparagraph 5.01 B(2)(a) require the redaction of information.

(2) FOR ATTORNEY PAYMENTS APPROVED AFTER THE TRIAL IS COMPLETED: The court shall make available to the public either a redacted or an unredacted copy of the voucher as follows:

(a) *If trial court proceedings have been completed and appellate review is not being pursued or has concluded at the time payment is approved:* The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed below justify limiting disclosure to the amounts approved for payment in the manner described in subparagraph 5.01 B(1). The interests that may require limiting disclosure include:

- i. the protection of any person's 5th Amendment right against self-incrimination;
- ii. the protection of the defendant's 6th Amendment right to effective assistance of counsel;
- iii. the defendant's attorney-client privilege;
- iv. the work product privilege of the defendant's counsel;
- v. the safety of any person; and
- vi. any other interest that justice may require (with the exception that for death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason justifying any limited disclosure).

(b) *If appellate review is being pursued at the time payment is approved:* The court shall make available to the public only the amounts approved for payment in the manner described in subparagraph 5.01 B(1) unless it finds

that none of the interests listed above in subparagraph 5.01 B(2)(a) will be compromised.

(3) FOR ATTORNEY PAYMENTS APPROVED AFTER THE APPEAL IS COMPLETED: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed in subparagraph 5.01 B(2)(a) justify limiting disclosure to the amounts approved for payment in the manner described in subparagraph 5.01 B(1).

5.02 Annual Report of Attorneys Claiming Compensation for More Than One Thousand Hours. Not later than three months after the end of each fiscal year, the Administrative Office shall prepare reports listing all attorneys who have claimed compensation of more than one thousand hours of services in the preceding fiscal year. The chief judge of each court of appeals and each district court shall receive a copy of the report regarding attorneys within that district or circuit.

**Chapter VI. REPRESENTATION IN FEDERAL DEATH PENALTY CASES AND IN
FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS**

CONTENTS

	<u>PAGE</u>
<u>6.01</u> Appointment of Counsel in Capital Cases	1
6.02 Compensation of Appointed Counsel in Capital Cases	5
6.03 Authorization and Payment for Investigative, Expert and Other Services in Capital Cases	8

CHAPTER VI. REPRESENTATION IN FEDERAL DEATH PENALTY CASES AND IN FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, amended 21 U.S.C. § 848(q), in a manner that creates a two-tiered structure for the compensation of counsel and the approval and payment of persons providing investigative, expert, and other services in capital cases. The pertinent provisions of the AEDPA are applicable to capital cases commenced, and appellate proceedings in which an appeal is perfected, on or after the date of enactment of the AEDPA (April 24, 1996). Thus, this chapter retains guidelines applicable to cases that pre-date the AEDPA, and adds, where appropriate, new guidelines for cases subject to the AEDPA. Unless otherwise specified, provisions in this chapter apply to all capital cases.

NOTE REGARDING FEDERAL DEATH PENALTY CASES: Detailed recommendations concerning the appointment and compensation of counsel in federal death penalty cases were adopted by the Judicial Conference on September 15, 1998. Those recommendations, and accompanying commentary by the Defender Services Committee's Subcommittee on Federal Death Penalty Cases, are set forth in Appendix I to this volume. The complete report, entitled *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*, is available on the judiciary's web site (www.uscourts.gov) or from the Defender Services Division of the AOUSC, 202-502-3030.

6.01 Appointment of Counsel in Capital Cases.

A. Number of Counsel.

- (1) Federal Death Penalty Cases. As required by 18 U.S.C. § 3005, at the outset of every capital case, courts should appoint two counsel, at least one of whom is experienced in and knowledgeable about the defense of death penalty cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case. While courts should not appoint more than two lawyers unless exceptional circumstances and good cause are shown, appointed counsel may, with prior court authorization, use the services of attorneys who work in association with them, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits.
- (2) Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the

complex, demanding and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

The judicial officer may appoint an attorney, if qualified under paragraph 6.01 C, who is furnished by a state or local public defender organization or by a legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed *pro hac vice* in accordance with paragraph 2.01 D of the *CJA Guidelines*. Such appointments should be made when the court determines that they will provide the most effective representation. In making this determination, the court should take into consideration whether the attorney represented the person during prior state court proceedings.

B. Procedures for Appointment in Federal Death Penalty Cases.

-(1) In appointing counsel in federal death penalty cases, the court shall consider the recommendation of the federal public defender, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. In fulfilling this responsibility, the federal public defender organization or Administrative Office should consult with counsel (if counsel has already been appointed or retained) and the court regarding the facts and circumstances of the case to determine the qualifications which may be required to provide effective representation. In evaluating the qualifications of counsel considered for appointment, the federal public defender organization or Administrative Office should consider:
- (a) the minimum experience standards set forth in 21 U.S.C. § 848(q), 18 U.S.C. § 3005, and other applicable laws or rules;
 - (b) the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases;
 - (c) the recommendations of other federal public and community defender organizations, and local and national criminal defense organizations;

(d) the proposed counsel's commitment to the defense of capital cases; and

(e) the availability and willingness of proposed counsel to accept the appointment and to represent effectively the interests of the client.

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Courts should ensure that all attorneys appointed in federal death penalty cases are well qualified, by virtue of their prior defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation. Ordinarily, "learned counsel" (see 18 U.S.C. § 3005) should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in *state* death penalty trials, appeals or post-conviction review that, in combination with co-counsel, will assure high-quality representation.

(2) Federal Death Penalty Cases: Special Considerations in the Appointment of Counsel on Appeal. Ordinarily, the attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. In appointing counsel the court should, among other relevant factors, consider:

(a) the attorney's experience in federal criminal appeals and capital appeals;

(b) the general qualifications identified in paragraph 6.01 B(1); and

(c) the attorney's willingness, unless relieved, to serve as counsel in any post-conviction proceedings that may follow the appeal.

(3) Federal Death Penalty Cases: Special Considerations in the Appointment of Counsel in Post-Conviction Proceedings. In appointing post-conviction counsel in a case where the defendant is sentenced to death, courts should consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings, as well as the general qualifications identified in paragraphs 6.01 B(1) and 6.01 C(2).

C. Statutory Attorney Qualification Requirements.

(1) Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. § 848(q)(5), at least one of the attorneys appointed must

have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

- (2) Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.
- (3) Attorney Qualification Waiver. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Continuity of Representation.

- (1) In the interest of justice and judicial and fiscal economy, unless precluded by a conflict of interest, presiding judicial officers are urged to continue the appointment of state post-conviction counsel, if qualified under paragraph 6.01 C, when the case enters the federal system.
- (2) Section 848(q)(8) of title 21, U.S.C., provides that, unless replaced by an attorney similarly qualified under paragraph 6.01 C pursuant to counsel's own motion or upon motion of the defendant, counsel shall represent the defendant in every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motion for a new trial, appeal, application for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.

6.02 Compensation of Appointed Counsel in Capital Cases.

A. Inapplicability of CJA Hourly Rates and Compensation Maximums.

- (1) Hourly Rates. Pursuant to 21 U.S.C. § 848(q)(10)(A), **with respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996,** the presiding judicial officer shall set the hourly compensation rate for appointed counsel in an amount not to exceed \$125 per hour for in-court and out-of-court time (unless raised by the Judicial Conference in accordance with section 848(q)(10)(A)).

**For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996,** in accordance with 21 U.S.C. § 848(q)(10) prior to that provision's amendment by the Antiterrorism Act, an attorney appointed to represent a defendant charged with a federal capital crime or seeking to vacate or set aside a death sentence in a proceeding under section 2254 or 2255 of title 28, U.S.C., shall be compensated at a rate and in an amount determined exclusively by the presiding judicial officer to be reasonably necessary to obtain qualified counsel to represent the defendant, without regard to CJA hourly rates or compensation maximums.

- (2) Inapplicability of Compensation Maximums. There is neither a statutory case compensation maximum for appointed counsel nor provision for review and approval by the chief judge of the circuit of the case compensation amount in capital cases.

B. Attorney Compensation Recommendation.

- (1) In the interest of justice and judicial and fiscal economy, and in furtherance of relevant statutory provisions regarding qualifications of counsel in capital cases (see paragraph 6.01 C), presiding judicial officers are urged to compensate counsel at a rate and in an amount sufficient to cover appointed counsel's general office overhead and to ensure adequate compensation for representation provided.

In consideration of the potential for wide disparity in compensation paid to attorneys in federal death penalty cases and in federal capital habeas corpus proceedings, and for overburdening the Defender Services appropriation, it is recommended that presiding judicial officers limit the hourly rate for attorney compensation to between \$75 and \$125 per hour for in-court and out-of-court time. **With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996,** the rate

of compensation shall not exceed \$125 per hour for in-court and out-of-court time (unless revised by the Judicial Conference in accordance with 21 U.S.C. § 848(q)(10)(A)).

- (2) If, following the appointment of counsel in a case in which a defendant was charged with an offense that may be punishable by death, it is determined that the death penalty will not be sought, the court may consider the question of the number of counsel needed and the rate of compensation needed for the duration of the proceeding. After considering whether the number of counsel initially appointed is necessary to ensure effective representation or to avoid disruption of the proceeding, the court may continue such appointments or make an appropriate reduction. After considering the need to compensate appointed counsel fairly, taking into account the commitment of time and resources appointed counsel has made and will continue to make, the court may continue to pay the rate previously approved or prospectively reduce such rate.
- C. Interim Payments to Counsel. It is urged that the court permit interim payment of compensation in capital cases. (See generally paragraph 2.30 B concerning interim payments to counsel in death penalty cases.)
  - D. Forms. Claims for compensation and reimbursement of expenses for attorneys furnishing services in death penalty proceedings should be submitted on CJA Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel."
  - E. Review of Vouchers. Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.
  - F. Case Budgeting in Federal Capital Habeas Corpus Proceedings and Federal Death Penalty Cases. Courts are encouraged to require appointed counsel to submit a proposed initial litigation budget for court approval that will be subject to modification in light of facts and developments that emerge as the case proceeds. Case budgets should be submitted *ex parte* and filed and maintained under seal.
    - (1) The budget should serve purposes comparable to those of private retainer agreements by confirming both the court's and the attorney's expectations regarding fees and expenses.
    - (2) Consideration should be given to employing an *ex parte* pretrial conference in order to facilitate reaching agreement on a litigation budget at the earliest opportunity.

(3) The budget should be incorporated into a sealed initial pretrial order that reflects the understandings of the court and counsel regarding all matters affecting counsel compensation and reimbursement and payments for investigative, expert and other services, including but not limited to the following matters:

(a) The hourly rate at which counsel will be compensated (see paragraphs 6.02 A and B);

(b) In capital habeas corpus cases: the best preliminary estimate that can be made of the cost of all services (counsel, expert, investigative, and other) for the entire case (in its discretion, the court may determine that defense counsel should prepare budgets for shorter intervals of time);

(c) In federal death penalty cases:

.....  
..... i. Prior to prosecution decision to seek death penalty authorization: the best preliminary estimate that can be made of the cost of all services (counsel, expert, investigative, and other) likely to be needed through the time that the Department of Justice determines whether to authorize the death penalty;

..... ii. After prosecution decision to seek death penalty authorization: the best preliminary estimate that can be made of the cost of all services (counsel, expert, investigative, and other) likely to be needed through the guilt and penalty phases of the trial (in its discretion, the court may determine that defense counsel should prepare budgets for shorter intervals of time);

iii. Death penalty not sought: as soon as practicable after a decision not to seek the death penalty, the number of appointed counsel and hourly rate of compensation should be reviewed in accordance with subparagraph 6.02 B(2);

..... (d) Agreement that counsel will advise the court of significant changes (counsel, expert, investigative, and other) to the estimates contained in the order;

.....(e) Agreement on a date on which a subsequent *ex parte* case budget pretrial conference will be held;

(f) Procedure and schedules for submission, review, and payment of interim compensation vouchers (see paragraphs 6.02 C and E);

(g) The form in which claims for compensation and reimbursement should be submitted (see paragraph 6.02 D) and the matters that those submissions should address; and

(h) The authorization and payment for investigative, expert, and other services (see paragraph 6.03).

.....(4) An approved budget should guide counsel's use of time and resources by indicating the services for which compensation is authorized. Case budgets should be re-evaluated when justified by changed or unexpected circumstances, and should be modified by the court where good cause is shown.

G. Case Management in Federal Capital Habeas Corpus Proceedings. Judges are encouraged to employ the case-management techniques used in complex civil litigation to control costs in federal capital habeas corpus cases.

6.03 Authorization and Payment for Investigative, Expert and Other Services in Capital Cases.

A. In General. **With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996,** upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court should authorize the defendant's attorneys to obtain such services. No *ex parte* request for

investigative, expert, or other services in such cases may be considered unless, a proper showing is made by counsel concerning the need for confidentiality.

**For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996,** in accordance with 21 U.S.C. § 848(q)(9) prior to that provision's amendment by the AEDPA, upon a finding in *ex parte* proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the presiding judicial officer shall authorize the defendant's counsel to obtain such services on behalf of the defendant.

For all capital cases, upon a finding that timely procurement of necessary investigative, expert or other services could not await prior authorization, the presiding judicial officer may authorize such services *nunc pro tunc* consistent with paragraph 3.02 B.

Except as otherwise specified in paragraph 6.03, the provisions set forth in Chapter III are applicable to the authorization and payment for investigative, expert, and other services in capital cases.

- B. AEDPA Limitation: Inapplicability to Pre-AEDPA Cases. For all capital cases, the compensation maximum set forth in paragraph 3.02 A of these guidelines is inapplicable.

**With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996,** pursuant to 21 U.S.C. § 848(q)(10)(B), the fees and expenses for investigative, expert, and other services are limited to \$7,500 in any case unless payment in excess of that amount is certified by the court, or magistrate judge if the services were rendered in connection with a case disposed of entirely before such magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit (or an active circuit judge to whom the chief judge has delegated this authority). The \$7,500 limit applies to the total payments for investigative, expert, and other services in a case, not to each service individually.

Once payments for investigative, expert, and other services total \$7,500, then additional payments must be approved by the chief judge of the circuit (or an active circuit judge to whom the chief judge has delegated this authority). Accordingly, the court shall monitor all payments for investigative, expert, and other services.

If it can be anticipated that the payments for investigative, expert, and other services will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or an active circuit judge to whom the chief judge has delegated this authority). See sample form, Appendix C. Rather than submitting multiple requests, where possible, courts should submit the expert, investigative and other services portion of the approved case budget (see paragraph 6.02 F) to the chief judge of the circuit (or his or her designee) for advance approval.

**For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996,** in accordance with 21 U.S.C. § 848(q)(10) prior to that provision's amendment by the AEDPA, the presiding judicial officer shall set compensation for investigative, expert, and other services in an amount reasonably necessary to obtain such services, without regard to CJA or AEDPA maximum limitations.

- C. Consulting Services in Federal Capital Habeas Corpus Cases and in Federal Death Penalty Cases. Where necessary for adequate representation, subsection (e) of the CJA and 21 U.S.C. § 848(q)(9) authorize the reasonable employment and compensation of expert attorney consultants to provide “light consultation” services to appointed and *pro bono* lawyers in federal capital habeas corpus cases and in federal death penalty cases in such areas as records completion, determination of need to exhaust state remedies, identification of issues, review of draft pleadings and briefs, authorization process to seek the death penalty, etc. “Light consultation” services are those that a lawyer in private practice would typically seek from another lawyer who specializes in a particular field of law, as opposed to “heavy consultation” services, which include, but are not limited to, reviewing records, researching case-specific legal issues, drafting pleadings, investigating claims, and providing detailed case-specific advice to counsel, if such tasks take a substantial amount of time.

An expert attorney consultant shall not be paid an hourly rate exceeding that which an appointed counsel could be authorized to be paid.

Courts may wish to require that an appointed counsel who seeks to have the court authorize the services of an expert attorney consultant confer with the federal defender, or the Administrative Office’s Defender Services Division if there is no federal defender in the district or if the federal defender has a conflict of interest, regarding who could serve as an expert attorney consultant.

- D. Interim Payments to Persons Providing Investigative, Expert and Other Services. It is urged that the court or magistrate judge permit interim payment of compensation in capital cases.

**With respect to federal death penalty cases and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996,** 21 U.S.C. § 848(q)(10)(B), as amended, provides a \$7,500 payment maximum for the total cost of fees and expenses for investigative, expert, and other services. A special set of procedures for effecting interim payments, including a special memorandum order, must be used in these cases. These procedures and a sample memorandum order are set forth in Appendix F, beginning on page F-11. (See also the case budgeting techniques recommended in paragraph 6.02 F.) Other interim payment arrangements which effectuate a balance between the interest in relieving service providers of financial hardships 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 payment may be devised in consultation with the Defender Services Division of the Administrative Office of the United States Courts.

**For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996,** there are no expert services maximums. A separate set of procedures for effecting interim payments, including a separate memorandum order, must be used in those cases. These procedures and sample memorandum order are set forth in Appendix F, beginning on page F-7.

- E. Forms. Claims for compensation and reimbursement of expenses for investigative, expert or other services in death penalty proceedings should be submitted on CJA Form 31, "Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services."
- F. Review of Vouchers. Absent extraordinary circumstances, judges should act upon claims for compensation for investigative, expert, or other services within 30 days of submission.

## APPENDIX A

### CRIMINAL JUSTICE ACT FORMS

1. List of Criminal Justice Act Forms:

**CJA Form 7** - Order Terminating Appointment of Counsel and/or Authorization for Distribution of Available Private Funds (Revised 2/84)

**CJA Form 19** - Notice to Court-Appointed Counsel of Public Disclosure of Attorney Fee Information (Revised 4/01)

**CJA Form 20** - Appointment of and Authority to Pay Court Appointed Counsel (Revised 5/99)

**CJA Form 21** - Authorization and Voucher for Expert and Other Services (Revised 5/99)

**CJA Form 22** - Statement of Parolee or Mandatory Releasee Concerning Appointment of Counsel Under the Criminal Justice Act (9/76)

**CJA Form 23** - Financial Affidavit (Revised 5/98)

NOTE: This form may be used in determining eligibility for the appointment of counsel or authorization of other services. Whether or not this affidavit shall be required, as opposed to using alternative means of determining the financial status of the "person represented," such as through oral swearing, will be at the court's discretion. Where a judge or the court requires a written affidavit for local court files, no copy should be submitted to the Administrative Office.

**CJA Form 24** - Authorization and Voucher for Payment of Transcript (Revised 5/99)

**CJA Form 25** - Notice to CJA Panel Attorneys Regarding Availability of Investigative, Expert and Other Services (Revised 6/94)

**CJA Forms 26 and 27** - Supplemental Information Statement for a Compensation Claim in Excess of the Statutory Case Compensation Maximum (for use in district court and court of appeals, respectively) (Revised 10/00)

NOTE: These forms, which are designed only for non-capital cases, may be used at the discretion of the courts. They do not replace any other documentation requirements to support the payment request.

