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**AMENDED CJA PLAN
OF THE CENTRAL DISTRICT OF ILLINOIS
PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964**

JOHN M. WATERS, Clerk
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

Pursuant to the Criminal Justice Act of 1964 as amended, (CJA), (18 U.S.C. § 3006A) and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judicial Policies and Procedures (CJA Guidelines), the Judges of the United States District Court for the Central District of Illinois adopt this Plan for furnishing representation in this court for any person financially unable to obtain adequate representation in accordance with the CJA.

I. 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 and the CJA Guidelines and statutory requirements regarding representation in capital cases in a way that meets the needs of this District.

B. Compliance

1. The Court, its Clerk, the Federal Public Defender Organization, 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 the 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 CJA (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.

II. DEFINITIONS

A. "Representation" includes counsel, investigative, expert, and other services necessary to an adequate defense.

B. "Appointed attorney" includes private attorneys, the Federal Public Defender and staff attorneys of the Federal Public Defender Organization, and private attorneys who are members of the CJA panel.

III. PROVISION OF REPRESENTATION

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

1. is charged with a felony or Class A misdemeanor;
2. is a juvenile alleged to have committed an act of juvenile delinquency which, if committed by an adult, would be a felony or Class A misdemeanor;
3. is charged with a violation of probation or faces modification, reduction, or enlargement of a condition or extension or revocation of a term of probation;
4. is under arrest, when such representation is required by law;
5. is subject to revocation of parole or is otherwise entitled to appointment of counsel in parole proceedings;
6. 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;
7. is subject to a mental condition hearing under chapter 313 of Title 18 of the United States Code;
8. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28 of the United States Code; or
9. is in custody as a material witness;
10. 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 of the United States Code; or
11. 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.

B. 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:

1. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
2. is charged with civil or criminal contempt who faces loss of liberty;
3. has been or will be 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, where there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or faces loss of liberty;
4. is proposed by the United States Attorney for processing under a pretrial diversion program;
5. is seeking relief, other than to set aside or vacate a death sentence, under sections 2241, 2254, or 2255 of Title 28 of the United States Code;
6. is held for international extradition under chapter 209 of Title 18 of the United States Code; or
7. is in need of counsel in ancillary matters appropriate to the proceedings pursuant to 18 U.S.C. § 3006A(c).

C. 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 judge or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, upon the filing of a motion or petition under sections 2241, 2254, or 2255 of Title 28 of the United States Code, or when a judge or magistrate judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

D. Number of Counsel - More than one attorney may be appointed in any case determined by the Court to be extremely difficult. In a capital case, at least two attorneys shall be appointed.

E. Qualifications - Except as provided by Section 848(q)(7) of Title 21, United States Code at least one attorney appointed in a capital case shall meet the qualification requirements set forth in Sections 848(q)(5) and (6) of Title 21, United States Code. Pursuant to Section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under Section 848(q)(5) and (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 to the unique and complex nature of the litigation.

F. Eligibility for Representation

1. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge after making appropriate inquiries concerning the person's financial condition.

2. The federal judge shall, in selecting and appointing counsel, either designate the Federal Public Defender, CJA Panel attorney, or, in death penalty habeas corpus cases, persons whose names are submitted by the Federal Public Defender.

3. 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.

IV. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

1. The Federal Public Defender Organization for the Central District of Illinois, previously established in the district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district. The organization initially established offices in Peoria, and Springfield, Illinois. An office in Urbana is required and its establishment will be a priority of the FPD. An office will be established in Rock Island when expedient. 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.

2. The FPD shall be capable of providing legal services throughout the Central District and shall maintain its principal office in Peoria, Illinois.

B. Supervision of Defender Organization - The FPD shall be responsible for the supervision and management of the FPD office, and accordingly the FPD shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the FPD.

V. PRIVATE PANEL ATTORNEYS

This Plan also provides for the appointment and compensation of private counsel who are members of the CJA Panel, established by the Court as provided in § VIII A.

