

**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

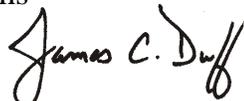
WASHINGTON, D. C. 20544

February 27, 2008

TRANSMITTAL 20 VOLUME 7 CHAPTER II & VI

**FOR THE GUIDE TO JUDICIARY POLICIES AND PROCEDURES**

**TO:** Judges, United States Courts of Appeals  
Judges, United States District Courts  
United States Magistrate Judges  
Circuit Executives  
Federal Public/Community Defenders  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts  
Chief Probation Officers  
Chief Pretrial Services Officers  
Senior Staff Attorneys  
Chief Preargument/Conference Attorneys  
Circuit Librarians

**FROM:** James C. Duff 

**SUBJECT:** REVISIONS TO APPOINTMENT OF COUNSEL IN CRIMINAL CASES, VOLUME 7, *GUIDE TO JUDICIARY POLICIES AND PROCEDURES*

This transmittal provides changes to the Appointment of Counsel in Criminal Cases, Volume 7, *Guide to Judiciary Policies and Procedures (Guide)*. Those changes are detailed in the chart below. **Please be advised that, effective with this transmittal, distributions of Volume 7 updates will no longer be provided in hard copy.** Updates to Volume 7 of the *Guide* will only be available electronically on the J-Net at [http://jnet.ao.dcn/Guide/Volume\\_7/Section\\_A.html](http://jnet.ao.dcn/Guide/Volume_7/Section_A.html). Questions may be directed to the Office of Defender Services, Legal and Policy Branch Duty Attorney, on 202-502-3030.

Change Code:  
E = editorial  
P = new policy/procedure  
R = revised

**Section-by-Section Comparison Chart**

Type of Change	Old Information	New Information	Reason for Change
E	Volume 7 of the <i>Guide</i> references 21 U.S.C. § 848(q) throughout, a statute that creates a right to federally appointed and compensated counsel	Where appropriate, citations to 21 U.S.C. § 848(q) have been updated in Chapters II and VI of Volume 7 of the <i>Guide</i> to reference sections of 18 U.S.C. § 3599.	As part of the USA Patriot Reauthorization Act, the text of 21 U.S.C. § 848(q) was repealed (Pub.L. 109-177, Title II, §§ 221(4), 222(c), Mar. 9, 2006, 120 Stat. 231, 232), and recodified in 18 U.S.C. § 3599.

Type of Change	Old Information	New Information	Reason for Change
	(as well as payment for reasonably necessary investigative, expert, and other services) for “financially unable” defendants in certain capital representations.	Note: Other references to 21 U.S.C. § 848(q), including a recitation of text in Chapter I, will be updated in future transmittals.	
R	Paragraphs 2.22A(1) and 6.02A(1) of Volume 7 of the <i>Guide</i> set out the maximum hourly compensation rates in non-capital (¶ 2.22A(1)) and capital (¶ 6.02A(1)) cases for attorneys appointed to represent eligible persons under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and related statutes. Effective January 1, 2006, the maximum hourly rate for non-capital appointments was \$92. For capital representations, the hourly rate could not exceed \$163.	Paragraphs 2.22A(1) and 6.02A(1) have been amended to update the maximum hourly compensation rates for attorneys appointed under the CJA and related statutes. For work performed on or after May 20, 2007, but before January 1, 2008, the hourly panel attorney rate for non-capital appointments may not exceed \$94, and the hourly compensation for capital representations (federal capital prosecutions and capital post-conviction proceedings) may not exceed \$166. For work performed on or after January 1, 2008, the hourly rates may not exceed \$100 for non-capital cases and \$170 for capital cases.	On May 2, 2007, the United States House and Senate Appropriations Committees approved the judiciary's final FY2007 financial plans, which included a cost-of-living adjustment to increase the maximum hourly rate for non-capital appointments from \$92 to \$94, and the maximum hourly capital rate from \$163 to \$166, for work performed on or after May 20, 2007. (Pub. L. No. 110-5, 121 Stat. 8 (2007)). The Consolidated Appropriations Act of 2008, provided funds to raise the maximum hourly rate to \$100 for non-capital cases and \$170 for capital cases, effective January 1, 2008.
P	None	New paragraph 6.04 of Volume 7 of the <i>Guide</i> encourages district courts in capital prosecution cases to set reasonable deadlines for stages of the death penalty authorization process, including the defendant's mitigation submission to the local U.S. Attorney, the U.S. Attorney's submission to the Department of Justice of its recommendation about whether the death penalty should be sought, and the Attorney General's decision whether to authorize seeking the death penalty. The new guideline recommends that the schedule be flexible and subject to extension for good cause at the request of either party.	The Judicial Conference approved the Defender Services Committee's recommendation (JCUS-SEP 07, p. 3) as a cost-containment strategy to avoid unnecessary expenses. The new paragraph was developed jointly with Department of Justice staff.