**CJA Forms 26A and 27A** - Guidance to Attorneys in Drafting the Memorandum Required for a Compensation Claim in Excess of the Case Compensation Maximum (for use in district court and court of appeals, respectively) (Revised 4/00)

NOTE: These forms, which are designed only for non-capital cases, may be used at the discretion of the courts and are offered as possible alternatives to Forms 26 and 27. They do not replace any other documentation requirements to support the payment request.

**CJA Form 30** - Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel (Revised 5/99)

**CJA Form 31** - Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services (Revised 5/99)

2. **Samples**: Sample copies of CJA Forms 7, 19, 20, 21, 22, 23, 24, 25, 26, 27, 26A, 27A, 30, and 31, along with explanatory notes and comments, are included in this appendix.
3. **Obtaining Forms**: WordPerfect versions of Forms 7, 20, 21, 22, 23, 24, 25, 26, 26A, 27, 27A, 30, and 31 are available on the J-Net (Forms/AO National Forms/CJA). <http://156.119.80.10/library/aofoms/contents.html>
4. **Questions/Suggestions**: Questions concerning any of these forms, or suggestions for improvement, should be addressed to the Defender Services Division, Administrative Office of the United States Courts, Washington, D.C. 20544 (202-502-3030).

APPENDIX B

**LOCATION AND OFFICE CODES**  
**COURTS OF APPEALS AND DISTRICT COURTS**

**District of Columbia Circuit (DCCX)**

**Washington, DC (DCX)**

- 1 U.S. DISTRICT COURT
- 2 D.C. SUPERIOR COURT

**First Circuit (01CX)**

**Maine (MEX)**

- 1 BANGOR
- 2 PORTLAND
- 3 CARIBOU
- 4 AUGUSTA
- 5 WATERVILLE

**Massachusetts (MAX)**

- A PEMBROKE
- 0 BOURNE
- 1 BOSTON
- 2 NEW BEDFORD
- 3 SPRINGFIELD
- 4 WORCESTER
- 5 LAWRENCE
- 6 PITTSFIELD
- 7 AYER
- 8 HYANNIS
- 9 CAMBRIDGE

**New Hampshire (NHX)**

- 1 CONCORD
- 2 LITTLETON
- 3 MANCHESTER
- 4 LANCASTER

**Rhode Island (RIX)**

- 1 PROVIDENCE
- 2 WARWICK
- 3 NEWPORT

**Puerto Rico (PRX)**

- 1 MAYAGUEZ
- 2 PONCE
- 3 SAN JUAN
- 4 AGUADILLA
- 5 SANTURCE

**Second Circuit (02CX)**

**Connecticut (CTX)**

- 0 WEST HARTFORD
- 1 NORWALK
- 2 HARTFORD
- 3 NEW HAVEN
- 4 NORWICH
- 5 BRIDGEPORT
- 6 WATERBURY
- 7 NEW LONDON
- 8 EAST HARTFORD
- 9 MANCHESTER

**New York, Northern (NYN)**

- A ONEONTA
- B TROY
- C OXFORD
- D ROME
- 0 CANTON
- 1 ALBANY
- 2 AUBURN
- 3 BINGHAMTON
- 4 MALONE
- 5 SYRACUSE
- 6 UTICA
- 7 WATERTOWN
- 8 SCHENECTADY
- 9 PLATTSBURGH

**New York, Eastern (NYE)**

- 0 HAUPPAUGE
- 1 BROOKLYN
- 2 MINEOLA
- 3 JAMAICA
- 4 BAY SIDE
- 5 JACKSON HEIGHTS
- 6 LONG ISLAND CITY
- 7 PATCHOQUE
- 8 WESTBURY
- 9 HEMPSTEAD

**New York, Southern (NYS)**

- 1 NEW YORK CITY
- 2 WARWICK
- 3 KINGSTON
- 4 POUGHKEEPSIE
- 5 YONKERS

- 6 MAMARONECK
- 7 WHITE PLAINS
- 8 MIDDLETOWN-WALLKILL
- 9 NEW BERG

**New York, Western (NYW)**

- A DUNKIRK
- B WATKINS GLEN
- C BATAVIA
- D MAYVILLE
- 0 NIAGARA FALLS
- 1 BUFFALO
- 2 CANANDAIGUA
- 3 ELMIRA
- 4 JAMESTOWN
- 5 LOCKPORT
- 6 ROCHESTER
- 7 WILLIAMSVILLE
- 8 SENECA FALLS
- 9 OLEAN

**Vermont (VTX)**

- 1 BRATTLEBORO
- 2 BURLINGTON
- 3 MONTPELIER
- 4 NEWPORT
- 5 RUTLAND
- 6 WINDSOR
- 7 SAINT JOHNSBURY
- 8 SAINT ALBANS
- 9 BENNINGTON

**Third Circuit (03CX)**

**Delaware (DEX)**

- 1 WILMINGTON
- 2 DOVER

**New Jersey (NJX)**

- A NEWTON
- B HACKENSACK
- C MARLTON
- D PATERSON
- E BROWN MILLS
- 0 ASBURY PARK
- 1 CAMDEN
- 2 NEWARK
- 3 TRENTON
- 4 RUTHERFORD
- 5 JERSEY CITY
- 6 NEW BRUNSWICK
- 7 WOODBURY
- 8 MORRISTOWN
- 9 ATLANTIC CITY

**Pennsylvania, Eastern (PAE)**

- 1 EASTON
- 2 PHILADELPHIA
- 3 MEDIA
- 4 READING
- 5 ALLENTOWN
- 6 POTTSVILLE
- 7 LANCASTER

**Pennsylvania, Middle (PAM)**

- A HAZLETON
- B GETTYSBURG
- C SAYRE
- D BELLEFONTE
- E LEMOYNE
- F YORK
- G HUNTINGTON
- 0 MECHANICSBURG
- 1 HARRISBURG
- 2 LEWISBURG
- 3 SCRANTON
- 4 WILLIAMSPORT
- 5 WILKES-BARRE
- 6 STROUDSBURG
- 7 CHAMBERSBURG
- 8 PITTSTON
- 9 HAWLEY

**Pennsylvania, Western (PAW)**

- A GREENSBURG
- B MEADVILLE
- C MERCER
- D CLARION
- E FRANKLIN
- F WARREN
- G SMETHPORT
- H RIDGWAY
- 0 ST. MARYS
- 1 ERIE
- 2 PITTSBURGH
- 3 CLEARFIELD
- 4 GROVE CITY
- 5 BRADFORD
- 6 ALTOONA
- 7 JOHNSTOWN
- 8 SOMERSET
- 9 UNIONTOWN

**Virgin Islands (VIX)**

- 1 CHRISTIANSTED
- 2 FREDERIKSTED
- 3 CHARLOTTE AMALIE

4 ST. CROIX  
5 ST. THOMAS

**Fourth Circuit (04CX)**

**Maryland (MDX)**

A KENSINGTON  
B ROCKVILLE  
C SILVER SPRING  
0 HYATTSVILLE  
1 BALTIMORE  
2 CUMBERLAND  
3 DENTON  
4 SALISBURY  
5 HAGERSTOWN  
6 BETHESDA  
7 UPPER MARLBORO  
8 GREENBELT  
9 DISTRICT HEIGHTS

**North Carolina, Eastern (NCE)**

A DUNN  
B GOLDSBORO  
C JACKSONVILLE  
E TRENTON  
F WILLIAMSTON  
0 ROCKY MOUNT  
1 CLINTON  
2 ELIZABETH CITY  
3 FAYETTEVILLE  
4 NEW BERN  
5 RALEIGH  
6 WASHINGTON  
7 WILMINGTON  
8 WILSON  
9 GREENVILLE

**North Carolina, Middle (NCM)**

A ALBEMARLE  
B BISCOE  
C BURLINGTON  
D YADKINVILLE  
E WELCOME  
F MAYODAN  
G LAURINBURG  
0 CONCORD  
1 DURHAM  
2 GREENSBORO  
3 ROCKINGHAM  
4 SALISBURY  
5 WILKESBORO  
6 WINSTON-SALEM  
7 RAEFORD  
8 ASHEBORO

9 SANFORD

**North Carolina, Western (NCW)**

A LENOIR  
B LINCOLNTON  
C MORGANTON  
D MARION  
E GREAT SMOKY NT PARK  
F WADESBORO  
G WILKESBORO  
H NORTH WILKESBORO  
0 HENDERSONVILLE  
1 ASHEVILLE  
2 BRYSON CITY  
3 CHARLOTTE  
4 SHELBY  
5 STATESVILLE  
6 RUTHERFORDTON  
7 NEWTON  
8 GASTONIA  
9 BREVARD

**South Carolina (SCX)**

A DARLINGTON  
B SUMTER  
C BENNETTSVILLE  
D BEAUFORT  
E WALHALLA  
F ABBEVILLE  
G EASLEY  
H CONWAY  
0 ROCK HILL  
1 AIKEN  
2 CHARLESTON  
3 COLUMBIA  
4 FLORENCE  
5 ORANGEBURG  
6 GREENVILLE  
7 SPARTANBURG  
8 ANDERSON  
9 GREENWOOD

**Virginia, Eastern (VAE)**

A ARLINGTON  
B FAIRFAX  
C MECHANICSVILLE  
D FALLS CHURCH  
0 FREDERICKSBURG  
1 ALEXANDRIA  
2 NORFOLK  
3 RICHMOND  
4 NEWPORT NEWS  
5 SOUTH HILL  
6 PETERSBURG

7 EXMORE  
8 HAMPTON  
9 WILLIAMSBURG

**Virginia, Western (VAW)**

A MARTINSVILLE  
B WISE  
C TAZEWELL  
D CHRISTIANSBURG  
E GALAX  
F WINCHESTER  
G BRISTOL  
H SHENANDOAH  
I CUMBERLAND  
J BIG ISLAND  
K CHESTER  
L LEXINGTON  
M WOODSTOCK  
0 STAUNTON  
1 ABINGDON  
2 BIG STONE GAP  
3 CHARLOTTESVILLE  
4 DANVILLE  
5 HARRISONBURG  
6 LYNCHBURG  
7 ROANOKE  
8 WYTHEVILLE  
9 ROCKY MOUNT

**West Virginia, Northern (WVN)**

0 MORGANTOWN  
1 CLARKSBURG  
2 ELKINS  
3 MARTINSBURG  
4 PARKERSBURG  
5 WHEELING  
6 FAIRMONT  
7 CHARLESTOWN  
8 WALTON  
9 KEYSER

**West Virginia, Southern (WVS)**

1 BLUEFIELD  
2 CHARLESTON  
3 HUNTINGTON  
4 LEWISBURG  
5 BECKLEY  
6 PARKERSBURG  
7 WELCH  
8 LOGAN  
9 FAYETTEVILLE

**Fifth Circuit (05CX)**

**Louisiana, Eastern (LAE)**

1 MILITARY COURT  
2 NEW ORLEANS  
3 HOUMA

**Louisiana, Middle (LAM)**

1 MILITARY COURT  
3 BATON ROUGE

**Louisiana, Western (LAW)**

1 ALEXANDRIA  
2 LAKE CHARLES  
3 MONROE  
4 OPELOUSAS  
5 SHREVEPORT  
6 LAFAYETTE  
7 LEESVILLE  
8 ABBEVILLE

**Mississippi, Northern (MSN)**

1 ABERDEEN  
2 CLARKSDALE  
3 OXFORD  
4 GREENVILLE  
5 ACKERMAN  
6 KOSCIUSKO  
7 HOUSTON  
8 TUPELO  
9 CORINTH

**Mississippi, Southern (MSS)**

1 BILOXI  
2 HATTIESBURG  
3 JACKSON  
4 MERIDIAN  
5 VICKSBURG  
6 GULFPORT  
7 NATCHEZ

**Texas, Northern (TXN)**

A SOUTH FORT WORTH  
0 GARLAND  
1 ABILENE  
2 AMARILLO  
3 DALLAS  
4 FORT WORTH  
5 LUBBOCK  
6 SAN ANGELO  
7 WICHITA FALLS  
8 ARLINGTON  
9 MINERAL WELLS

**Texas, Eastern (TXE)**

0 PLANO

1 BEAUMONT  
2 MARSHALL  
3 PARIS  
4 SHERMAN  
5 TEXARKANA  
6 TYLER  
7 JEFFERSON  
8 DENISON  
9 LUFKIN

**Texas, Southem (TXS)**

1 BROWNSVILLE  
2 CORPUS CHRISTI  
3 GALVESTON  
4 HOUSTON  
5 LAREDO  
6 VICTORIA  
7 EDINBURG  
8 MCALLEN  
9 RIO GRANDE CITY

**Texas, Western (TXW)**

A KERRVILLE  
B EAGLE PASS  
0 BIG BEND NATL PARK  
1 AUSTIN  
2 DEL RIO  
3 EL PASO  
4 PECOS  
5 SAN ANTONIO  
6 WACO  
7 MIDLAND-ODESSA  
8 MARFA  
9 KILLEEN

**Sixth Circuit (06CX)**

**Kentucky, Eastern (KYE)**

A PINEVILLE  
B WINCHESTER  
C DANVILLE  
0 ASHLAND  
1 CATLETTSBURG  
2 COVINGTON  
3 FRANKFORT  
4 JACKSON  
5 LEXINGTON  
6 LONDON  
7 PIKEVILLE  
8 RICHMOND  
9 HARLAN

**Kentucky, Western (KYW)**

A NORTONVILLE

0 HOPKINSVILLE  
1 BOWLING GREEN  
2 CYNTHIANA  
3 LOUISVILLE  
4 OWENSBORO  
5 PADUCAH  
6 GREENSBURG  
7 LEBANON  
8 MAMMOTH CAVE  
9 GLASGOW

**Michigan, Eastern (MIE)**

1 BAY CITY  
2 DETROIT  
3 PORT HURON  
4 FLINT  
5 ANN ARBOR  
6 SAGINAW

**Michigan, Western (MIW)**

A BENTON HARBOR  
B ESCANABA  
C IRONWOOD  
D MASON  
E ONTONAGON  
F VICKSBURG  
G LELAND  
H CHARLEVOIX  
0 TRAVERSE CITY  
1 GRAND RAPIDS  
2 MARQUETTE  
3 SAULT ST MARIE  
4 KALAMAZOO  
5 LANSING  
6 MUSKEGON  
7 HART  
8 WHITEHALL  
9 MONTAQUE

**Ohio, Northern (OHN)**

1 CLEVELAND  
2 LIMA  
3 TOLEDO  
4 YOUNGSTOWN  
5 AKRON  
6 CANTON  
7 DELPHOS  
8 MANSFIELD

**Ohio, Southem (OHS)**

1 CINCINNATI  
2 COLUMBUS  
3 DAYTON

- 4 STEUBENVILLE
- 5 SPRINGFIELD
- 6 ZANESVILLE
- 7 PORTSMOUTH
- 8 CHILLICOTHE

- 5 QUINCY
- 6 GALESBURG
- 7 BLOOMINGTON
- 8 DECATUR
- 9 PARIS

**Tennessee, Eastern (TNE)**

- 1 CHATTANOOGA
- 2 GREENVILLE
- 3 KNOXVILLE
- 4 WINCHESTER
- 5 JOHNSON CITY
- 6 NEWPORT
- 7 SHELBYVILLE
- 8 SWEETWATER
- 9 SEVIERVILLE

**Tennessee, Middle (TNM)**

- 1 COLUMBIA
- 2 COOKEVILLE
- 3 NASHVILLE
- 4 CLARKSVILLE
- 5 MC EWEN
- 6 LAWRENCEBURG

**Tennessee, Western (TNW)**

- 1 JACKSON
- 2 MEMPHIS
- 3 DYERSBURG
- 4 SELMER
- 5 SAVANNAH

**Seventh Circuit (07CX)**

**Illinois, Northern (ILN)**

- A WHEATON
- B GENEVA
- 1 CHICAGO
- 2 FREEPORT
- 3 ROCKFORD
- 4 ROCHELLE
- 5 OTTAWA
- 6 DIXON
- 7 JOLIET
- 8 GLEN ELLYN
- 9 WAUKEGAN

**Illinois, Central (ILC)**

- C CHAMPAIGN/URBANA
- 0 KANKAKEE
- 1 PEORIA
- 2 DANVILLE
- 3 SPRINGFIELD
- 4 ROCK ISLAND

**Illinois, Southern (ILS)**

- A EFFINGHAM
- B BELLEVILLE
- C MARION
- 0 CHESTER
- 1 CAIRO
- 3 EAST ST LOUIS
- 4 BENTON
- 5 ALTON
- 6 CARBONDALE
- 7 HARRISBURG
- 8 MT CARMEL
- 9 LAWRENCEVILLE

**Indiana, Northern (INN)**

- 1 FORT WAYNE
- 2 HAMMOND
- 3 SOUTH BEND
- 4 LAFAYETTE
- 5 PERU
- 6 GARY

**Indiana, Southern (INS)**

- 1 INDIANAPOLIS
- 2 TERRE HAUTE
- 3 EVANSVILLE
- 4 NEW ALBANY
- 5 RICHMOND
- 6 LINTON
- 7 MUNCIE

**Wisconsin, Eastern (WIE)**

- 0 FOND DU LAC
- 1 GREEN BAY
- 2 MILWAUKEE
- 3 OSHKOSH
- 4 ELKHORN
- 5 APPLETON
- 6 RACINE
- 7 ANTIGO
- 8 KENOSHA
- 9 SHEBOYGAN

**Wisconsin, Western (WIW)**

- 1 EAU CLAIRE
- 2 LA CROSSE
- 3 MADISON

- 4 SUPERIOR
- 5 WAUSAU
- 6 ASHLAND
- 7 SPARTA
- 8 MOSINEE
- 9 TOMAH

- 3 ST PAUL
- 4 MINNEAPOLIS
- 5 DULUTH
- 6 FERGUS FALLS
- 7 ROCHESTER
- 8 ST CLOUD
- 9 INTERNATIONAL FALLS

**Eighth Circuit (08CX)**

**Arkansas, Eastern (ARE)**

- 1 BATESVILLE
- 2 HELENA
- 3 JONESBORO
- 4 LITTLE ROCK
- 5 PINE BLUFF
- 6 FORREST CITY
- 7 WEST MEMPHIS

**Arkansas, Western (ARW)**

- 1 EL DORADO
- 2 FORT SMITH
- 3 HARRISON
- 4 TEXARKANA
- 5 FAYETTEVILLE
- 6 HOT SPRINGS
- 7 CAMDEN

**Iowa, Northern (IAN)**

- 1 CEDAR RAPIDS
- 2 DUBUQUE
- 3 FORT DODGE
- 4 MASON CITY
- 5 SIOUX CITY
- 6 WATERLOO

**Iowa, Southern (IAS)**

- 1 COUNCIL BLUFFS
- 2 CRESTON
- 3 DAVENPORT
- 4 DES MOINES
- 5 KEOKUK
- 6 OTTUMWA
- 7 BURLINGTON
- 8 IOWA CITY

**Minnesota (MNX)**

- A CROOKSTON
- B MARSHALL
- C BEMIDJI
- D MOORHEAD
- 0 HUMBOLDT
- 1 WINONA
- 2 MANKATO

**Missouri, Eastern (MOE)**

- 1 CAPE GIRARDEAU
- 2 HANNIBAL
- 3 ROLLA
- 4 ST LOUIS
- 5 MEXICO
- 6 JACKSON
- 7 MOBERLY
- 8 VAN BUREN

**Missouri, Western (MOW)**

- 1 CHILLICOTHE
- 2 JEFFERSON CITY
- 3 JOPLIN
- 4 KANSAS CITY
- 5 ST JOSEPH
- 6 SPRINGFIELD
- 7 LEBANON
- 8 OZARK

**Nebraska (NEX)**

- A FALLS CITY
- B O'NEILL
- C PENDER
- D COZAD
- E GERING
- 0 SIDNEY
- 1 CHADRON
- 2 GRAND ISLAND
- 3 HASTINGS
- 4 LINCOLN
- 5 MC COOK
- 6 NORFOLK
- 7 NORTH PLATTE
- 8 OMAHA
- 9 VALENTINE