VI. APPOINTMENT OF COUNSEL AND CASE MANAGEMENT IN CAPITAL CASES

A. Applicability and Purpose - The provisions set forth in this section shall govern in all capital cases. For the purposes of this section, "capital cases," or "cases involving the death penalty," are those criminal cases in which the death penalty may be or is being sought by the prosecution, as well as proceedings under 28 U.S.C. § 2254 and 2255 seeking to vacate or set aside a death sentence, motions for a new trial, direct 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.

The provisions of this section shall be implemented by the presiding judge at the earliest opportunity in any potential capital case.

B. Trial Counsel

1. **General Requirements** - Due to the complex, demanding, and protracted nature of death penalty proceedings, a defendant who is or has become financially unable to obtain capital representation and who applies for appointment of counsel at government expense shall be entitled, as required by 18 U.S.C. § 3005, to the assignment of at least two attorneys who meet the qualifications set forth in this section. At least one of the attorneys appointed to represent the defendant shall be learned in the law applicable to capital cases and, when applicable, qualified as pursuant to 21 U.S.C. § 848(q)(5) or 848(q)(6).

In cases where two or more defendants are to be tried jointly, the presiding judge shall appoint separate teams of counsel for each defendant. One member of the team shall be designated counsel and the other member(s) shall be identified as assistant counsel.

2. **Qualifications of Lead Counsel** - To be eligible for appointment as lead counsel in a capital case, an attorney must:

- a. be a member of the bar of this court, or must be admitted to practice *pro hac vice* based on his or her qualifications;
- b. have at least ten years experience in the field of federal criminal practice;
- c. have prior experience as sole or lead counsel in the trial of no fewer than three serious and complex felony cases that were tried to completion in federal court;

d. have exemplary prior experience as counsel in a state or federal capital case;

e. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

3. Qualifications of Assistant Counsel - To be eligible for appointment as assistant counsel in a capital case, an attorney must:

a. be a member of the bar of this court, or be admitted to practice *pro hac vice* on the basis of his or her qualifications;

b. have at least five years experience in the field of federal criminal practice;

c. have prior experience as defense or prosecution counsel, demonstrating adequate proficiency in connection with serious and complex felony cases;

d. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to the defense of capital cases.

4. Special Appointments: Discretionary, Additional Counsel - The presiding judge may, for good cause, appoint attorneys who do not meet this section's requirements, but whose background, knowledge, or experience would otherwise enable them to effectively represent a defendant in a capital case, provided that lead counsel for each defendant shall have distinguished prior experience as counsel in a capital case, as required by Subsection VI(B)(2) of this section.

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 a capital case.

Where the defendant has counsel, the presiding judge may appoint additional counsel in order to ensure the adequate representation of the defendant. Appointment of additional counsel may take place during any stage in the proceedings.

C. Appointment Procedures

1. Appointment of Capital Trial Counsel - Appointment of trial counsel shall occur no later than when a defendant appears in court and is charged with a federal criminal offense where the penalty of death is possible.

Before the appointment of counsel is made in a capital case, the judge presiding over the initial proceedings shall inform the Federal Public Defender for the Central District of Illinois that a capital case is pending and that counsel is needed. The Federal Public Defender shall provide the judge with the names of at least four attorneys who meet the guidelines for counsel in capital cases, as set forth in Section VI(B)(2).

The presiding judge shall either accept or reject the submitted names, and shall notify the Federal Public Defender of the decision. In the event that a recommendation is not accepted, the presiding judge shall consult with the Federal Public Defender to identify other qualified counsel acceptable to the Court.

The court may appoint counsel in advance of formal charges or habeas corpus petition being filed if it learns of a potential capital case prior to charges or habeas petition being filed or arrests being made. In order to protect the rights of an individual who is the subject of an investigation in a capital case, the presiding judge may assign interim counsel at his or her own initiative, or upon the request of any interested party.

2. Appointment of Additional or Substitute Counsel - In cases where counsel has been retained or appointed before the government filed notice of its intent to seek the death penalty, the appointment of additional or substitute counsel is permitted once the government files notice of intent to seek the death penalty. Appointment of additional or substitute counsel shall be made sufficiently in advance of trial to permit newly-appointed counsel an adequate opportunity to prepare.