**North Dakota (NDX)**

- A BELCOURT
- B BOTTINEAU
- C RUGBY
- D MINNEWAUKAN
- 0 WILLISTON
- 1 BISMARCK
- 2 GRAND FORKS
- 3 FARGO

- 4 MINOT
- 5 JAMESTOWN
- 6 DEVILS LAKE
- 7 DICKINSON
- 8 PEMBINA
- 9 FORT YATES

**South Dakota (SDX)**

- 1 ABERDEEN
- 2 DEADWOOD
- 3 PIERRE
- 4 SIOUX FALLS
- 5 RAPID CITY
- 6 MOBRIDGE
- 7 WINNER
- 8 CHAMBERLAIN

**Ninth Circuit (09CX)**

**Alaska (AKX)**

- 1 JUNEAU
- 2 NOME
- 3 ANCHORAGE
- 4 FAIRBANKS
- 5 KETCHIKAN
- 6 KODIAK

**Arizona (AZX)**

- A GRAND CANYON
- B DOUGLAS
- C TUBA CITY
- D SAFFORD
- E PINETOP
- F SIERRA-VISTA
- G MESA
- H NORTHSIDE
- I GLENDALE
- J SOUTHSIDE
- 0 YUMA
- 1 GLOBE
- 2 PHOENIX
- 3 PRESCOTT
- 4 TUCSON
- 5 FLORENCE
- 6 FLAGSTAFF
- 7 HOLBROOK
- 8 KINGMAN
- 9 NOGALES

**California, Northern (CAN)**

- A SANTA CRUZ
- B CAPITOLA
- 0 SAN MATEO
- 1 EUREKA

- 2 FREMONT
- 3 SAN FRANCISCO
- 4 OAKLAND
- 5 SAN JOSE
- 6 WALNUT CREEK
- 7 MONTEREY
- 8 SALINAS
- 9 SANTA ROSA

**California, Eastern (CAE)**

- A STOCKTON
- B SUSANVILLE
- C YOSEMITE NATL PARK
- D YREKA
- E BISHOP
- F CERES
- G SOUTH LAKE TAHOE
- H THREE RIVERS
- J VISALIA
- K AUBURN
- 0 SEQUOIA NATL PARK
- 1 FRESNO
- 2 SACRAMENTO
- 3 REDDING
- 4 ALTURAS
- 5 BAKERSFIELD
- 6 LASSEN NATL PARK
- 7 LONE PINE
- 8 MERCED
- 9 MODESTO

**California, Central (CAC)**

- A LONG BEACH
- B SANTA FE SPRINGS
- C VENTURA
- D PANORAMA CITY
- E WEST COVINA
- F SOUTH BAY
- G LAGUNA
- H PASADENA
- 0 TWENTY NINE PALMS
- 1 BARSTOW
- 2 LOS ANGELES
- 3 LANCASTER
- 4 OXNARD
- 5 RIVERSIDE
- 6 SAN BERNARDINO
- 7 SAN LUIS OBISPO
- 8 SANTA ANA
- 9 SANTA BARBARA

**California, Southern (CAS)**

- 1 MINERAL
- 2 EL CENTGO

3 SAN DIEGO

**Hawaii (HIW)**

1 HONOLULU  
4 HILO  
6 WAILUKU  
7 ELEELE  
8 LIHUE  
9 JOHNSTON ISLAND

**Idaho (IDX)**

1 BOISE  
2 COEUR D ALENE  
3 MOSCOW  
4 POCATELLO  
5 IDAHO FALLS  
6 MOUNTAIN HOME  
7 LEWISTON  
8 TWIN FALLS  
9 CALDWELL

**Montana (MTX)**

A MILES CITY  
B BROWNING  
C WOLF POINT  
D LIBBY  
E HARDIN  
F HAMILTON  
G CUT BANK  
H POLSON  
J AUGUSTA  
K BOZEMAN  
L GLACIER NATL PARK  
0 LEWISTOWN  
1 BILLINGS  
2 BUTTE  
3 GLASGOW  
4 GREAT FALLS  
5 HAVRE  
6 HELENA  
7 KALISPELL  
8 LIVINGSTON  
9 MISSOULA

**Nevada (NVX)**

1 CARSON CITY  
2 LAS VEGAS  
3 RENO  
4 ELKO  
5 FALLON  
6 BOULDER CITY  
7 ELY  
8 LOVELOCK

**Oregon (ORX)**

A ASTORIA  
B HOOD RIVER  
C COQUILLE  
D NORTH BEND  
E BEND  
F BAKER  
G GRANTS PASS  
H ROSEBURG  
J THE DALLES  
K LA GRANDE  
L LINCOLN CITY  
M SEASIDE  
N TILLAMOOK  
P ALBANY  
R GOLD BEACH  
0 SALEM  
1 MEDFORD  
2 PENDLETON  
3 PORTLAND  
4 BURNS  
5 KLAMATH FALLS  
6 EUGENE  
7 CORVALLIS  
8 CRATER LAKE  
9 VALE

**Washington, Eastern (WAE)**

A MOSES LAKE  
0 EPHRATA  
1 YAKIMA  
2 SPOKANE  
3 WALLA WALLA  
4 RICHLAND  
5 KENNEWICK  
6 SOAP LAKE  
7 COLVILLE  
8 WENATCHEE  
9 PASCO

**Washington, Western (WAW)**

A BREMERTON  
0 MT RAINIER NATL PARK  
1 BELLINGHAM  
2 SEATTLE  
3 TACOMA  
4 PORT TOWNSEND  
5 VANCOUVER  
6 ABERDEEN  
7 PORT ANGELES  
8 EVERETT  
9 OLYMPIC NATL PARK

**Guam (GUX)**

1 AGANA

**Northern Mariana Islands (TTX)**

1 SAIPAN

**TENTH CIRCUIT (10CX)**

**Colorado (COX)**

A ESTES PARK  
B MONTE VISTA  
C CORTEZ  
D BOULDER  
E FORT COLLINS  
F STEAMBOAT SPRINGS  
H LAKEWOOD  
0 MESA VERDE NATL PARK  
1 DENVER  
2 DURANGO  
3 GRAND JUNCTION  
4 MONTROSE  
5 PUEBLO  
6 STERLING  
7 LAMAR  
8 COLORADO SPRINGS  
9 ROCKY MT NATL PARK

**Kansas (KSX)**

A HAYS  
B JUNCTION CITY  
C COLBY  
D PARSONS  
E CHANUTE  
F MANHATTAN  
0 GARDEN CITY  
1 FORT SCOTT  
2 KANSAS CITY  
3 LEAVENWORTH  
4 SALINA  
5 TOPEKA  
6 WICHITA  
7 HUTCHINSON  
8 DODGE CITY  
9 LAWRENCE

**New Mexico (NMX)**

A CLOVIS  
B DEMING  
C CARLSBAD  
D TUCUMCARI  
E CLAYTON  
F FARMINGTON  
0 ALAMOGORDO  
1 ALBUQUERQUE

2 LAS CRUCES  
3 LAS VEGAS  
4 RATON  
5 ROSWELL  
6 SANTA FE  
7 SILVER CITY  
8 GALLUP  
9 HOBBS

**Oklahoma, Northern (OKN)**

1 BARTLESVILLE  
2 MIAMI  
3 PAWHUSKA  
4 TULSA  
5 VINITA

**Oklahoma, Eastern (OKE)**

A SULPHUR  
0 SOUTH MCALESTER  
1 ADA  
2 ARDMORE  
4 DURANT  
5 HUGO  
6 MUSKOGEE  
7 OKMULGEE  
9 POTEAU

**Oklahoma, Western (OKW)**

A CLINTON  
B ALTUS  
0 CHICKASHA  
1 ENID  
2 GUTHRIE  
3 LAWTON  
4 MANGUM  
5 OKLAHOMA CITY  
6 PONCA CITY  
7 WOODWARD  
8 SHAWNEE  
9 PAULS VALLEY

**Utah (UTX)**

1 OGDEN  
2 SALT LAKE CITY  
3 PROVO  
4 ST. GEORGE  
5 VERNAL

**Wyoming (WYX)**

A BUFFALO  
B WHEATLAND  
C WORLAND  
D TORRINGTON  
E GREEN RIVER

F LARAMIE  
 G GILLETTE  
 H SUNDANCE  
 I CODY  
 J LUSK  
 K THERMOPOLIS  
 L YELLOWSTONE NATL PK  
 M BASIN  
 N KEMMERER  
 P NEW CASTLE  
 0 JACKSON  
 1 CASPER  
 2 CHEYENNE  
 3 EVANSTON  
 4 LANDER  
 5 SHERIDAN  
 6 RAWLINS  
 7 PINEDALE  
 8 GREYBULL  
 9 DOUGLAS

**Eleventh Circuit (11CX)**

**Alabama, Northern (ALN)**

A TALLEDEGA  
 0 DORA  
 1 ANNISTON  
 2 BIRMINGHAM  
 3 FLORENCE  
 4 GADSEN  
 5 HUNTSVILLE  
 6 JASPER  
 7 TUSCALOOSA  
 8 DECATUR  
 9 HALEYVILLE

**Alabama, Middle (ALM)**

1 DOTHAN  
 2 MONTGOMERY  
 3 OPELIKA  
 4 PRATTVILLE

**Alabama, Southern (ALS)**

1 MOBILE  
 2 SELMA  
 3 GROVE HILL

**Florida, Northern (FLN)**

1 GAINESVILLE  
 2 MARIANNA  
 3 PENSACOLA  
 4 TALLAHASSEE  
 5 PANAMA CITY  
 6 FORT WALTON BEACH

**Florida, Middle (FLM)**

A TITUSVILLE  
 B COCOA  
 D LAKELAND  
 F NAPLES  
 0 DAYTONA BEACH  
 1 FERNANDINA  
 2 FORT MYERS  
 3 JACKSONVILLE  
 4 LIVE OAK  
 5 OCALA  
 6 ORLANDO  
 7 ST PETERSBURG  
 8 TAMPA  
 9 SARASOTA

**Florida, Southern (FLS)**

A NAPLES  
 0 FORT LAUDERDALE  
 1 MIAMI  
 2 FORT PIERCE  
 3 CORAL CABLES  
 4 KEY WEST  
 5 NORTH MIAMI BEACH  
 6 HOMESTEAD  
 9 WEST PALM BEACH

**Georgia, Northern (GAN)**

1 ATLANTA  
 2 GAINESVILLE  
 3 NEWNAN  
 4 ROME  
 5 CLARKSVILLE  
 6 JASPER

**Georgia, Middle (GAM)**

1 ALBANY  
 2 AMERICUS  
 3 ATHENS  
 4 COLUMBUS  
 5 MACON  
 6 THOMASVILLE  
 7 VALDOSTA  
 8 VIENNA

**Georgia, Southern (GAS)**

1 AUGUSTA  
 2 BRUNSWICK  
 3 DUBLIN  
 4 SAVANNAH  
 5 WAYCROSS  
 6 STATESBORO

**U. S. Supreme Court (SUPX)**

WASHINGTON, DC

APPENDIX C

MEMORANDUM

TO: Chief Judge (or Delegate) \_\_\_\_\_  
United States Court of Appeals For the \_\_\_\_\_ Circuit

DATE: \_\_\_\_\_

FROM: \_\_\_\_\_

SUBJECT: Advance Authorization for Investigative, Expert or Other Services

It is requested that advance authorization be granted to obtain services in an amount in excess of the maximum allowed under the provisions of subsection (e)(3) of the Criminal Justice Act, 18 U.S.C. § 3006A, **[or, for capital cases commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996, under 21 U.S.C. § 848(q)(10)(B),]** as follows:

Case Name & Designation \_\_\_\_\_

Name of Expert or Investigator or Service Provider \_\_\_\_\_

Address \_\_\_\_\_

Type of Service \_\_\_\_\_

Reasons for Application \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated Compensation (Non-Capital Case) \$ \_\_\_\_\_

Estimated Compensation and Expenses (Capital Case) \$ \_\_\_\_\_

Estimated Compensation and Expenses of All Investigative, Expert, and Other Services (Capital Case) \$ \_\_\_\_\_

I certify that the estimated compensation in excess of the maximum set forth in 18 U.S.C. § 3006A(e)(3) [or, if applicable, the estimated compensation and expenses in excess of the maximum set forth in 21 U.S.C. § 848(q)(10)(B),] appears necessary to provide fair compensation for services of an unusual character or duration and therefore recommend approval of this advance authorization in the amount of \$\_\_\_\_\_

\_\_\_\_\_  
United States District Judge  
or Magistrate Judge

\_\_\_\_\_  
Date

Advance authorization is hereby approved in the amount of  
\$\_\_\_\_\_.

\_\_\_\_\_  
Chief Judge, United States Court of Appeals  
(or Delegate)

\_\_\_\_\_  
Date

APPENDIX C

ADVANCE AUTHORIZATION

- C-1 ADVANCE AUTHORIZATION FOR INVESTIGATIVE, EXPERT OR OTHER SERVICES
  
- C-3 MODEL ORDER AUTHORIZING THE ACQUISITION OF COMPUTER [HARDWARE and/or SOFTWARE] UNDER THE CRIMINAL JUSTICE ACT

APPENDIX C

MODEL ORDER AUTHORIZING THE ACQUISITION OF COMPUTER [HARDWARE  
and/or SOFTWARE] UNDER THE CRIMINAL JUSTICE ACT

**NOTE:** Footnotes explain options or provide suggestions to the presiding judicial officer.

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

United States of America

v.

No. \_\_\_\_\_

Defendant #1  
Defendant #2  
Defendant #3  
Defendant #4

ORDER AUTHORIZING ACQUISITION  
OF [HARDWARE AND/OR SOFTWARE]  
UNDER THE CRIMINAL JUSTICE  
ACT

---

The above-named defendants,<sup>1</sup> having been found to be eligible for services under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, have submitted an *ex parte*<sup>2</sup> application for the approval of CJA funds to purchase computer [hardware and/or software<sup>3</sup>], as authorized by subsection (e) of the CJA.

---

<sup>1</sup> In most cases, counsel for one defendant is likely to make application on behalf of all co-defendants. Courts should encourage cooperation among defendants in multi-defendant cases and urge them to agree on needs before application is made.

<sup>2</sup> In accordance with subsection (e) of the CJA, paragraph 3.03 of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*, anticipates an *ex parte* application for “services other than counsel” and instructs that applications “shall be heard *in camera*” and are not to be revealed without the consent of the defendant.

<sup>3</sup> Hardware includes computers, laptops, CD drives, printers, scanners, memory boards or related tangible items. Software includes operating and application programs.

The Court finds, after inquiry and counsel's consultation with the Defender Services Division of the Administrative Office of the United States Courts,<sup>4</sup> that the [hardware and/or software] detailed in items [1. through . . .] is [are] necessary for an adequate defense and constitute unusual or extraordinary expenses.<sup>5</sup>

The Court, therefore, approves the acquisition of the following items:

[1.]

[2.]

[3.]

[4.]

in the amounts listed for each item and a total expenditure not to exceed [the sum of all items approved<sup>6</sup>].

---

<sup>4</sup> In all cases, applicants shall consult with the Defender Services Division of the Administrative Office of the United States Courts, (202) 502-3030, **before** submitting an application for funds to the Court. The Division will provide technical advice to counsel to ensure the items requested are necessary, appropriate, and compatible with systems in use within the federal defender system. Counsel is required to include, in writing, the advice and recommendation of the Division in the application to the Court. *See* CJA Guideline 3.16. The presiding judicial officer or the clerk also may wish to seek advice from the Division.

<sup>5</sup> CJA Guideline 3.16 authorizes approval for "unusual or extraordinary expenses" when "the circumstances from which the need arose would normally result in an additional charge to a fee paying client over and above that charged for overhead expenses." The Court has discretion to determine when that condition is met. Circumstances of extraordinary expense may include, but are not limited to: massive documentary discovery; numerous hours of wiretap tapes; complex financial transactions; and national security concerns requiring disclosure, but no copying, of discovery. In all cases, the decision to approve expenses for hardware or software is a matter for the presiding judge (and if above the case compensation maximum, for the chief judge of the court of appeals, or designee of the chief judge).

<sup>6</sup> The Court may wish to authorize acquisition of each specific item and a total cost ceiling, but allow the Division or the designated purchaser some leeway to negotiate prices for individual items.

It is further ordered that the Federal Defender Organization for the District of [\_\_\_\_],<sup>7</sup> as designated by the Defender Services Division, shall acquire the approved items utilizing the Criminal Justice Act appropriation, in conformance with CJA Guideline 3.16.

Because this [hardware and/or software] is [are] for the use of counsel appointed under the Criminal Justice Act and is being purchased with United States government funds, it is further ordered that the approved items are and shall remain the property of the United States. The item[s] is [are] to be used only in the course of the representation of the above-named defendant[s]. Counsel shall use due diligence and care to maintain the property in good condition.

Unless otherwise ordered by the Court, within 30 days after final judgment is entered as to a defendant, appointed counsel for that defendant is directed to return all items acquired under authorization of this Order to a Federal Defender Organization designated by the Defender Services Division, for assignment by the Division for any other appropriate use under the Criminal Justice Act.

Counsel for the defendant[s] is [are] further instructed to remove and delete all case-related data and software from any hardware before delivering the equipment to the Federal Defender Organization.<sup>8</sup> Software should be returned with all original disks and manuals. Counsel should retain copies, electronic or otherwise, of the deleted information for the client's file.<sup>9</sup>

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<sup>7</sup>After the Court issues this order, a Federal Defender Organization (FDO) designated by the Defender Services Division, or the Division, will purchase the approved items in accordance with judiciary procurement procedures and charge the costs to the CJA panel attorney line of the appropriation. Payment will be made through the CJA Panel Attorney Payment System by means of a CJA Form 21 or 31 (to which this order should be attached), which has been approved by the presiding judge (and if above the case compensation maximum, by the chief judge of the court of appeals, or designee of the chief judge). The FDO or the Division will also maintain the tangible items on its inventory of property, noting the items are on loan to appointed counsel.

<sup>8</sup>Returning equipment cleaned of data and software will minimize risk of inadvertent disclosure of information protected by work product or attorney-client privilege.

<sup>9</sup>While it is preferable that counsel retain copies of the deleted information in the client files, there may be some cases where it is impossible or prohibited by law. For example, the retention of discovery that implicates a national security concern may be barred by federal law.

**APPENDIX D**  
**JUDICIAL CONFERENCE**  
**OF THE UNITED STATES OF AMERICA**  
**AND**  
**COMMUNITY DEFENDER ORGANIZATION**  
**FOR THE \_\_\_\_\_ DISTRICT(S) OF \_\_\_\_\_**  
**FISCAL YEAR \_\_\_\_\_**  
**GRANT AND CONDITIONS**

The Community Defender Organization named \_\_\_\_\_ (hereinafter grantee), operating as a non-profit defense counsel service, has been authorized by the Criminal Justice Act Plan(s) of the \_\_\_\_\_ District(s) of \_\_\_\_\_ to provide representation, and related defense services to eligible persons pursuant to the Criminal Justice Act, as amended, 18 U.S.C. 3006A (g)(2)(B) (hereinafter CJA); and

By submitting an application for a sustaining grant for fiscal year \_\_\_\_\_, the grantee has elected to receive periodic sustaining grants to provide representation and related defense services in lieu of payments under subsections (d) and (e) of the CJA; and

The grantee has submitted the required application materials to the Judicial Conference of the United States (hereinafter Conference) via the Administrative Office of the United States Courts (hereinafter A.O.), including an annual report setting forth the activities and financial position and the anticipated expenses for the coming year; and

Pursuant to the authority delegated to it by the Conference, the Judicial Conference Committee on Defender Services (Defender Services Committee) has approved, subject to the availability of appropriated funds, a grant in the amount of \$ \_\_\_\_\_ for fiscal year \_\_\_\_\_, commencing on October 1, \_\_\_\_\_ and terminating on September 30, \_\_\_\_\_ as further detailed by budget categories contained in Attachment 1; and

Pursuant to its authority under subsections (g)(2)(B) and (h) of the CJA, and in consideration of this sustaining grant, the Conference requires that funds will not be expended from the grant except pursuant to the following terms and conditions;

The grantee, by its signature, or that of its authorized representative, at the end hereof, signifies its acceptance of and agreement to the terms and conditions set forth below, as well as its agreement to comply with the provisions of the CJA, the *Guidelines for the Administration of the*

*Criminal Justice Act* and any other policies or directives issued by the Conference, and the court plans of the judicial district and circuit in which the grantee will operate.

Once executed, this agreement shall be returned to the Defender Services Division together with a current list of the names and addresses of all officers and directors of the organization.

**1. USE OF GRANT FUNDS:** Grant funds, once awarded to the grantee, generally will be distributed pursuant to a schedule promulgated by the A.O. Except as authorized by the A.O., the grantee will expend such funds only for obligations incurred within the period stipulated in the grant award, and, except as provided in Clause 4, only in accordance with and in such amounts as are provided in designated budget categories as authorized by the Conference. Except as authorized by the A.O., grantee will use such funds solely for the purpose of providing representation and appropriate other services in accordance with the CJA, the *Guidelines for the Administration of the Criminal Justice Act*, and the plans of the District and Circuit Courts.

**2. BANK ACCOUNTS FOR GRANT FUNDS:** Except as authorized by the A.O., the grantee will maintain grant funds in federally insured interest bearing accounts in accordance with provisions of 31 CFR 202 and will ensure that amounts in excess of federal insurance limits are collateralized before depositing the funds; grant funds will be maintained separately and will not be commingled with any non-grant funds maintained by grantee; and interest earned on the deposit of grant funds will be deposited with grant funds and may not be obligated or expended by the grantee, and will be returned to the A. O. at the end of the fiscal year for which the grant was awarded.

**3. GRANT-RELATED INCOME:** Unless otherwise authorized or directed by the A.O., any income arising or developing from grantee operations supported by grant funds shall inure to the benefit of the United States, shall not be commingled with any non-grant funds maintained by grantee, and shall be deposited and maintained in federally insured, interest bearing accounts until returned to the A.O. along with unobligated grant funds. The grantee may not obligate or expend this income without specific authorization from the A.O.

**4. REALLOCATING FUNDS:** Subject to such limitations as the Defender Services Committee may establish, the grantee may reallocate grant funds between budget categories (i.e., for purposes not specifically identified in the funding justification), provided that the aggregate of the amounts transferred within the fiscal year does not exceed 15% of the organization's total fiscal year grant amount approved by the Defender Services Committee. Subject to such limitations as the Defender Services Committee may establish, the A.O. may authorize reallocation between budget categories in any amount.

**5. RETURN OF UNOBLIGATED OR UNEXPENDED BALANCES:** Within 60 days of the end of the fiscal year, the grantee shall return to the A.O.'s Accounting Division the actual or estimated amount of all unobligated or unexpended grant funds, grant interest, and grant-related income remaining at the end of the fiscal year, unless otherwise authorized by the A.O. Along with funds returned, the grantee shall include a statement identifying which portion of the funds returned represents grant funds, grant interest, and grant-related income. The amount of any funds returned as an estimate will be adjusted, if necessary, following completion of the annual A.O. audit specified in clause 8.

**6. ANNUAL REPORTS:** As required by subsection (g)(2)(B) of the CJA, the grantee must submit an annual report setting forth its activities, financial position, the anticipated caseload, support services, and all other expenses for the coming fiscal year, and a current roster of attorneys and other personnel employed by the grantee. Instructions for completing the annual report and its date of submission will be provided to the grantee by the A.O. at least thirty (30) days prior to the submission date.

**7. GRANT RECORDS AND REPORTS:** The grantee shall keep financial books and all records in accordance with the federal fiscal year unless a waiver is granted by the A.O. Such records shall be maintained and submitted in such manner and form as required by the A.O. Such records shall disclose the amount of grant funds, grant interest, and grant-related income received during the fiscal year, as well as the amount of grant funds expended by budget category and the total amount of grant funds expended during the fiscal year.

The record keeping procedures utilized by the grantee shall provide for the accurate and timely recordation and determination of all income and funds received, all expenditures and obligations, and the balance of unexpended and unobligated grant funds, grant interest, and grant-related income. In addition, the grantee shall maintain the records in such a manner as to permit the determination of the propriety of all expenditures of grant funds and the charges to specific budget categories.

Grantee shall maintain records concerning expenditures of all funds subject to audit (as specified in Clause 8) in such a manner as to allow the Auditor access to said records without compromising client files and other attorney-client privileged material. The grantee is obligated to maintain the confidentiality of information protected by the attorney-client privilege or any ethical, Constitutional, statutory or other mandate.

The A.O. may inspect and audit the financial records, bank statements, and other records related to the expenditure of grant funds, except for privileged information, at any reasonable time upon request. If, because of inadequate records, documentation, or explanation, the propriety of an expenditure cannot readily be determined, questionable costs and expenditures may be disallowed.

The grantee shall maintain and submit such statistical records and reports as may be required by the A.O. The grantee must keep financial and statistical records and reports for a period of at least seven years after the expiration of the fiscal year for which the grant was awarded unless otherwise authorized by the A.O. If audit issues remain unresolved, records must be retained until all such issues have been resolved.

**8. AUDITS:** Within 120 days of the end of the fiscal year, a contract auditor (hereafter, "Auditor") selected and paid for by the A.O. will perform an audit of the grantee's financial activities occurring during the grant period. Such audit will express an opinion on whether the grantee's statement of financial position, report of revenue and expenditures by budget category (as designated in the approved grant), and inventory of equipment, furniture, and furnishings purchased with federal funds present fairly the financial position of the grantee.

The grantee will make its financial records/books and supporting documents available to the Auditor (as specified in clause 7) and will prepare or assist the Auditor in the compilation and preparation of the required statements and reports.

The Auditor will perform the audit in accordance with the Government Auditing Standards promulgated by the U.S. General Accounting Office. In accordance with those standards, the Auditor also will prepare a report on the grantee's internal controls over its financial activities and a report on the grantee's compliance with the terms and conditions of the grant and other rules and regulations pertinent to the grant. The Auditor will also adhere to the principles of confidentiality embodied in the Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor of the American Bar Association.

The grantee may contract with local accountants or with the Auditor, for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns and any additional annual audit reports required by the Board of Directors that do not duplicate the national contract audit. Notwithstanding the foregoing, a grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the Defender Services Division.

**9. INFORMAL REPORTS:** The grantee shall submit informal reports, at least semi-annually, setting forth its financial position. Additionally, the grantee shall submit to the A.O. quarterly statements of expenditures of grant funds in such form and manner as requested by the A.O. These reports need not be certified.

**10. GRANTEE STATUS:** Neither the grantee nor any of its employees are officers, employees, or agents of the United States. The United States shall in no way be obligated under leases, contracts, or other agreements entered into by the grantee.

**11. PROPERTY AND SERVICES:** Title to all property purchased with grant funds or grant related income will be in the United States. Procurement of all property and all services other than services under subsection (e) of the CJA shall be conducted in a manner promoting free and open competition in the procurement process.<sup>1</sup> Unless otherwise authorized by the A.O., no equipment, furniture, furnishings or other property, and no services (except for services under subsection (e) of the CJA, leasing of office space, and procurement of liability insurance) shall be obtained with such funds at a total cost of more than \$25,000 without advance approval of the A.O. In addition, no single automation hardware item or software title with a cost of more than \$1,000 shall be purchased without the prior approval of the A.O.

The grantee shall not sell, assign, dispose of, or encumber any property of the United States, having an acquisition cost of more than \$250 without the prior approval of the A.O.<sup>2</sup>

The grantee shall maintain an inventory of all United States property reflecting the date and cost of purchase of such property and the date and manner of disposition of excess or surplus property. This inventory shall be available to the A.O. upon request.<sup>3</sup>

Grantee will provide the A.O. with at least 15 working days advance notification of its intention to enter into a lease for office space. Such notice shall include the total number of square feet, cost per square foot, the duration of the lease, and certification that at least two other competitive proposals were considered.

**12. DISSOLUTION OF GRANTEE ORGANIZATION OR TERMINATION OF GRANT FUNDS:** The grantee may dissolve on its own accord in accordance with the laws of the state in which it is organized. Grantee shall provide the A.O., chief judge of the district court, and chief judge of the court of appeals 90 days' advance notice of its intent to dissolve. Additionally, the

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<sup>1</sup> For guidance in determining what constitutes "free and open competition" grantees should consult (1) the *Guide to Judiciary Policies and Procedures (Guide)*, Volume I, Chapter VIII, Part B., and (2) regarding acquisition of automation equipment and software, the *Guide*, Volume XIII, Chapter XIV, especially sections E.6. and F. (generally), and section E.7. (ethical standards for such procurement activities).

<sup>2</sup> For guidance regarding procedures and preferred methods of disposal of property, grantees should consult the *Guide*, Volume I, Chapter VIII, Part D.

<sup>3</sup> For further guidance regarding maintaining an inventory, grantees should consult the *Guide*, Volume I, Chapter VIII, Part C.

Conference in its discretion may determine to terminate or not renew the grant. In either event, unless otherwise authorized by the A.O., the grantee shall properly inventory and make available for reclamation, all property in the care and custody of the grantee purchased with grant funds or related income. Within 75 days of dissolution, the Auditor will perform a final financial audit of the grant. The audit will be of the same scope as discussed in clause 8. Upon receipt of the report of this audit, grantee shall remit to the A.O.'s Accounting Division all remaining unobligated or unexpended grant funds, grant interest, and grant-related income. The United States shall not be responsible for any obligations or debts incurred by the grantee and the grantee shall hold the United States harmless for such obligations or debts.

**13. MULTI-SERVICE DEFENDER ORGANIZATIONS:** Consistent with clause 2 of this agreement, if the grantee is part of a larger defender organization which is not exclusively providing services under the CJA, grant funds received from the Conference pursuant to the CJA, grant interest, and grant related income may not be commingled with those of the general organization unless otherwise authorized by the A.O. Also, expenses, inventory, payroll, and other records pertaining to CJA funds and operations of the grantee must be maintained separately by the grantee unless otherwise approved by the A.O.

**14. TRAVEL, MEALS, AND LODGING:** The grantee's reimbursement policies regarding expenses for official travel, meals, and lodging shall be in writing. Grantee shall furnish the A.O. a current copy of the written policies, and all changes thereto. Unless approved by the A.O., grantee's reimbursement policies for official travel, lodging and meals shall not exceed the maximum allowances to be paid for per diem, actual expenses, and travel prescribed for federal employees. Grantee shall maintain records of travel and reimbursement acceptable to the A.O.

Grantee must obtain advance written authorization from the Defender Services Division for all administrative travel outside the district(s) in which the grantee is designated to provide defense services and for all administrative and case-related travel outside the 48 contiguous United States. The Defender Services Division may approve written requests for waivers to this policy for organizations in which individuals are required to travel frequently to Mexico or Canada on case-related matters.

**15. PERSONNEL:** Personnel policies and other terms and conditions of employment shall be in writing. The A.O. shall be furnished a current copy of such policies, and subsequently, any changes to those policies.

Grantee shall maintain leave records in a form acceptable to the A.O.

No personnel vacancy shall be filled without prior notice to the A.O. Such notice shall include all relevant data concerning the employee candidate, including his or her name, position,

starting salary (including grade and step for graded employees), education, experience and compensation history. Information regarding attorneys must indicate the month and year they received their law degree, the month and year they first became a member of a bar, and their prior relevant work experience.

**16. INVESTIGATIVE, EXPERT, OR OTHER SERVICES:** Pursuant to subsection (e) of the CJA, and to the extent that they are necessary for adequate representation of a person who is financially eligible under the CJA, the grantee may engage and compensate investigators, experts, or others from grant funds made available for that purpose.

**17. BUSINESS, ENTERTAINMENT, OR PERSONAL EXPENSES:** The grantee may not use grant funds to pay for business or personal entertainment, or items of property or services of a personal nature.

**18. TRAINING:** Funds for training of employees are provided in the "other services" budget category. Grantees shall submit annual reports of training activities including travel and other expenses associated therewith.

**19. EMPLOYMENT:** The grantee shall not discriminate against any employee, or applicant for employment, on the basis of race, color, national origin, religion, sex, age,<sup>4</sup> or handicap. The grantee shall not hire, promote or advance within the organization any individual who is a relative<sup>5</sup> of: (1) the federal defender, (2) any superior of the federal defender, or (3) any member of the board of directors. No employee of the grantee shall hire, promote, advance, or advocate the hiring, promotion or advancement of his or her relative by the grantee.

The grantee agrees to place in effect a program for providing equal employment to all persons regardless of their race, color, national origin, religion, sex, age or handicap. This program shall encompass all facets of personnel management including recruitment, hiring, promotion, and advancement. The program shall also provide for a system, whereby all applicants for employment, and all employees, may seek timely redress of discrimination complaints. A copy of the grantee's program will be filed with the Defender Services Division of the A.O.

Upon request, grantee shall submit to the A.O. statistical and other reports relating to its equal employment opportunity practices. Grantee also agrees to notify the Defender Services

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<sup>4</sup> Judicial Conference policy with respect to age discrimination is that the complainant must have been at least 40 years of age at the time of the alleged discrimination.

<sup>5</sup> For purposes of this clause, the term "relative," is defined the same as in 5 U.S.C. §3110 (a)(3).

Division of any equal employment opportunity related grievance or suit filed against the organization or any of its employees and of the outcome of all such grievances or suits, and upon request, shall provide the Division with any additional information regarding any such grievance or suit.

**20. OUTSIDE PRACTICE OF LAW:** Unless otherwise authorized by the A.O., no employee of the grantee organization (including the federal defender) may engage in the practice of law outside the scope of his or her official duties with the grantee. Notwithstanding this prohibition, an employee may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the employee's family.<sup>6</sup>

**21. LIABILITY INSURANCE:** Unless otherwise authorized by the A.O., grantee shall maintain insurance, in reasonable amounts, to cover the costs of representation and liability for claims alleging malpractice, negligence, unfair personnel practices, and "errors and omissions" of officers, directors, and employees of the organization. Upon receiving or amending coverage, grantee shall notify the A.O. of the amount of coverage per event, the aggregate limit, the amount of deductible, and the cost for each type of insurance obtained, and shall certify that competitive proposals were sought.

Grantee also agrees to notify the Defender Services Division of any such claims filed and their disposition, and upon request shall provide the Division with any additional information regarding any such claim.

**22. CHANGES OR MODIFICATIONS:** Upon their adoption, the grantee shall forward to the A.O. any amendment to the Articles of Incorporation or the By-laws under which the grantee operates, or any changes in the grantee's Board of Directors.

**23. PAYMENTS FROM OR ON BEHALF OF CLIENTS:** Except as authorized pursuant to subsection (f) of the CJA and corresponding provisions in the CJA Guidelines, neither the grantee nor its employees will take, request, demand, accept, receive or agree to receive anything of value from or on behalf of a person who is to be, is being, or has been furnished representation by grantee. Grantee will take appropriate measures to enforce this clause and advise the A.O. of any violation.

**24. NON-ASSIGNABILITY:** No obligations or responsibilities of the grantee, and no grant funds or benefits accruing under the grant, may be transferred, assigned, sub-contracted, or otherwise conveyed without the express written approval of the A.O., except as specifically authorized in the Grant and Conditions.

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<sup>6</sup> For purposes of this clause, the term "family" includes all relatives listed in 5 U.S.C. §3110 (a)(3).

**25. FAILURE TO COMPLY WITH TERMS AND CONDITIONS:** In the event the grantee fails to comply substantially with any of the terms or conditions of the grant award set forth herein, or it is unable to deliver the representation and other services which are the subject of this agreement, the Conference, or its authorized representative, may reduce, suspend, or terminate, or disallow payments under this grant award as it deems appropriate. The Conference, or its authorized representative, shall give notice to the grantee of an intent to reduce, suspend, or terminate payments at least 10 days prior to taking action. Such notice shall indicate the intended action and the reason therefore.