3. Termination of Appointment - If, following the appointment of counsel in a capital case, it is determined that the death penalty will not be sought, the court may consider the question of the number of counsel 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 the appointments or reduce the number of appointed counsel.

After considering the need to fairly compensate appointed counsel, 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 previously approved rate, or prospectively reduce the rate.

D. Initial Status Conference and Case Management Schedule

1. In all identified capital cases, the presiding judge shall promptly conduct an initial status conference to ensure the effective management of the case, including the appointment of counsel pursuant to this section.

2. Upon the return or unsealing of an indictment in a capital case, the court shall schedule a status conference to discuss issues and concerns related to the death penalty authorization process conducted by the Department of Justice. Among other matters, the conference should address the scheduling of the defendant's submissions to the United States Attorney, the meeting between the defense and the United States Attorney, and discovery that may be necessary before the defense can make any submission to the court or to the Department of Justice.

3. If the Attorney General's authorization decision delays the deadlines set in the court's schedule, the court may find that the Attorney General's death penalty notice issue did not provide the defense with a reasonable time to prepare for trial, as required by 18 U.S.C. § 3593(a).

4. In order to expedite compliance with this section, counsel shall become familiar with the United States Department of Justice protocol, practices, and procedures in capital cases.

E. Assessment of Costs and Fees

1. Counsel - Counsel appointed pursuant to this section shall be compensated at a rate determined by the presiding judge to be reasonably necessary for qualified counsel to provide adequate representation in a capital case. At the time counsel are appointed, the court shall set an hourly rate of compensation pursuant to 21 U.S.C. § 848(q)(10)(A).

2. Investigative, Mitigation, Expert, and Other Services - Upon finding that investigative, mitigation, expert, or other services are necessary for the adequate representation of a defendant in a capital case, the presiding judge shall authorize counsel to obtain such services on behalf of the defendant and shall set the rate of compensation in consideration of the statutory limits.

Pursuant to the provisions of this section and the Criminal Justice Act, an interpreter shall be appointed to assist counsel if counsel is not fluent in the capital defendant's native language.

The presiding judge may authorize investigative, mitigation, expert, or other services, even if the services have already been obtained.

3. Confidentiality - Petitions for the payment of costs and fees, including the time and expense records of counsel, shall be heard *ex parte* and *in camera*. The petitions shall be placed under seal and shall be inaccessible to the prosecution and the public, absent court order or written waiver by the defendant, until disposition of the petition.

F. Procedures for Compensation

1. Compensation for Investigative, Mitigation, Expert, and Other Services - Pursuant to 21 U.S.C. § 848(q)(10)(B), fees and expenses for investigative, expert, and other services in excess of the amount provided by statute must be certified by the presiding judge in order to provide fair compensation for services of an unusual character or duration. The amount of any excess payment must be approved by the Chief Judge of the Seventh Circuit Court of Appeals or his designee. The maximum statutory amount threshold applies to the total payments for investigative, expert, and other services in a case, not to each service individually.

2. Forms - Claims for compensation and reimbursement of expenses for services in death penalty proceedings should be submitted on CJA Form 30, "Death Penalty Proceedings: Appointment and Authority to Pay Court Appointed Counsel," and CJA Form 31, "Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services."

3. Review of Vouchers - Absent extraordinary circumstances, judges should act upon panel attorney and other compensation claims within thirty (30) days of submission.

4. Interim Billing and Payment - In the interest of justice and judicial economy, interim billing and payment shall be allowed in the court's discretion and encouraged for counsel, experts, and other services.

5. Case Budgeting - The presiding judge is encouraged to follow the budgeting procedure outlined in Section 6.02(F) of the *Guide to Judiciary Policies and Procedures: Appointment of Counsel in Criminal Cases*.

G. Other Considerations

1. Emergency Court Contacts - In all capital cases where the death penalty has been authorized, the Clerk of the Court shall devise and implement a system for contacting the presiding judge, counsel for the parties, the United States Marshal for the Central District of Illinois or his representative, and the warden of the penal institution where the defendant is awaiting execution.