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**AUTHORIZED REPRESENTATIVE OF GRANTEE**

## APPENDIX E

### PROCEDURES FOR EFFECTING INTERIM PAYMENTS TO COUNSEL APPOINTED UNDER THE CRIMINAL JUSTICE ACT, 18 U.S.C. 3006A IN NON-DEATH PENALTY CASES

1. The district court issues a Memorandum Order to counsel, outlining payment procedures and specifically addressing payment for actual expenses, travel, and compensation of counsel. (A Sample Memorandum Order appears on Page E-3.)
2. If excess compensation is anticipated, written approval of the procedure must be obtained from the chief judge of the circuit or his or her delegate prior to issuance of the order.
3. Once it is issued, a copy of the Memorandum Order should be furnished to the CJA Claims Coordinator.
4. The CJA Form 20 should be submitted with full documentation of all expenses claimed on the voucher.
5. Assign a number to each voucher processed for payment.
6. Item 19 of the CJA Form 20 must be completed to indicate the time period covered by the voucher and whether it is for the final payment or for an interim payment.
7. If the court has selected OPTION A of the Sample Memorandum Order, the final voucher should:
  - a) set forth in detail the time and expenses claimed for the entire case;
  - b) reflect all compensation and reimbursement previously received;
  - c) show the net amount remaining to be paid; and
  - d) be approved by the chief judge of the circuit or his or her delegate if the total claim for the case is in excess of the statutory limits.

8. If the court has selected OPTION B of the Sample Memorandum Order and established intervals for the balance of amounts withheld from the interim vouchers, each cumulative voucher should:
  - a) be labeled "CUMULATIVE VOUCHER";
  - b) set forth in detail the time and expenses claimed for the pre-established time interval;
  - c) reflect all compensation and reimbursement previously received during the pre-established time interval;
  - d) show the net amount remaining to be paid; and
  - e) be approved by the chief judge of the circuit or his or her delegate.

S A M P L E  
(To be used in non-death penalty cases)

Memorandum to All Counsel Appointed Under the Criminal Justice Act in the Case of  
\_\_\_\_\_  
Number \_\_\_\_\_

RE: Interim Payments for Representation of Counsel

Because of the expected length of the trial in this case, and the anticipated hardship on counsel in undertaking representation full-time for such a period without compensation, pursuant to paragraph 2.30 A of the Guidelines for the Administration of the Criminal Justice Act, the following procedures for interim payments shall apply during the course of your representation in this case:

1. Submission of Vouchers

Counsel shall submit to the court clerk, twice each month, an interim CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel." Compensation earned and reimbursable expenses incurred from the first to the fifteenth days of each month shall be claimed on an interim voucher submitted no later than the twentieth day of each month, or the first business day thereafter. Compensation earned and reimbursable expenses incurred from the sixteenth to the last day of each month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date of appointment to \_\_\_\_\_, and shall be submitted no later than \_\_\_\_\_; thereafter, the vouchers shall be submitted twice each month according to the schedule outlined above. Counsel shall complete Item 19 on the form for each interim voucher. Each interim voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter II, Part C of the Guidelines for the Administration of the Criminal Justice Act outlines the procedures and rules for claims by CJA attorneys and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for two-thirds of the approved number of hours. This compensation will be determined by multiplying two-thirds of the approved number of hours by the applicable rate. I will also authorize for payment all reimbursable expenses reasonably incurred.

*[Select OPTION A or B]*

#### OPTION A

At the conclusion of the representation, each counsel shall submit a final voucher seeking payment of the one-third balance withheld from the earlier interim vouchers, as well as payment for representation provided during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. Counsel shall reflect all compensation and reimbursement previously received on the appropriate line of the final voucher, as well as the net amount remaining to be paid at the conclusion of the case. After reviewing the final voucher, I will submit it to the chief judge of the circuit or his or her delegate for review and approval.

#### OPTION B

Every \_\_\_\_\_ months, counting from the submission date for the first interim voucher, until the conclusion of the representation, counsel shall submit a cumulative interim voucher seeking payment of the outstanding one-third balance withheld from all earlier interim compensation paid out during the preceding \_\_\_\_\_-month interval, as well as payment for representation provided during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. Counsel should reflect all compensation and reimbursement previously received on the appropriate line of the cumulative interim voucher, as well as the net amount remaining to be paid at the end of the interval. After reviewing the cumulative interim voucher, I will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. At the conclusion of the representation, each counsel shall submit a final cumulative voucher seeking payment of the one-third balance withheld from the interim vouchers processed during the final interval, as well as payment for representation provided during the last interim period of the interval.

## 2. Reimbursable Expenses

Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. While the statute and applicable rules and regulations do not place a monetary limit on the amount of expenses that can be incurred, counsel should incur no single expense item in excess of \$ \_\_\_\_\_ without prior approval of the Court. Such approval may be sought by filing an *ex parte* application with the Clerk stating the nature of the expense, the estimated dollar cost and the reason the expense is necessary to the representation. An application seeking such approval may be filed *in camera*, if necessary. Upon finding that the expense is reasonable, I will authorize counsel to incur it. Recurring expenses, such as telephone toll calls, photocopying and photographs, which aggregate more than \$ \_\_\_\_\_ on one or more interim vouchers are not considered single expenses requiring Court approval.

With respect to travel outside of the city/county of \_\_\_\_\_ for the purpose of consulting with the client or his or her former counsel, interviewing witnesses, etc., the \$ \_\_\_\_\_ rule should be applied in the following manner. Travel expenses, such as air fare, mileage, parking fees, meals and lodging, can be claimed as itemized expenses. Therefore, if the reimbursement for expenses relating to a single trip will aggregate an amount in excess of \$ \_\_\_\_\_, the travel should receive prior approval of the Court.

The following additional guidelines may be helpful to counsel:

a. Case related travel by privately owned automobile should be claimed at the rate of \_\_\_\_\_ cents per mile, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Air travel in "first class" is prohibited. Counsel and persons providing services under the CJA are encouraged to contact the clerk for air travel authorization at government rates.

b. Actual expenses incurred for meals and lodging while traveling outside of the city/county of \_\_\_\_\_ in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses for federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.

c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Rule 17, F.R.Cr.P. and 28 U.S.C. §1825.

3. Further questions or guidance

Answers to questions concerning appointment under the Criminal Justice Act can generally be found in (1) 18 U.S.C. §3006A; (2) the Plan of the United States District Court for \_\_\_\_\_, available through the clerk, and (3) Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the U.S. Courts, also available through the clerk. Should these references fail to provide the desired clarification or direction, counsel should address their inquiry directly to me or my staff.

\_\_\_\_\_  
United States District Judge

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Date      Chief Judge of the United  
States Court of Appeals for the  
\_\_\_\_\_ Circuit

**PROCEDURES FOR EFFECTING INTERIM PAYMENTS TO COUNSEL  
APPOINTED UNDER THE CRIMINAL JUSTICE ACT, 18 U.S.C. 3006A,  
IN DEATH PENALTY CASES**

1. The district court issues a Memorandum Order to counsel, outlining payment procedures and specifically addressing payment for actual expenses, travel, and compensation of counsel. (A Sample Memorandum Order appears on Page E-8.)
2. A copy of the Memorandum Order should be furnished to the CJA claims coordinator.
3. The CJA Form 30 should be submitted with full documentation of all expenses claimed on the voucher.
4. Assign a number to each voucher processed for payment.
5. Item 18 of the CJA Form 30 must be completed to indicate the time period covered by the voucher and whether it is for the final payment or for an interim payment.
6. The final voucher should:
  - a) set forth in detail the time and expenses claimed for the final interim period;
  - b) set forth in detail the time and expenses claimed for the entire case; and
  - c) reflect all compensation and reimbursement previously received.

SAMPLE  
(To be used only in death penalty cases)

Memorandum to All Counsel Appointed Under the Criminal Justice Act (CJA) in the Case  
of \_\_\_\_\_

Number \_\_\_\_\_

RE: Interim Payments for Representation of Counsel

Because of the expected length of the trial in this case and the anticipated hardship on counsel in undertaking representation full-time for such a period without compensation, pursuant to paragraph 2.30 B of the Guidelines for the Administration of the Criminal Justice Act, the following procedures for interim payments shall apply during the course of your representation in this case:

1. Submission of Vouchers

Counsel shall submit to the court clerk, twice each month, an interim CJA Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel." Compensation earned and reimbursable expenses incurred from the first to the fifteenth days of each month shall be claimed on an interim voucher submitted no later than the twentieth day of each month, or the first business day thereafter. Compensation earned and reimbursable expenses incurred from the sixteenth to the last day of each month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date of appointment to \_\_\_\_\_, and shall be submitted no later than \_\_\_\_\_; thereafter, the vouchers shall be submitted twice each month according to the schedule outlined above. Each voucher shall be numbered when processed for payment. Counsel should complete Item 18 on the form for each interim voucher. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter VI, as well as the applicable provisions of Chapter II, Part C of the Guidelines for the Administration of the Criminal Justice Act, outlines the procedures and rules for claims by CJA attorneys and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for the approved number of hours. I will also authorize for payment all reimbursable expenses reasonably incurred.

At the conclusion of the representation, each counsel shall submit a final voucher seeking payment for representation provided during the final interim period. The final voucher shall also set forth in detail the time and expenses claimed for the entire case, including all documentation. Counsel shall reflect all compensation and reimbursement previously received on the appropriate line of the final voucher.

## 2. Reimbursable Expenses

Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. While the statute and applicable rules and regulations do not place a monetary limit on the amount of expenses that can be incurred, counsel should incur no single expense item in excess of \$ \_\_\_\_\_ without prior approval of the Court. Such approval may be sought by filing an ex parte application with the Clerk stating the nature of the expense, the estimated dollar cost and the reason the expense is necessary to the representation. An application seeking such approval may be filed in camera, if necessary. Upon finding that the expense is reasonable, I will authorize counsel to incur it. Recurring expenses, such as telephone toll calls, photocopying and photographs, which aggregate more than \$ \_\_\_\_\_ on one or more interim vouchers are not considered single expenses requiring Court approval.

With respect to travel outside of the city/county of \_\_\_\_\_ for the purpose of consulting with the client or his or her former counsel, interviewing witnesses, etc., the \$ \_\_\_\_\_ rule should be applied in the following manner. Travel expenses, such as air fare, mileage, parking fees, meals and lodging, can be claimed as itemized expenses. Therefore, if the reimbursement for expenses relating to a single trip will aggregate an amount in excess of \$ \_\_\_\_\_, the travel should receive prior approval of the Court.

The following additional guidelines may be helpful to counsel:

a. Case related travel by privately owned automobile should be claimed at the rate of \_\_\_\_\_ cents per mile, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Air travel in "first class" is prohibited. Counsel and persons providing service under the CJA are encouraged to contact the clerk for air travel authorization at government rates.

b. Actual expenses incurred for meals and lodging while traveling outside of the city/county of \_\_\_\_\_ in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.

c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Rule 17, F.R.Cr.P. and 28 U.S.C. §1825.

## 3. Further questions or guidance

Answers to questions concerning appointment under the Criminal Justice Act can generally be found in (1) 18 U.S.C. §3006A; (2) the Plan of the United States District Court for

\_\_\_\_\_, available through the clerk, and (3) Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the U.S. Courts, also available through the clerk. Should these references fail to provide the desired clarification or direction, counsel should address their inquiry directly to me or my staff.

\_\_\_\_\_  
United States District Judge

\_\_\_\_\_  
Date

## APPENDIX F

### PROCEDURES FOR EFFECTING INTERIM PAYMENTS TO PERSONS PROVIDING SERVICES PURSUANT TO SUBSECTION (e) OF THE CRIMINAL JUSTICE ACT, 18 U.S.C. 3006A IN NON-DEATH PENALTY CASES

1. The district court issues a Memorandum Order to persons providing services pursuant to subsection (e) of the Criminal Justice Act, 18 U.S.C. §3006A, outlining payment procedures and specifically addressing payment for actual expenses, travel, and compensation of persons providing investigative, expert and other services under subsection (e). (A Sample Memorandum Order appears on page F-3.)
2. If excess compensation is anticipated, written approval of the procedure must be obtained from the chief judge of the circuit or his or her delegate prior to issuance of the order.
3. Once it is issued, a copy of the Memorandum Order should be furnished to the CJA Claims coordinator.
4. The CJA Form 21 should be submitted with full documentation of all expenses claimed on the voucher.
5. Assign a number to each voucher processed for payment.
6. Item 18 of the CJA Form 21 must be completed to indicate the time period covered by the voucher and whether it is for the final payment or for an interim payment.
7. If the court has selected OPTION A of the Sample Memorandum Order, the final voucher should:
  - a) set forth in detail the time and expenses claimed for the entire case;
  - b) reflect all compensation and reimbursement previously received;
  - c) show the net amount remaining to be paid; and
  - d) be approved by the chief judge of the circuit or his or her delegate if the total claim for the case is in excess of the statutory limits.

8. If the court has selected OPTION B of the Sample Memorandum Order and established intervals for the submission of cumulative vouchers for the balance of amounts withheld from the interim vouchers, each cumulative voucher should:
  - a) be labeled "CUMULATIVE VOUCHER";
  - b) set forth in detail the time and expenses claimed for the pre-established time interval;
  - c) reflect all compensation and reimbursement previously received during the pre-established time interval;
  - d) show the net amount remaining to be paid; and
  - e) be approved by the chief judge of the circuit or his or her delegate.

S A M P L E  
(To be used in non-death penalty cases)

Memorandum to All Persons Providing Services Pursuant to Subsection (e) of the Criminal Justice Act, 18 U.S.C. §3006A, in the Case of

Number \_\_\_\_\_  
\_\_\_\_\_

RE: Interim Payments for Services Other Than Counsel

Because of the expected length of the trial in this case, and the anticipated hardship on persons providing services pursuant to subsection (e) of the Criminal Justice Act for such a period without compensation, in accordance with paragraph 3.06 A of the Guidelines for the Administration of the Criminal Justice Act, the following procedures for interim payments shall apply during the period of time in which you provide services in connection with this case:

1. Submission of Vouchers

Persons providing services under subsection (e) shall submit to the court clerk, twice each month, an interim CJA Form 21, "Authorization and Voucher for Expert and Other Services." Compensation earned and reimbursable expenses incurred from the first to the fifteenth days of each month shall be claimed on an interim voucher submitted no later than the twentieth day of each month, or the first business day thereafter. Compensation earned and reimbursable expenses incurred from the sixteenth to the last day of each month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date on which your services were first retained to \_\_\_\_\_, and shall be submitted no later than \_\_\_\_\_; thereafter, the vouchers shall be submitted twice each month according to the schedule outlined above. Claimants shall complete Item 17 of each interim voucher submitted. Each voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter III of the Guidelines for the Administration of the Criminal Justice Act outlines the procedures and rules for claims by persons providing services pursuant to subsection (e) and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for two-thirds of the approved number

of hours. This compensation will be determined by multiplying two-thirds of the approved number of hours by the applicable rate. I will also authorize for payment all reimbursable expenses reasonably incurred.

*[Select OPTION A or B]*

#### OPTION A

At the conclusion of the period during which you provide services in this case, you shall submit a final voucher seeking payment of the one-third balance withheld from the earlier interim vouchers, as well as payment for services rendered during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement should be attached to the voucher which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the conclusion of the case. After reviewing the final voucher, I will submit it to the chief judge of the circuit, or his or her delegate, for review and approval.

#### OPTION B

Every \_\_\_\_\_ months, counting from the submission date for the first interim voucher, until the conclusion of the services, claimants shall submit a cumulative interim voucher seeking payment of the outstanding one-third balance withheld from all earlier interim compensation paid out during the preceding \_\_\_\_\_-month interval, as well as payment for services rendered during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. A statement shall be attached to the cumulative interim voucher, which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the end of the interval. After reviewing the cumulative interim voucher, I will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. At the conclusion of the period during which you provide services in this case, you shall submit a final cumulative voucher seeking payment of the one-third balance withheld from the interim vouchers processed during the final interval, as well as payment for services rendered during the last interim period of the interval.

#### 2. Reimbursable Expenses

Persons providing services pursuant to subsection (e) may be reimbursed for out-of-pocket expenses reasonably incurred incident to the rendering of services.

The following guidelines may be helpful:

a. Case related travel by privately owned automobile should be claimed at the rate of \_\_\_\_\_ cents per mile, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Air travel

in "first class" is prohibited. For service providers requiring air travel, counsel are encouraged to contact the clerk for air travel authorization at government rates.

b. Actual expenses incurred for meals and lodging while traveling outside of the city/county of \_\_\_\_\_ in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses for federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.

c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Rule 17, F.R.Cr.P. and 28 U.S.C. §1825.

3. Further questions or guidance

Answers to questions concerning services provided pursuant to the Criminal Justice Act can generally be found in (1) 18 U.S.C. §3006A; (2) the Plan of the United States District Court for \_\_\_\_\_, available through the clerk, and (3) Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the U.S. Courts, also available through the clerk. Should these references fail to provide the desired clarification or direction, counsel should address their inquiry directly to me or my staff.

\_\_\_\_\_  
United States District Judge

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Judge of the United  
States Court of Appeals for the  
\_\_\_\_\_  
Circuit

**PROCEDURES FOR EFFECTING INTERIM PAYMENTS  
TO PERSONS PROVIDING SERVICES PURSUANT TO  
SUBSECTION (e) OF THE CRIMINAL JUSTICE ACT, (CJA) 18 U.S.C. § 3006A,  
IN CAPITAL PROCEEDINGS FOR CASES COMMENCED, AND APPELLATE  
PROCEEDINGS IN WHICH AN APPEAL IS PERFECTED,  
BEFORE APRIL 24, 1996**

1. The district court issues a Memorandum Order to persons providing services pursuant to subsection (e) of the CJA, 18 U.S.C. section 3006A, outlining payment procedures and specifically addressing payment for actual expenses, travel, and compensation of persons providing investigative, expert and other services under subsection (e). (A Sample Memorandum Order appears on page F-8.)
2. A copy of the Memorandum Order should be furnished to the CJA claims coordinator.
3. The CJA Form 31 should be submitted with full documentation of all expenses claimed on the voucher.
4. Assign a number to each voucher processed for payment.
5. Item 17 of the CJA Form 31 must be completed to indicate the time period covered by the voucher and whether it is for the final payment or for an interim payment.
6. The final voucher should:
  - a) set forth in detail the time and expenses claimed for the final interim period;
  - b) set forth in detail the time and expenses claimed for the entire case; and
  - c) reflect all compensation and reimbursement previously received.