2. Stays - Upon the filing of a notice of appeal, motion for reconsideration, habeas corpus petition, or other such action which has the practical effect of challenging a sentence of death, the presiding judge shall issue a stay of execution pending final disposition of the matter, accompanied by any necessary findings. The Clerk shall immediately notify all parties, and the state or federal authorities responsible for implementing the defendant's sentence of death, of the stay. If notification is oral, it shall be followed by written notice. Unless vacated or modified, the stay will continue in effect until the expiration of all proceedings available to and elected by the defendant, including review by United States Supreme Court, unless otherwise ordered by the Court. The District Court shall grant a prompt hearing as required by 28 U.S.C. § 2254 and 2255 and, as required by 18 U.S.C. § 3595(a) and 21 U.S.C. § 848(q)(1), the review in capital cases shall have priority over all other cases. The Clerk shall send notice to the parties and the state or federal authorities responsible for implementing the defendant's sentence of death when the stay imposed by this provision is no longer in effect.

3. Pre-Bail Interviews - CJA Counsel, or interim counsel appointed pursuant to this section, shall be present at each pre-bail interview with the defendant, and any other interview conducted by the United States Probation Office or any other office.

4. Access to Defendant - In light of the heightened necessity for attorney-client consultation in a capital case, the United States Marshals Service shall cooperate in providing counsel adequate access to the defendant.

VII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Accused for Appointment of Counsel - Federal probation 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, arrange to have the person promptly presented before a judge or magistrate judge of this Court for determination of financial eligibility and appointment of counsel.

B. Pretrial Interview - Recognizing the continuing excellent relationship between appointed counsel and the U.S. Probation Office in this District, this Plan encourages defense counsel and the Probation Office to continue to work together to accommodate the defendant's interest in speaking with an attorney at the earliest opportunity and the probation officer's interest in having sufficient time to obtain information relevant to the defendant's release status. To further this goal, the probation officer shall not discuss with the defendant any of the facts and circumstances of the defendant's arrest or the charges against the defendant.

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 Clerk of the Court immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

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

A. Composition of Panel of Private Attorneys

1. CJA Panel

a. 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" and its sub-panels in each division established pursuant to Section VIII A 2(a) of this plan. Members of the CJA Panel shall serve at the pleasure of the Court.

b. 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.

c. 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.

d. 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 and members of the Panel Selection Committee.

e. 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.

2. Panel Selection Committee

a. Membership - A Panel Selection Committee shall be established by the Court. The Committee shall consist of the chief district judge, one magistrate judge, the federal public defender, and one attorney who is willing to serve on the CJA Panel. The chief district judge shall be the chairperson. There shall be a sub-panel in each division appointed by the chief district judge consisting of the presiding district judge, one magistrate judge, the assigned federal defender for the division, and one attorney who is willing to serve on the CJA panel. The presiding district judge shall be the chairperson.

b. Duties

(1) The Panel Selection Committee shall review applications for membership on the CJA Panel recommended by each sub-panel and shall make a recommendation to the Court regarding the applicant's worthiness for service on the panel. The Panel Selection Committee and sub-panels shall be permitted to gather information from any source for purposes of making a worthiness determination.

(2) The Panel Selection Committee and each sub-panel shall meet at least once a year to review the performance of each member of the CJA Panel and shall provide the Court with a list of attorneys recommended for retention on the CJA Panel.

(3) At its annual meeting, the Committee shall also review the operation and administration of the panel and sub-panels 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.

3. 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 without the approval of the presiding district judge. 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.

B. Selection for Appointment

1. Maintenance of List and Distribution of Appointments - The Clerk of the Court shall maintain a current list of attorneys included on the CJA Panel, with

current office addresses and telephone numbers, as well as a statement of qualifications and experience. The clerk shall furnish a copy of this list to each district judge, magistrate judge, and federal public defender.

2. 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.

C. Compensation - Filing of Vouchers

1. 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. 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 to the appropriate district 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.