SAMPLE

**(To be used only in capital proceedings for cases commenced, and appellate proceedings in which an appeal is perfected, before April 24, 1996)**

Memorandum to All Persons Providing Services Pursuant to Subsection(e) of the Criminal Justice Act 18 U.S.C. §3006A, (CJA) in the Case  
of \_\_\_\_\_

Number \_\_\_\_\_

RE: Interim Payments for Services Other Than Counsel

Because of the expected length of the trial in this case and the anticipated hardship on persons providing services pursuant to subsection (e) of the CJA for such a period without compensation, in accordance with paragraph 3.06 B of the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the following procedures for interim payments shall apply during the period of time in which you provide services in connection with this case:

1. Submission of Vouchers

Persons providing services under subsection (e) shall submit to the court clerk, twice each month, an interim CJA Form 31, "Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services." Compensation earned and reimbursable expenses incurred from the first to the fifteenth days of each month shall be claimed on an interim voucher submitted no later than the twentieth day of each month, or the first business day thereafter. Compensation earned and reimbursable expenses incurred from the sixteenth to the last day of each month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date on which your services were first retained to \_\_\_\_\_, and shall be submitted no later than \_\_\_\_\_; thereafter, the vouchers shall be submitted twice each month according to the schedule outlined above. Claimants shall complete Item 17 of each interim voucher submitted. Each interim voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter VI, as well as the applicable provisions of Chapter III, of the *CJA Guidelines*, outlines the procedures and rules for claims by persons providing services pursuant to subsection (e) and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for the approved number of hours. I will also authorize for payment all reimbursable expenses reasonably incurred.

At the conclusion of the period during which you provide services in this case, you shall submit a final voucher seeking payment for services rendered during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement should be attached to the voucher which reflects all compensation and reimbursement previously received.

## 2. Reimbursable Expenses

Persons providing services pursuant to subsection (e) may be reimbursed for out-of-pocket expenses reasonably incurred incident to the rendering of services.

The following guidelines may be helpful:

a. Case related travel by privately owned automobile should be claimed at the rate of \_\_\_\_\_ cents per mile, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Air travel in "first class" is prohibited. For service providers requiring air travel, counsel are encouraged to contact the clerk for authorization to travel at government rates.

b. Actual expenses incurred for meals and lodging while traveling outside of the city/county of \_\_\_\_\_ in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.

c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Rule 17, F.R.Cr.P. and 28 U.S.C. §1825.

## 3. Further questions or guidance

Answers to questions concerning services provided pursuant to the Criminal Justice Act can generally be found in (1) 18 U.S.C. §3006A; (2) the Plan of the United States District Court for \_\_\_\_\_, available through the clerk, and (3) *CJA Guidelines*, published by the Administrative Office of the U.S. Courts, also available through the clerk. Should

these references fail to provide the desired clarification or direction, inquiries should be addressed directly to me or my staff.

---

United States District Judge

---

Date

PROCEDURES FOR EFFECTING INTERIM PAYMENTS  
TO PERSONS PROVIDING SERVICES PURSUANT TO  
SUBSECTION (e) OF THE CRIMINAL  
JUSTICE ACT (CJA), 18 U.S.C. § 3006A, and 21 U.S.C. § 848(q)(9) and (q)(10)(B)  
**IN CAPITAL PROCEEDINGS FOR CASES COMMENCED, AND  
APPELLATE PROCEEDINGS IN WHICH AN APPEAL IS PERFECTED,  
ON OR AFTER APRIL 24, 1996**

1. The district court issues a Memorandum Order to persons providing investigative, expert, and other services pursuant to 18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(9) and (q)(10)(B), outlining payment procedures and specifically addressing payment for actual expenses, travel, and compensation. (A Sample Memorandum Order appears on page F-13.)
2. If excess payment (*i.e.*, more than \$7,500 for all such services in a case) is anticipated, written approval of the procedure must be obtained from the chief judge of the circuit or his or her delegate prior to issuance of the Memorandum Order. See sample form, Appendix C. If excess payment was not anticipated, but becomes apparent during the provision of services, approval must be obtained at that point.
3. Once it is issued, a copy of the Memorandum Order should be furnished to the court's CJA Claims coordinator.
4. The CJA Form 31 should be submitted for each service provider with full documentation of all expenses claimed on the voucher.
5. Assign a number to each voucher processed for payment.
6. Item 17 of the CJA Form 31 must be completed to indicate the time period covered by the voucher and whether it is for the final payment or for an interim payment.
7. If the court has selected OPTION A of the Sample Memorandum Order, the final voucher should:
  - a) set forth in detail the time and expenses claimed for the entire case;
  - b) reflect all compensation and reimbursement previously received;
  - c) show the net amount remaining to be paid; and
  - d) be approved by the chief judge of the circuit or his or her delegate if the total claim for the case is in excess of the statutory limit.

8. If the court has selected OPTION B of the Sample Memorandum Order and established intervals for the submission of cumulative vouchers for the balance of amounts withheld from the interim vouchers, each cumulative voucher should:
- a) be labeled "CUMULATIVE VOUCHER";
  - b) set forth in detail the time and expenses claimed for the pre-established time interval;
  - c) reflect all compensation and reimbursement previously received during the pre-established time interval;
  - d) show the net amount remaining to be paid; and
  - e) be approved by the chief judge of the circuit or his or her delegate.

S A M P L E

**(To be used in capital proceedings for cases commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996)**

Memorandum to All Persons Providing Services Pursuant to Subsection (e) of the Criminal Justice Act (CJA), 18 U.S.C. §3006A, and 21 U.S.C. § 848(q)(9) and (q)(10)(B), in the Case of

\_\_\_\_\_  
Name

\_\_\_\_\_  
Number

RE: Interim Payments for Services Other Than Counsel

Because of the expected length of the proceedings in this [federal capital prosecution] [federal capital habeas corpus case], and the anticipated hardship on persons providing services pursuant to 18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(9) and (q)(10)(B) for such a period without payment, in accordance with paragraph 6.03 D of the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the following procedures for interim payments shall apply during the period of time in which you provide services in connection with this case.

1. Submission of Vouchers

Persons providing services under 18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(9) and (q)(10)(B) shall submit to the court clerk, twice each month, an interim CJA Form 31, "Authorization and Voucher for Expert and Other Services." Compensation earned and reimbursable expenses incurred from the first to the fifteenth days of each month shall be claimed on an interim voucher submitted no later than the twentieth day of each month, or the first business day thereafter. Compensation earned and reimbursable expenses incurred from the sixteenth to the last day of each month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date on which your services were first retained to \_\_\_\_\_, and shall be submitted no later than \_\_\_\_\_; thereafter, the vouchers shall be submitted twice each month according to the schedule outlined above. Claimants shall complete Item 17 of each interim voucher submitted. Each interim voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter VI and the applicable provisions of Chapter III of the *CJA Guidelines* outline the procedures and rules for claims by persons providing services pursuant to

18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(9) and (q)(10)(B), and should be followed regarding each voucher.

I will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for two-thirds of the approved number of hours. This compensation will be determined by multiplying two-thirds of the approved number of hours by the applicable rate. I will also authorize for payment all reimbursable expenses reasonably incurred.

[Select OPTION A or B]

OPTION A

At the conclusion of the period during which you provide services in this case, you shall submit a final voucher seeking payment of the one-third balance withheld from the earlier interim vouchers, as well as payment for services rendered during the final interim period. The final voucher shall set forth in detail the time and expenses claimed for the entire case, including all appropriate documentation. A statement should be attached to the voucher which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the conclusion of the case. After reviewing the final voucher, the court, or magistrate judge if the services were rendered in connection with a case disposed of entirely before the magistrate judge, will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. The court or magistrate judge will certify that the total payment amount is necessary to provide fair compensation for services of an unusual character or duration. If the total payment for a service provider does not exceed \$7,500, and if it is anticipated that the combined payments for all providers of investigative, expert, and other services will not exceed \$7,500, then I will approve the final voucher.

OPTION B

Every \_\_\_\_\_ months, counting from the submission date for the first interim voucher, until the conclusion of the services, claimants shall submit a cumulative interim voucher seeking payment of the outstanding one-third balance withheld from all earlier interim compensation paid out during the preceding \_\_\_\_\_-month interval, as well as payment for services rendered during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. A statement shall be attached to the cumulative interim voucher, which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the end of the interval. At the conclusion of the period during which you provide services in this case, you shall submit a final cumulative voucher seeking payment of the one-third balance withheld from the interim vouchers processed during the final interval, as well as payment for services rendered during the last interim period of the interval. After reviewing the cumulative interim voucher, the court, or magistrate judge if the services were rendered in connection with a

case disposed of entirely before the magistrate judge, will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. The court or magistrate judge will certify that the total payment amount is necessary to provide fair compensation for services of an unusual character or duration. If the total payment for a service provider does not exceed \$7,500, and if it is anticipated that the combined payments for all providers of investigative, expert, and other services will not exceed \$7,500, then I will approve the final cumulative voucher seeking payment of the one-third balance withheld from the interim vouchers processed during the final interval, as well as payment for services rendered during the last interim period of the interval.

## 2. Reimbursable Expenses

Persons providing services pursuant to 18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(9) and (q)(10)(B), may be reimbursed for out-of-pocket expenses reasonably incurred incident to the rendering of services.

The following guidelines may be helpful:

a. Case related travel by privately owned automobile should be claimed at the rate of \_\_\_\_\_ cents per mile, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Air travel in "first class" is prohibited. For service providers requiring air travel, counsel are encouraged to contact the clerk for authorization to travel at government rates.

b. Actual expenses incurred for meals and lodging while traveling outside of the city/county of \_\_\_\_\_ in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses for federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.

c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Rule 17, F.R.Cr.P. and 28 U.S.C. §1825.

## 3. Further questions or guidance

Answers to questions concerning services provided pursuant to 18 U.S.C. § 3006A and 21 U.S.C. § 848(q), as amended, can generally be found in (1) these statutes; (2) the Plan of the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_, available through the clerk; and (3) the *CJA Guidelines*, published by the Administrative Office of the U.S.

Courts, also available through the clerk. Should these references fail to provide the desired clarification or direction, counsel should address their inquiry directly to me or my staff.

\_\_\_\_\_  
United States District Judge

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Judge of the United  
States Court of Appeals for the  
\_\_\_\_\_ Circuit

MODEL  
CRIMINAL JUSTICE ACT PLAN

(District with a Federal Public or Community Defender Organization)

Brackets denote optional language based on the configuration of defense services in the district.

CONTENTS

- I. Authority
- II. Statement of Policy
  - A. Objectives
  - B. Compliance
- III. Definitions
  - A. Representation
  - B. Appointed Attorney
- IV. Provision of Representation
  - A. Circumstance
    - 1. Mandatory
    - 2. Discretionary
  - B. When Counsel Shall Be Provided
  - C. Number and Qualifications of Counsel
    - 1. Number
    - 2. Qualifications
  - D. Eligibility for Representation
    - 1. Factfinding
    - 2. Disclosure of Change in Eligibility
- V. [Federal Public] [Community] Defender Organization
  - A. Establishment
  - B. Supervision of Defender Organization
  - C. Management of CJA Panel or
  - C. [Not used (if [federal public] [community] defender is not responsible for management of the CJA panel)]

- VI. Private Attorneys
  - A. Establishment of CJA Panel
  - B. Organization
  - C. Ratio of Appointments
  
- VII. [Not used (in states with no death penalty)] or
  
- VII. Representation in State Death Penalty Habeas Corpus Proceedings under 28 U.S.C. § 2254
  
- VIII. Duties of Appointed Counsel
  - A. Standards
  - B. Professional Conduct
  - C. No Receipt of Other Payment
  - D. Continuing Representation
  
- IX. Duties of Law Enforcement and Related Agencies
  - A. Presentation of Accused for Appointment of Counsel
  - B. Pretrial Services Interview
  - C. Notice of Indictment or Criminal Information
  
- X. Miscellaneous
  - A. Forms
  - B. Claims
  - C. Supersession
  
- XI. Effective Date

APPENDIX or APPENDICES:

[I. Bylaws of the Community Defender Organization] (omit if a community defender organization is not authorized by this CJA Plan)

I. [or II.] Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

UNITED STATES DISTRICT COURT  
 FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_  
 CRIMINAL JUSTICE ACT PLAN

## I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), section 3006A of title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the judges of the United States District Court for the \_\_\_ District of \_\_\_, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

## II. STATEMENT OF POLICY

### A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the *CJA Guidelines* in a way that meets the needs of this district.

### B. Compliance.

1. The court, its clerk, [the (federal public) (community) defender organization], [attorneys furnished by a bar association or legal aid agency], and private attorneys appointed under the CJA shall comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the clerk of court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk shall maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and shall make known to such attorneys its availability.

## III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.

- B. "Appointed attorney" includes private attorneys, [the (federal public) (community) defender and staff attorneys of the (federal public) (community) defender organization], [and attorneys furnished by a bar association or legal aid agency].

#### IV. PROVISION OF REPRESENTATION

##### A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:
  - a. is charged with a felony or with a Class A misdemeanor;
  - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
  - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - d. is under arrest, when such representation is required by law;
  - e. is entitled to appointment of counsel in parole proceedings;
  - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
  - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
  - h. is in custody as a material witness;
  - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
  - j. 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 section 4109 of title 18, United States Code;
  - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
  - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
  - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
  - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of title 28, United States Code;
  - c. is charged with civil or criminal contempt who faces loss of liberty;

- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
- e. is proposed by the United States attorney for processing under a pretrial diversion program;
- f. is held for international extradition under chapter 209 of title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:
  - a. Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
  - b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.
2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:
  - a. Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. § 848(q)(5), at least one of the attorneys appointed must have been admitted to practice in the

court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender or, if no such organization exists in the district, of the Administrative Office of the United States Courts.

- b. Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.
- c. Attorney Qualification Waiver. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

#### D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. 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.

### V. [FEDERAL PUBLIC] [COMMUNITY] DEFENDER ORGANIZATION

#### A. Establishment.

[Creation of New Organization]

1. Pursuant to subsections (g)(1) and (g)(2)(A) of the CJA, the Federal Public Defender Organization for the \_\_\_\_\_ District of \_\_\_\_\_ is hereby established. Upon

organization of the federal public defender's office, the federal public defender shall notify this court that he or she is available to accept appointments for representation.

or

Pursuant to subsections (g)(1) and (g)(2)(B) of the CJA, [the (name of community defender organization)], a community defender organization, [is] [shall be] designated to provide representation in this district. Upon organization of [the (name of community defender organization)], a community defender organization, the community defender shall notify this court that he or she is available to accept appointments for representation. A copy of the Bylaws of the community defender organization [are] [shall be] found at Appendix I of this CJA Plan.

or [Recognition of Existing Organization]

1. The Federal Public Defender Organization of the \_\_\_\_\_ District of \_\_\_\_\_, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.

or

The (name of community defender organization), previously established in this district pursuant to the provisions of the CJA, is hereby recognized as a community defender organization for this district.

2. The [federal public] [community] defender organization shall be capable of providing legal services [throughout the district] [in the \_\_\_\_, \_\_\_\_, and \_\_\_\_ Divisions of the district] and shall maintain [an office in (city), (state)] [offices in (city), (city), and (city), (state)].
- B. Supervision of Defender Organization. The [federal public] [community] defender shall be responsible for the supervision and management of the [federal public] [community] defender organization. Accordingly, the [federal public] [community] defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the [federal public] [community] defender.
- C. Management of CJA Panel. The [federal public] [community] defender shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel subject to the provisions of the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act, found at Appendix I [or II] of this CJA Plan.

or

C. [Not used (if the [federal public] [community] defender is not responsible for management of the CJA panel)].

VI. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I [or II] of this CJA Plan.
- C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

VII. [Not used (in states with no death penalty)].

or

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254

The court shall appoint a member or members of the Special Death Penalty Habeas Corpus Panel, [or the (federal public) (community) defender with his or her consent], [or a qualified attorney recommended by the (federal public) (community) defender], [or the state or county public defender], [or an attorney furnished by (name of bar association or legal aid agency)], [or other attorney who qualifies for appointment pursuant to section 848(q) of title 21, United States Code] to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of [the American Bar Association's *Model Rules of Professional Conduct*] or [the American Bar Association's *Model Code of Professional Conduct*] or [other standards for professional conduct adopted by the Court].
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

## IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, [notify the (federal public) (community) defender who shall discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and] arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. *[Consistent with the following resolution approved by the Judicial Conference during its March 1988 proceedings, state the district practice, if applicable, regarding the advice of counsel prior to the pretrial services interview:*

*The Judicial Conference recognizes the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. § 3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the Conference encourages districts to take the steps necessary to permit the furnishing of appointed counsel at this stage of*

*the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing.]*

- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

## X. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of [the clerk of the court] or [the (federal public) (community) defender]. That office shall review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

## XI. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the \_\_\_\_\_ Circuit.

## APPENDIX or APPENDICES:

- [I. Bylaws of the Community Defender Organization] (omit if a community defender organization is not authorized by this CJA Plan)

I. [or II.] Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

ENTER FOR THE COURT ON (month), (day), (year).

\_\_\_\_\_  
CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE \_\_\_\_\_  
CIRCUIT on (month), (day), (year).

\_\_\_\_\_  
CHIEF JUDGE, COURT OF APPEALS

MODEL PLAN FOR THE  
COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF  
PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

*[Defender Services Committee Comment: This "Model Plan" is intended to provide guidance in the establishment and operation of the Panel of private attorneys required under subsection (b) of the Criminal Justice Act, 18 U.S.C. §3006A. The "Model Plan" may either be incorporated into the existing District Plan for the Implementation of the Criminal Justice Act or promulgated as a supplement to that Plan by local rule. If the "Model Plan" is issued as a local rule, care should be taken to insure that no provision of the "Model Plan" is inconsistent with the District Plan for the Implementation of the Criminal Justice Act.]*

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to paragraph B. of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.
2. Size. The Court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

*[Defender Services Committee Comment: This provision reflects the policy statement regarding the size of CJA Panels contained in paragraph 2.01 D of the Guidelines for the Administration of the Criminal Justice Act adopted by the United States Judicial Conference.]*

3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet 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 hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments 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.

***[Defender Services Committee Comment: The Defender Services Committee considered the question of whether detailed eligibility standards and minimum experience standards should be included. The Committee was of the view that while imposing specific qualification and experience requirements might ensure that only the most qualified attorneys become members of the panel in some districts, in other districts such specific requirements might render it difficult or impossible to find a sufficient number of attorneys to serve on the panel.]***

***The "Model Plan" thus contains only the very general eligibility requirement of membership in good standing of the federal bar of the district and demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. More detailed and specific qualifications standards can, if desired, be developed and substituted locally by each district.]***

4. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.

5. Terms. The initial CJA Panel established pursuant to this Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, and members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.

***[Defender Services Committee Comment: In view of the provision in paragraph 1 above, and that of paragraph 2.01 D of the Guidelines for the Administration of the Criminal Justice Act that members of the CJA Panel shall serve at the pleasure of the court, some courts may not wish to have fixed terms for panel membership but rather have members of the panel serve continuously until they resign or are removed. If the above paragraph regarding terms of membership is deleted, the following paragraph pertaining to reappointment should also be deleted.]***

6. Reappointment. A member of the CJA Panel shall not be eligible for reappointment to the panel for the one year period immediately following expiration of his or her term, unless waiver of this restriction is certified by the Court.

***[Defender Services Committee Comment: As with the preceding paragraph, if a court should elect to have indeterminate membership on the panel rather than fixed terms, this paragraph should be deleted.]***

7. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

#### B. PANEL SELECTION COMMITTEE

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one magistrate judge, one attorney who is entering the third year of his or her term as a member of the CJA Panel [, and the Federal Public or Community Defender]. The Committee shall be chaired by the district judge.

***[Defender Services Committee Comment: The "Model Plan" provides for the screening and reviewing of the qualifications of applicants by a Panel Selection Committee consisting of one district judge, one magistrate judge, one attorney who is a senior member of the CJA Panel and, if there is a Federal Defender Organization in the district, the Federal Defender. The primary function of the Committee would be to consider applications, evaluate the qualifications of the applicants, and to make recommendations to the Court regarding appointments to the CJA Panel. The "Model Plan" calls for the Committee to meet at least annually, and leaves to the Committee the development of its own procedures, subject to any guidelines that may be established by the Court.***

*The composition of the Panel Selection Committee can be adjusted to reflect the degree of judicial, Federal Defender, or Panel attorney involvement in the screening process that is desired by each district court. The court should make a diligent effort to ensure that the composition of the Panel Selection Committee also reflects the diversity of the community in regard to the categories listed in Paragraph I.A.4. above, in order to achieve the goals of that paragraph.]*

2. Duties.

a. The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee shall also review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated, and shall be immediately eligible for reappointment notwithstanding the one-year restriction imposed by paragraph A(5) above, provided that the portion of the expired term actually served by the member did not exceed eighteen months.

c. When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.4. of this model plan. At least once each year the Committee shall provide the court with information on the panel of attorneys in each of the categories listed in paragraph I.A.4. of this model plan.

***[Defender Services Committee Comment: Recruitment efforts to provide opportunities for women, minorities, and otherwise qualified persons with disabilities could include the following:***

- o Notifying bar associations composed of minorities, persons with disabilities, and women of the availability of panel membership;***

- o Advertising in legal journals targeted to persons with disabilities, minorities, and women to encourage panel membership;*
- o Informal person-to-person recruiting of persons with disabilities, minorities and women by panel administrators, and women and minority members of the panel, and members who have disabilities;*
- o Contacting current or former members of the panel or other prominent local attorneys who have disabilities or are minorities or women to seek recommendations of other persons with disabilities, minority and women practitioners.]*

### C. CJA TRAINING PANEL

The Panel Selection Committee may establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a "second chair" capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

***[Defender Services Committee Comment: The "Model Plan" does not provide for a two-tier panel, i.e., one in which the more experienced members would be assigned to a felony panel and less experienced members to a misdemeanor panel. There are several reasons for rejecting this concept:***

- (a) Many districts have a very small number of misdemeanor or petty offense cases, therefore there would be no need for a separate panel.*
- (b) Experience alone, whether in terms of years in practice, or number of trials, is not a reliable enough factor to serve as a standard or criteria in determining qualifications to handle serious cases.*
- (c) Certain misdemeanor and petty offense cases may be quite complex, and entail serious consequences if a conviction is obtained. Thus requirements for highly qualified counsel in these cases would not differ from the requirements for attorneys in felony cases.*
- (d) Avoiding a two-tier panel system precludes the possibility that attorneys might be viewed as more or less competent.*

*The "Model Plan" also provides that the Panel Selection Committee may establish a "CJA Training Panel" consisting of attorneys who have not acquired the experience deemed necessary for membership on the CJA Panel. These attorneys could be assigned by the Court to assist members of the CJA Panel in a voluntary, "second chair," capacity. Training Panel members would not be eligible for independent appointments, nor for compensation. Training Panel membership would be neither a condition precedent to CJA Panel membership nor would service on the Training Panel guarantee admission to the CJA Panel. Training Panel members would be approved by the Panel Selection Committee, rather than by the Court.]*

## II. SELECTION FOR APPOINTMENT

### A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Clerk of the Court [Federal Public or Community Defender] shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Clerk [Federal Public or Community Defender] shall furnish a copy of this list to each judge and magistrate judge. The Clerk [Federal Public or Community Defender] shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public or Community Defender office and private attorneys, according to the formula described in the CJA Plan for the District.

*[Defender Services Committee Comment: The Committee takes no specific position as to whether or not, and to what degree, Federal Public or Community Defender Organizations should be involved in the management and administration of the CJA Panel. In those districts in which the Court wishes the Federal Public or Community Defender Organization to undertake the responsibility for the maintenance of appropriate records regarding the CJA Panel and the distribution of cases, the Federal Public or Community Defender Organization, as shown in brackets, can be substituted for the Clerk of the Court.]*

### B. METHOD OF SELECTION

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate judge shall notify the Clerk of Court [Federal Public or Community Defender] of the need for counsel and the nature of the case.

The Clerk of Court [Federal Public or Community Defender] shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public or Community Defender and the panel of private attorneys. If the magistrate judge or judge decides to appoint an attorney from the panel, the Clerk [Federal Public or Community Defender] shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge or magistrate judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Clerk of Court [Federal Public or Community Defender] as to the name of the attorney appointed and the date of the appointment.

***[Defender Services Committee Comment: The "Model Plan" provides for an individual analysis of an attorney's qualifications with respect to each appointment, to ensure that the attorney selected has the experience and ability required to handle the particular case.***

***As with the preceding paragraph, discretion is left to individual courts to determine the degree to which, if at all, Federal Public or Community Defenders shall be involved in the management of the CJA Panel. The Federal Public or Community Defender, as indicated in brackets, can be substituted for the Clerk of the Court.]***

### **III. COMPENSATION - FILING OF VOUCHERS**

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of the Court [Federal Public or Community Defender]. The Clerk of the Court [Federal Public or Community Defender] shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge or magistrate judge.

APPENDIX H

INSANITY DEFENSE REFORM ACT OF 1984

| <u>U.S. Code Section</u> | <u>Type of Hearing</u>                                                                                                                                   | <u>New Case</u> | <u>Part of Case In Chief</u> |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------------------------|
| 18 U.S.C. 4241(a)        | Motion to determine competence to stand trial.                                                                                                           | no              | yes                          |
| 18 U.S.C. 4241(e)        | Hearing to determine whether person temporarily hospitalized as a result of incompetence to stand trial has recovered competence.                        | no              | yes                          |
| 18 U.S.C. 4243(c)        | Hearing to determine whether release of person found not guilty by reason of insanity would create substantial risk of injury to person or property.     | yes             | no                           |
| 18 U.S.C. 4243(f)        | Hearing to determine whether person hospitalized following finding of not guilty by reason of insanity may be released conditionally or unconditionally. | yes             | no                           |
|                          | Also hearing to modify or eliminate conditions of release.                                                                                               | yes             | no                           |
| 18 U.S.C. 4243(g)        | Hearing on revocation of conditional release imposed under Sec. 4243(f)                                                                                  | yes             | no                           |
| 18 U.S.C. 4244(a)        | Hearing to determine present mental condition of convicted defendant prior to sentencing.                                                                | no              | yes                          |
| 18 U.S.C. 4245(a)        | Hearing to determine whether imprisoned person suffering from mental disease or defect should be hospitalized.                                           | yes             | no                           |

New Part of Case

| <u>U.S. Code Section</u> | <u>Type of Hearing</u>                                                                                                                                                                                      | <u>Case</u> | <u>In Chief</u> |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------|
| 18 U.S.C. 4246(a)        | Hearing to determine whether a hospitalized person due for release is presently suffering from a mental disease or defect so that release would create a substantial risk of injury to persons or property. | yes         | no              |
| 18 U.S.C. 4246(e)        | Hearing to determine whether a person whose hospitalization was extended following a hearing under Sec. 4246(a) may be released or conditionally released.                                                  | yes         | no              |
| 18 U.S.C. 4246(f)        | Hearing on revocation of conditional release imposed under Sec. 4246(e).                                                                                                                                    | yes         | no              |

## APPENDIX I

### RECOMMENDATIONS AND COMMENTARY

#### Preamble

Appendix I includes the recommendations and accompanying commentary contained in Part II of the report prepared by the Defender Services Committee's Subcommittee on Federal Death Penalty Cases entitled, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (report). The Judicial Conference of the United States adopted the recommendations in the report on September 15, 1998. The commentary accompanying the report has not been approved by the Judicial Conference, but is included in Appendix I, as it expands upon the recommendations, discusses the role of federal defender organizations in federal death penalty cases, and generally provides practical information that is useful to judges and appointed counsel in the management of a federal death penalty case.

#### 1. Qualifications for Appointment.

- a. Quality of Counsel. Courts should ensure that all attorneys appointed in federal death penalty cases are well qualified, by virtue of their prior defense experience, training and commitment, to serve as counsel in this highly specialized and demanding type of litigation. High quality legal representation is essential to assure fair and final verdicts, as well as cost-effective case management.
- b. Qualifications of Counsel. As required by statute, at the outset of every capital case, courts should appoint two counsel, at least one of whom is experienced in and knowledgeable about the defense of death penalty cases. Ordinarily, "learned counsel" should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in *state* death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.
- c. Special Considerations in the Appointment of Counsel on Appeal. Ordinarily, the attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. In appointing appellate counsel, courts should, among other relevant factors, consider:
  - i. the attorney's experience in federal criminal appeals and capital appeals;
  - ii. the general qualifications identified in paragraph 1(a), above; and

- iii. the attorney's willingness, unless relieved, to serve as counsel in any post-conviction proceedings that may follow the appeal.
  
- d. Special Considerations in the Appointment of Counsel in Post-Conviction Proceedings. In appointing post-conviction counsel in a case where the defendant is sentenced to death, courts should consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings, as well as the general qualifications set forth in paragraph 1(a).
  
- e. Hourly Rate of Compensation for Counsel. The rate of compensation for counsel in a capital case should be maintained at a level sufficient to assure the appointment of attorneys who are appropriately qualified to undertake such representation.

### **Commentary**

As Recommendation 1(a) indicates, the first responsibility of the court in a federal death penalty case is to appoint well-trained, experienced and dedicated defense counsel. Federal law requires the appointment of two counsel to represent a defendant in a federal death penalty case, of whom at least one must be “learned in the law applicable to capital cases.” 18 U.S.C. § 3005. Additional requirements relating to counsel’s experience are codified at 21 U.S.C. § 848(q)(5)-(7). Legislatures, courts, bar associations, and other groups that have considered the qualifications necessary for effective representation in death penalty proceedings have consistently demanded a higher degree of training and experience than that required for other representations. Such heightened standards are required to ensure that representation is both cost-effective and commensurate with the complexity and high stakes of the litigation. The standards listed in Recommendations 1(b) - (d) are designed to assist courts in identifying the specific types of prior experience which have been deemed most valuable in the experience of

the federal courts thus far. They emphasize the importance of bringing to bear both death penalty expertise and experience in the practice of criminal defense in the federal courts.

Recommendation 1(b) calls for the appointment of specially qualified counsel “at the outset” of a case, because virtually all aspects of the defense of a federal death penalty case, beginning with decisions made at the earliest stages of the litigation, are affected by the complexities of the penalty phase. Early appointment of “learned counsel” is also necessitated by the formal “authorization process” adopted by the Department of Justice to guide the Attorney General's decision-making regarding whether to seek imposition of a death sentence. (See United States Attorney’s Manual § 9-10.000.) Integral to the authorization process is a presentation to Justice Department officials of the factors which would justify not seeking a death sentence against the defendant. A “mitigation investigation” therefore must be undertaken at the commencement of the representation. Since an early decision not to seek death is the least costly way to resolve a potential capital charge, a prompt preliminary mitigation investigation leading to effective advocacy with the Justice Department is critical both to a defendant’s interests and to sound fiscal management of public funds.

Trial courts should appoint counsel with “distinguished prior experience” (Recommendation 1(b)) in death penalty trials or appeals, even if meeting this standard requires appointing a lawyer from outside the district in which a matter arises. The preparation of a death penalty case for trial requires knowledge, skills and abilities which are absent in even the most seasoned felony trial lawyers, if they lack capital experience. An attorney knowledgeable about the nature of capital pretrial litigation, the scope of a mitigation investigation and the impact of the sentencing process on the guilt phase is indispensable and generally produces cost

efficiencies. The costs of travel and other expenses associated with “importing” counsel from another jurisdiction can be minimized with careful planning by counsel and the court. With appropriate forethought, investigations, client counseling, court appearances and other obligations can be coordinated to maximize the efficient use of counsel’s time and ensure cost-effectiveness.

Recommendations 1(c) and (d), with respect to the appointment of appellate and post-conviction counsel, respond to the requirement of 21 U.S.C. § 848(q) that representation in death penalty cases continue through post-conviction proceedings. Because trial counsel ordinarily will be precluded by a conflict of interest from representing the defendant in a post-conviction proceeding under 28 U.S.C. § 2255, continuity of representation and the efficient use of resources generally will best be achieved by appointing, at the appellate stage, at least one new lawyer who may continue to provide representation in any post-conviction proceedings. This should promote continuing representation by a lawyer who is already familiar with the record. In determining which, if any, of a death-sentenced defendant’s prior counsel to appoint as post-conviction or appellate counsel, courts should consult with those counsel, the district’s federal defender organization and/or the Administrative Office. (See Recommendation 2.)

Recommendation 1(e) reflects the fact that appropriate rates of compensation are essential to maintaining the quality of representation required in a federal capital case. The time demands of these cases are such that a single federal death penalty representation is likely to become, for a substantial period of time, counsel’s exclusive or nearly exclusive professional commitment. It is therefore necessary that the hourly rate of compensation be fair in relation to the costs associated with maintaining a criminal practice. Federal statute currently provides for an hourly

rate of up to \$125 (21 U.S.C. § 848 (q)(10)(A)), which the Subcommittee finds to be adequate at the present time. However, this figure should be reviewed at least every three years, to ensure that it remains sufficient in light of inflation and other factors.

(See 18 U.S.C. § 3006A(d)(1).)

## **2. Consultation with Federal Defender Organizations or the Administrative Office.**

- a. Notification of Statutory Obligation to Consult. The Administrative Office of the U.S. Courts (Administrative Office) and federal defender organizations should take appropriate action to ensure that their availability to provide statutorily mandated consultation regarding the appointment of counsel in every federal death penalty case is well known to the courts. (See 18 U.S.C. § 3005.)
- b. Consultation by Courts in Selecting Counsel. In each case involving an offense punishable by death, courts should, as required by 18 U.S.C. § 3005, consider the recommendation of the district's Federal Public Defender (FPD) (unless the defender organization has a conflict) about the lawyers to be appointed. In districts not served by a Federal Public Defender Organization, 18 U.S.C. § 3005 requires consultation with the Administrative Office. Although not required to do so by statute, courts served by a Community Defender Organization should seek the advice of that office.
- c. Consultation by Federal Defender Organizations and the Administrative Office in Recommending Counsel. In discharging their responsibility to recommend defense counsel, FDOs and the Administrative Office should consult with Federal Death Penalty Resource Counsel in order to identify attorneys who are well qualified, by virtue of their prior defense experience, training and commitment, to serve as lead and second counsel.

## Commentary

Since 1994, courts have been required to consider the recommendation of their federal public defender organization<sup>1</sup> or the Administrative Office regarding the appointment of counsel in each federal death penalty case. The Administrative Office has notified courts of this relatively recent innovation, and it has been largely followed and yielded results satisfying to judges, defense counsel and prosecutors. In a small number of cases, however, the Subcommittee found that courts had ignored or been unaware of the consultation requirement. For that reason, Recommendation 2(a) suggests that the Administrative Office take further steps to ensure that all courts are familiar with their obligations in this area and with the nature of the assistance which will be provided to them upon their request (see Commentary accompanying Recommendation 2(c)).

Recommendation 2(b) reflects the Subcommittee's view that recommendations concerning appointment of counsel are best obtained on an individualized, case-by-case basis. The relative infrequency of federal death penalty appointments, and the typically swift response which any court requesting a recommendation can expect, makes lists or "panels" of attorneys both unnecessary, and in some respects, impractical. Currently, within approximately 24 hours

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<sup>1</sup> A district court which chooses to provide representation through a federal defender organization may elect one of two organizational models. A Federal Public Defender Organization (FPDO) is a federal agency, headed by a Federal Public Defender who is selected by the Circuit Court of Appeals. The attorneys and other staff of a federal public defender organization are government employees. A Community Defender Organization (CDO) is a not-for-profit corporation governed by a board of directors and led by an executive director. Both types of organization are funded and administered by the federal judiciary pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. The term "federal defender organization," or "FDO," as used in this report, includes both organizational models.

of receipt of a request, the Administrative Office or federal defender provides the court with the names of attorneys who not only are qualified to serve as counsel but who also have been contacted and indicated their willingness to serve in the particular case.<sup>2</sup> These individualized recommendations help to ensure that counsel are well-suited to the demands of a particular case and compatible with one another and the defendant. Case-specific consultation is also required by existing Judicial Conference policy (see paragraph 6.01B of the Guidelines for the Criminal Justice Act (CJA Guidelines), Volume VII, *Guide to Judiciary Policies and Procedures*, explaining the 18 U.S.C. § 3005 consultation requirement and suggesting that in developing a recommendation, consideration be given to “the facts and circumstances of the case.”).

Recommendation 2(b) also suggests that in districts served by a Community Defender Organization (rather than a Federal Public Defender Organization) courts extend the statutory requirement and seek the recommendation of the head of that organization about appointment of counsel in federal death penalty cases. The omission of specific reference to Community Defender Organizations in the statute is not explained in any legislative history, and consultation with a Community Defender Organization is likely to be as valuable as consultation with a Federal Public Defender Organization.

To assist federal defender organizations and the Administrative Office in discharging their responsibility to recommend counsel, the judiciary has contracted with three Federal Death

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<sup>2</sup> The distinction between being qualified to serve and willing to do so is significant. Most defense counsel interviewed by the Subcommittee indicated that they would not be willing to accept appointment to more than one federal death penalty case at a time. Furthermore, since accepting a federal death penalty appointment requires a substantial time commitment which may ultimately cause the attorney to become entirely unavailable for any other fee-generating work, appointment to such a case is not lightly undertaken.

Penalty Resource Counsel, experienced capital litigators whose work is described in Section C.2 of Part I of the report. Recommendation 2(c) recognizes the value of the assistance provided by Resource Counsel and urges federal defenders and the Administrative Office to continue to work closely with them. Resource Counsel are knowledgeable about and maintain effective communication with defense counsel nationwide. Their ability promptly to match attorneys with cases is of great value to the judiciary.

### **3. Appointment of More Than Two Lawyers.**

Number of Counsel. Courts should not appoint more than two lawyers to provide representation to a defendant in a federal death penalty case unless exceptional circumstances and good cause are shown. Appointed counsel may, however, with prior court authorization, use the services of attorneys who work in association with them, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits.