2. The maximum compensation with or without prior approval shall not exceed the maximum amount allowed under the CJA unless payment in excess of that amount is certified by the district judge or 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."

3. *Ex parte* applications for services other than counsel made under this section shall be heard *in camera* and shall not be revealed without the consent of the person represented. 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.

D. Appointment of Attorneys Not on the Panel - Subsection (B) of the CJA provides, in part, that counsel appointed pursuant to a local CJA plan must 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, or a magistrate judge 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 appointed to represent the 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 this district, should possess such qualities as would qualify him or her for admission to this district's panel in the ordinary course of panel selection. Any suggestion not made through the FPD's ordinary course of assignments that a specific lawyer be appointed, shall come only from the defendant or the defendant's current attorney. The suggestion shall not be made by the U.S. Attorney's Office or by another law enforcement office or agency.

IX. DETERMINATION OF NEED FOR COUNSEL

A. Determination in Court - Upon the appearance of a person before a district judge or magistrate judge, or at any proceeding in which a person who is entitled to representation under the Plan appears without counsel, the judge or magistrate judge shall advise the person of the right to be represented by counsel throughout the case and that counsel will be appointed if the person is financially unable to afford adequate representation. If the person states that he or she wishes to be represented by appointed counsel, the judge or magistrate judge shall recess the proceedings and appoint the FPD or a CJA panel attorney forthwith. If the need for the assistance of counsel is immediate and apparent, counsel may be appointed and the financial inquiry may follow the appointment of counsel as soon thereafter as is practical. A defendant shall not have the right to select appointed counsel from the FPD staff or CJA panel.

B. Fact Finding - Unless it will result in undue delay, fact finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (CJA Form 23). Employees of law enforcement agencies or United States Attorney's 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.

All statements made by a person in requesting counsel or during the inquiry into eligibility shall be either (a) by affidavit sworn to before the court, a court clerk or deputy, or a notary public; or (b) under oath in open court.

C. Standards for Eligibility - In addition to the income and assets of a person seeking the appointment of counsel, the judge or magistrate judge shall also consider the cost of providing the person and the person's dependants with the necessities of life, and the cost of bail bond if financial conditions are imposed, or the amount of the cash the person is required to make to secure his or her release on bond.

D. Retroactivity of Appointment - Appointment of counsel may be made retroactive to include representation furnished pursuant to this Plan prior to appointment if the district judge or magistrate judge finds a person has been and is then

financially unable to obtain an adequate defense, and that such earlier representation was authorized under the Plan. Compensation will be made retroactive to cover out-of-court time expended by the attorney during the prior period, and in addition cover compensation for services rendered from the time of initial presentation before a court. If the person represented is unavailable at the time counsel applies to the court for approval of retroactive appointment, the attorney may nevertheless submit his or her claim to the court for approval based on the person's financial condition at the time.

E. Multiple Representation - The district judge or magistrate judge shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown. Ordinarily, 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 be appointed for each defendant.

F. Discretionary Appointments - Any financially eligible person for whom representation may be provided under this Plan may apply to the court or magistrate judge to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially unable to obtain adequate representation. Such application shall be made on a CJA Form 23 unless another form is prescribed by the Judicial Conference of the United States or by Local Rule. If the party is not before the Court, the district judge or magistrate judge may, without requiring the personal appearance of the party for such purpose, act on the basis of the form alone, or the form as supplemented by such information as may be made available by an officer or custodian or other responsible officer, provided that such information is also made available to the party.

G. Waiver of Right to Counsel - All waivers of the right to counsel before a judge or magistrate judge shall be in writing on a form approved by the Chief Judge and shall be filed among the papers in the case. If a person knowingly waives the right to counsel, but refuses to sign the waiver form, the district judge or magistrate judge shall certify such fact to the Clerk of the Court for inclusion in the file.

A district judge or magistrate judge shall explain to a person waiving the right to counsel that such waiver will not prevent a request for the appointment of counsel at a later time or before the same or another judicial officer.