#### **Commentary**

The norm in federal death penalty cases is the appointment of two counsel per defendant. More than two attorneys should be appointed only in exceptional circumstances. Courts contemplating the appointment of a third counsel might consider contacting the Administrative Office for information and advice about whether circumstances warrant such appointment. Notwithstanding this suggested limit on the number of attorneys charged with responsibility for the defense in its entirety, courts are encouraged to permit appointed counsel to employ additional attorneys to perform more limited services where to do so would be cost-effective or otherwise enhance the effective use of resources. For example, in many federal death penalty cases the prosecution provides to defense counsel an extensive amount of discovery material which must be reviewed for relevance and organized for use by the defense. Providing legal

assistance to appointed counsel at a lower hourly rate may prove economical or it may be a necessity in light of court deadlines. This is consistent with existing Judicial Conference policy with respect to all Criminal Justice Act representations (see CJA Guideline 2.11A), and is emphasized here because of its cost containment potential in capital litigation.

#### **4. Appointment of the Federal Defender Organization (FDO).**

- a. FDO as Lead Counsel. Courts should consider appointing the district's FDO as lead counsel in a federal death penalty case only if the following conditions are present:
  - i. the FDO has one or more lawyers with experience in the trial and/or appeal of capital cases who are qualified to serve as “learned counsel”; and
  - ii. the FDO has sufficient resources so that workload can be adjusted without unduly disrupting the operation of the office, and the lawyer(s) assigned to the death penalty case can devote adequate time to its defense, recognizing that the case may require all of their available time; and
  - iii. the FDO has or is likely to obtain sufficient funds to provide for the expert, investigative and other services reasonably believed to be necessary for the defense of the death penalty case.
- b. FDO as Second Counsel. Courts should consider appointing the district's FDO as second counsel in a federal death penalty case only if the following conditions are present:
  - i. the FDO has sufficient resources so that workload can be adjusted without unduly disrupting the operation of the office, and the lawyer(s) assigned to the death penalty case can devote adequate time to its defense, recognizing that the case may require all of their available time; and
  - ii. the FDO has or is likely to obtain sufficient funds to provide for the expert, investigative and other services reasonably believed to be necessary for the defense of the death penalty case.

## Commentary

Federal defender organizations have provided representation in only a small number of the federal death penalty cases filed to date. In many cases, representation by defender organizations has been precluded because of conflicts of interest which arise because the organization has represented either another defendant or a witness in the case. Even where the defender organization is not disqualified by a conflict, however, there are good reasons to proceed with caution in making appointments in this area. A decision to appoint a defender organization either as lead or as second counsel in a capital case should be made only after consideration of the factors identified in this Recommendation and consultation between the court and the federal defender.

Recommendation 4(a) is intended to inform courts, which are accustomed to relying on federal defenders to undertake the most difficult representations, that few federal defender attorneys currently possess appropriate qualifications and experience to act as lead counsel in a federal death penalty case. Because violent felony offenses, particularly homicides, rarely are prosecuted in the federal courts, there is little opportunity for federal court practitioners to learn even the fundamentals relevant to the guilt phase defense of a federal death penalty case. Unless they gained such experience in state court before joining the defender organization, most federal defender attorneys have little to no experience defending a homicide case; of those who did bring with them such state court background, few have capital experience.

Notwithstanding these considerations, however, there is much to be gained from the involvement of a defender organization in the defense of a federal capital case. Recommendation 4(b) suggests pairing a defender organization as co-counsel with an experienced capital litigator,

an approach which has successfully been employed in some cases. In these cases, the defender organization has benefitted from the expertise of the “learned counsel” and gained valuable capital litigation experience as well. At the same time, the “learned counsel” has benefitted from the institutional resources and local court expertise of the defender staff. Whether as lead or second counsel,<sup>3</sup> a federal defender organization should not be required to undertake more than one federal death penalty representation at a time unless the head of the organization believes such an arrangement is appropriate. Recommendations 4(a) and (b) acknowledge that capital cases inevitably and seriously disrupt the normal functioning of an office. To undertake too much death penalty litigation would seriously threaten the effective performance of a defender organization’s overriding responsibility to provide representation to a substantial number of financially eligible criminal defendants in its district each year.

#### **5. The Death Penalty Authorization Process.**

- a. Streamlining the Authorization Process. The Department of Justice should consider adopting a “fast track” review of cases involving death-eligible defendants where there is a high probability that the death penalty will not be sought.
- b. Court Monitoring of the Authorization Process. Courts should exercise their supervisory powers to ensure that the death penalty authorization process proceeds expeditiously.

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<sup>3</sup> In a very small number of cases, federal defender organizations have served as both lead and second counsel, without the assistance of a panel attorney; such appointments should not be made unless the federal defender believes it is in the best interests of the client and the organization.

## Commentary

A decision not to seek the death penalty against a defendant has large and immediate cost-saving consequences. The sooner that decision is made, the larger the savings. Since the death penalty ultimately is sought against only a small number of the defendants charged with death-punishable offenses, the process for identifying those defendants should be as expeditious as possible in order to preserve funding and minimize the unnecessary expenditure of resources. Recommendation 5(a) calls upon the Department of Justice to increase the speed with which it makes decisions not to authorize seeking the death penalty. Recommendation 5(b) urges judges to oversee the authorization process by monitoring the progress of the decisionmaking and imposing reasonable deadlines on the prosecution in this regard. Courts should also ensure that the prosecution's timetables allow for meaningful advocacy by counsel for the defendant.

### **6. Federal Death Penalty Resource Counsel.**

- a. Information from Resource Counsel. In all federal death penalty cases, defense counsel should obtain the services of Federal Death Penalty Resource Counsel in order to obtain the benefit of model pleadings and other information that will save time, conserve resources and enhance representation. The judiciary should allocate resources sufficient to permit the full value of these services to be provided in every case.
- b. Technology and Information Sharing. The Administrative Office should explore the use of computer-based technology to facilitate the efficient and cost-effective sharing of information between Resource Counsel and defense counsel in federal death penalty cases.

## Commentary

Recommendation 6(a) urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project (described in Section C.2 of Part I of the

report), which has become essential to the delivery of high quality, cost-effective representation in federal death penalty cases, and to ensure the Project's continued effectiveness.

Recommendation 6(b) recognizes that recent innovations in computer technology are making it increasingly easy and inexpensive for individuals who are geographically dispersed to share information. The Administrative Office should explore the feasibility and cost-effectiveness of using computer and other technology to enhance the delivery of support to appointed counsel in federal death penalty cases.

## **7. Experts.**

- a. Salaried Positions for Penalty Phase Investigators. The federal defender program should consider establishing salaried positions within FDOs for persons trained to gather and analyze information relevant to the penalty phase of a capital case. FDOs should explore the possibility that, in addition to providing services in death penalty cases to which their FDO is appointed, it might be feasible for these investigators to render assistance to panel attorneys and to other FDOs.
- b. Negotiating Reduced Rates. Counsel should seek to contain costs by negotiating reduced hourly rates and/or total fees with experts and other service providers.
- c. Directory of Experts. A directory of experts willing to provide the assistance most frequently needed in federal death penalty cases, and their hourly rates of billing, should be developed and made available to counsel.

### **Commentary**

Penalty phase investigators, or "mitigation specialists," as they have come to be called, are individuals trained and experienced in the development and presentation of evidence for the penalty phase of a capital case. Their work is part of the existing "standard of care" in a federal death penalty case. (See Section B.7 of Part I of the report.) Because the hourly rates charged by mitigation specialists are lower than those authorized for appointed counsel, employment of a

mitigation specialist is likely to be a cost-effective approach to developing the penalty phase defense.

Mitigation specialists are, however, in short supply. In most of the federal death penalty cases the Subcommittee examined, penalty phase investigators were not available locally. Courts thus were required to pay for the costs of travel and related expenses in addition to paying the mitigation specialist's hourly rates. Recommendation 7(a) suggests ameliorating this problem by employing and training persons for this work in federal defender organizations. Because of the cost containment potential, the feasibility of having these salaried employees work not only on cases to which their federal defender organization is appointed, but on others within their region, should be explored as well.

Recommendation 7(b) encourages counsel to negotiate a reduced hourly rate for expert services whenever possible. Private experts must be employed in death penalty cases, but the cost of their services can and should be contained. When asked to provide services for the defense of an indigent criminal defendant, many experts are willing to accept fees lower than their customary hourly rates for private clients. In addition, courts and counsel should agree in advance to a total amount which may be expended for a particular expert. If it appears that costs will exceed the agreed-upon amount, counsel should return to the court for prior authorization to secure them. If travel costs are to be incurred, government rates should be obtained.

## **8. Training.**

Federal Death Penalty Training Programs. The Administrative Office should continue to offer and expand training programs designed specifically for defense counsel in federal death penalty cases.

## Commentary

All of the defense counsel interviewed by the Subcommittee stressed the importance of participating in specialized death penalty training programs. Although the individuals appointed as “learned counsel” comprised a highly experienced group of lawyers, they nevertheless continued to attend training programs to update and refine their skills and knowledge, and emphasized that they availed themselves of such opportunities whenever possible. There are, however, very few training programs anywhere in the country specializing in the defense of death penalty cases, and there is only one — an annual one-day program organized by the Federal Death Penalty Resource Counsel Project and funded by the Administrative Office — focusing entirely on federal death penalty representation. Almost all of the defense counsel the Subcommittee interviewed had attended this program and identified it as a significant resource. With the case law relatively undeveloped and so many issues being litigated for the first time, the opportunity for counsel to benefit from the research of others and to share information and ideas was considered especially important and cost-effective. The Administrative Office and Federal Death Penalty Resource Counsel should ensure that training opportunities continue to meet the needs of appointed counsel in this area.

### 9. Case Budgeting.

- a. Consultation with Prosecution. Upon learning that a defendant is charged with an offense punishable by death, courts should promptly consult with the prosecution to determine the likelihood that the death penalty will be sought in the case and to find out when that decision will be made.
- b. Prior to Death Penalty Authorization. Ordinarily, the court should require defense counsel to submit a litigation budget encompassing all services (counsel, expert, investigative and other) likely to be required through the time that the Department of Justice (DOJ) determines whether or not to authorize the death penalty.

- c. After Death Penalty Authorization. As soon as practicable after the death penalty has been authorized by DOJ, defense counsel should be required to submit a further budget for services likely to be needed through the trial of the guilt and penalty phases of the case. In its discretion, the court may determine that defense counsel should prepare budgets for shorter intervals of time.
- d. Advice from Administrative Office and Resource Counsel. In preparing and reviewing case budgets, defense counsel and the courts should seek advice from the Administrative Office and Federal Death Penalty Resource Counsel, as may be appropriate.
- e. Confidentiality of Case Budgets. Case budgets should be submitted ex parte and should be filed and maintained under seal.
- f. Modification of Approved Budget. An approved budget should guide counsel's use of time and resources by indicating the services for which compensation is authorized. Case budgets should be re-evaluated when justified by changed or unexpected circumstances, and should be modified by the court where good cause is shown.
- g. Payment of Interim Vouchers. Courts should require counsel to submit vouchers on a monthly basis, and should promptly review, certify and process those vouchers for payment.
- h. Budgets In Excess of \$250,000. If the total amount proposed by defense counsel to be budgeted for a case exceeds \$250,000, the court should, prior to approval, submit such budget for review and recommendation to the Administrative Office.
- i. Death Penalty Not Authorized. As soon as practicable after DOJ declines to authorize the death penalty, the court should review the number of appointed counsel and the hourly rate of compensation needed for the duration of the proceeding pursuant to CJA Guideline 6.02.B(2).
- j. Judicial Conference Guidelines. The Judicial Conference should promulgate guidelines on case budgeting for use by the courts and counsel.
- k. Judicial Training for Death Penalty Cases. The Federal Judicial Center should work in cooperation with the Administrative Office to provide training for judges in the management of federal death penalty cases and, in particular, in the review of case budgets.

## Commentary

The Judicial Conference has endorsed the use of case budgets to manage the cost of capital habeas corpus cases. (CJA Guideline 6.02.F.) Case budgets for federal death penalty cases are designed to serve purposes similar to those accomplished by case budgets for capital habeas corpus cases. A complete case budget will require the lawyer to incorporate cost considerations into litigation planning and will encourage the use of less expensive means to achieve the desired end. For example, a budget might request appointment of an expert to perform a task that could be accomplished by a lawyer, justifying the request by showing that the expert's work will produce a corresponding reduction in the attorney hours required.

Submission and review of a budget will also assist the court in monitoring the overall cost of representation in the case, and determining the reasonableness of costs. Case budgets are increasingly being requested by courts or submitted by lawyers in federal death penalty cases. Most judges and lawyers interviewed by the Subcommittee were receptive to the idea of case budgeting, provided that persons with expertise in the defense of federal death penalty cases were available to assist in the development or the review of a case budget. Recommendation 9(d) encourages courts and counsel to seek such assistance from the Administrative Office and Federal Death Penalty Resource Counsel.

Because of the unpredictability of pretrial litigation, it is impractical to require counsel to budget for an entire case from start to finish. At a minimum, the budgeting process should be in two stages, as suggested in Recommendations 9(b) and (c). The first stage begins when the lawyer is sufficiently familiar with the case to be able to present a budget reasonably related to the anticipated factual and legal issues in the case and continues until the Department of Justice

makes its decision as to whether it will seek the death penalty. If a death penalty notice is filed, a further budget should be prepared. The court may require a single budget from authorization to trial, or a series of budgets covering shorter increments of time. If the prosecution will not seek the death penalty, Recommendation 9(i) calls for the court to review the case in accordance with CJA Guideline 6.02.B(2), to determine whether the number or compensation of counsel should be reduced.

Because case budgeting is time consuming, and because federal death penalty cases in which the prosecution decides not to seek the death penalty cost much less than cases in which the death penalty is authorized, it may not be cost-effective for counsel to prepare a case budget if authorization is improbable. For this reason, Recommendation 9(a) encourages courts to inquire of the prosecution whether authorization is unlikely. Furthermore, inquiring into the date by which the authorization decision will be made will provide information about how long a period the initial budget should cover, which will assist courts in reviewing budgets. If a significant mitigation investigation is to be undertaken, the Subcommittee recommends that a budget be developed for this work.

Recommendation 9(e) calls for case budgets to be submitted ex parte and maintained permanently under seal. A case budget requires defense counsel to spell out the overall litigation plan for the case. Consequently, it is an extremely sensitive document and contains privileged information. This approach is consistent with Judicial Conference policy regarding capital habeas case budgets. (CJA Guideline 6.02F.)

Review of case budgets greater than \$250,000 by the Administrative Office should assist courts in determining whether the cost of representation is reasonable in light of experience in other similar cases and in identifying areas in which expenses might be reduced.

#### **10. Case Management.**

- a. Non-Lawyer Staff. Where it will be cost-effective, courts should consider authorizing payment for services to assist counsel in organizing and analyzing documents and other case materials.
- b. Multi-defendant Cases.
  - i. Early Decision Regarding Severance. Courts should consider making an early decision on severance of non-capital from capital co-defendants.
  - ii. Regularly Scheduled Status Hearings. Status hearings should be held frequently, and a schedule for such hearings should be agreed upon in advance by all parties and the court.
  - iii. "Coordinating Counsel". In a multi-defendant case (in particular a multi-defendant case in which more than one individual is eligible for the death penalty), and with the consent of co-counsel, courts should consider designating counsel for one defendant as "coordinating counsel."
  - iv. Shared Resources. Counsel for co-defendants should be encouraged to share resources to the extent that doing so does not impinge on confidentiality protections or pose an unnecessary risk of creating a conflict of interest.
  - v. Voucher Review. In large multi-defendant cases, after approving a case budget, the court should consider assigning a magistrate judge to review individual vouchers. The court should meet with defense counsel at regular intervals to review spending in light of the case budget and to identify and discuss future needs.

#### **Commentary**

Recommendation 10(a) recognizes that the large volume of discovery materials and pleadings associated with a federal death penalty case may make it cost-effective for courts to

authorize (and appointed counsel to employ) the services of law clerks, paralegals, secretaries or others to perform organizational work which would otherwise have to be performed by counsel at a higher hourly rate. (See also Commentary accompanying Recommendation 3, endorsing the practice of authorizing counsel to obtain the services of additional attorneys under appropriate circumstances.) Judicial Conference policy provides that, in general, appointed counsel may not be reimbursed for expenses deemed part of their office overhead (CJA Guideline 2.28); however, unusual expenses of this nature may be compensated (CJA Guideline 3.16). The Guidelines suggest that in determining whether an expense is unusual or extraordinary, “consideration should be given to whether the circumstances from which the need arose would normally result in an additional charge to a fee paying client over and above that charged for overhead expenses” (CJA Guideline 3.16).

Recommendations 10(b)(i) - (iv) address some of the particular management burdens associated with multi-defendant federal death penalty cases. Special efforts are required to ensure the orderly administration of justice in these matters, which tend to become costly and cumbersome for courts and counsel.

Recommendation 10(b)(i) suggests that courts make early decisions concerning severance of non-capital from capital co-defendants. In general, capital cases remain pending longer than non-capital cases and involve far greater amounts of pre-trial litigation. Separating the cases of non-capital co-defendants, where appropriate, may lead to swifter and less costly dispositions in those cases. The earlier such a decision is implemented, the greater will be the cost savings.

Recommendation 10(b)(ii) suggests that courts schedule frequent status hearings so that discovery and other matters may proceed efficiently and so that problems may be noted early and

swiftly resolved. If the schedule for such status hearings (on a monthly or other basis) is agreed upon in advance, then all parties can plan accordingly and valuable time will not be wasted while counsel and judges try to find a mutually convenient time for their next meeting.

Recommendation 10(b)(iii) suggests that, if all counsel agree, courts consider designating the attorneys for one defendant as “coordinating counsel.” Coordinating counsel might be responsible for arranging the efficient filing and service of motions and responses among the co-defendants, scheduling co-counsel meetings and court dates, facilitating discovery, or any other tasks deemed appropriate by counsel and the court. In multi-defendant cases where the federal defender organization represents a defendant eligible for the death penalty, courts should (taking into account the views of the federal defender) consider designating the FDO as coordinating counsel because of its institutional capabilities. In the event that a panel attorney is designated as coordinating counsel, the additional time and resources demanded by this role should be compensated.

#### **11. Availability of Cost Data.**

The Administrative Office should improve its ability to collect and analyze information about case budgets and the cost of capital cases.

#### **Commentary**

Only because there have been a comparatively small number of federal death penalty cases was it possible to assemble -- by painstaking manual collection -- the cost data relied upon by the Subcommittee. This process was necessitated by the limitations of the only available information source, the CJA payment system. The Administrative Office is in the process of replacing that system. Given the heightened significance of capital case costs to the federal

defender program, the Administrative Office should give priority to ensuring that its new system will provide capital case data which is accurate, reliable and accessible. In addition, the Administrative Office should continuously track capital case costs so that the impact of appellate and post-conviction litigation can be analyzed, trends in case costs can be readily identified, and appropriate cost-containment mechanisms can be developed.