X. APPOINTMENT OF COUNSEL

A. Whenever it shall appear to the presiding district judge or magistrate judge at the time of arraignment or at any other time, that a party entitled to counsel is not represented by counsel and has not voluntarily waived the assistance of counsel, the district judge or magistrate judge shall determine whether such defendant is

financially able to obtain counsel and, if not, whether the party wishes the judge to appoint counsel for the party. The judge may also make a discretionary appointment as provided in Section IX. F. of this Plan. If in either situation the judge concludes that counsel should be appointed, either the FPD will be designated or such appointment will be made from the CJA panel; provided, however, that in extraordinary situations, in the interest of justice, the judge may appoint any member of the bar of this court who would otherwise qualify to become a member of the Panel to represent such a party.

After conviction, if a defendant desires to waive his or her right of appeal, appointed counsel shall insure that such waiver is made intelligently and voluntarily, and shall obtain the signature of the defendant on a written waiver form to be approved by the chief judge, and shall cause the executed form to be filed with the other papers in the case.

B. Redetermination of Need - If at any stage of the proceeding prior to imposition of sentence, a district judge or magistrate judge shall find that a party for whom counsel has not previously been appointed under this Plan but who has retained private counsel, is financially unable to provide for continued representation, the judge or magistrate judge may appoint counsel for such party. The court will ordinarily not appoint the same attorney.

If at any time after appointment, counsel has reason to believe that a party is financially able to obtain counsel or to make partial payment for counsel, and the source of counsel's information is not protected as a privileged communication, counsel shall advise the Court. The Court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such defendant.

In such event, the amount so paid or payable by the party shall be considered by the court in determining the total compensation to be allowed to such attorney.

XI. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

A. In Non-Capital Cases

1. With Prior Approval - Counsel (whether or not appointed under the Criminal Justice Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense, may request such services in an *ex parte* application submitted to the district judge before whom the case is pending, or before a magistrate judge who has jurisdiction (or if the judge otherwise refers such application to a magistrate judge for findings and report). Upon finding in an *ex parte* proceeding that the services are necessary, and that the person is financially unable to obtain them, the district judge or magistrate judge shall authorize counsel to obtain the services.

2. Without Prior Approval - Counsel appointed under the Criminal Justice Act may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed the maximum amount then-allowed under the CJA Guidelines unless the presiding district judge or magistrate judge, in the interest of justice, finds in an *ex parte* proceeding that timely procurement of necessary services could not await prior authorization. The presiding judicial officer may then authorize such services *nunc pro tunc*.

3. Maximum Compensation - The maximum compensation with or without prior approval shall not exceed the maximum amount allowed under the CJA unless payment in excess of that amount is certified by the court or 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."

B. In Capital Cases - The maximum compensation paid for investigative, expert, and other services in capital cases shall not exceed the statutory limitation on fees and expenses for these services, unless the payment in excess of that amount is certified as necessary by the presiding judicial officer.

C. Ex Parte Applications - *Ex parte* applications for services other than counsel made under this Section shall be heard *in camera* and shall not be revealed without the consent of the person represented. 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.

XII. 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. Compensation

1. Federal Public Defender Organization - The Federal Public Defender shall receive such compensation as is fixed by the Court of Appeals at a rate not to exceed that of the U. S. Attorney for the district. The Federal Public Defender shall set the compensation for attorneys and other personnel of the Organization.

2. Private CJA Attorneys - 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. 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 of vouchers and in submitting them for further processing.

3. Supersession - This Plan supersedes all prior Criminal Justice Act Plans of this Court.

ADOPTED this 12th day of December 2003.

s/ Joe B. McDade

JOE BILLY McDADE
CHIEF UNITED STATES DISTRICT JUDGE

s/ Michael M. Mihm

MICHAEL M. MIHM
UNITED STATES DISTRICT JUDGE

s/ Michael P. McCuskey

MICHAEL P. McCUSKEY
UNITED STATES DISTRICT JUDGE

s/ Jeanne E. Scott

JEANNE E. SCOTT
UNITED STATES DISTRICT JUDGE