

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 Fed. R. Crim. P. 17 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

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:

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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 Fed. R. Crim. P. 17 and 28 U.S.C. §1825.

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United States District Judge

Date

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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.

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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 Fed. R. Crim. P. 17 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

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 United States magistrate judge if the services were rendered in connection with a case disposed of entirely before the United States magistrate judge, will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. The court or United States 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 United States magistrate judge if the services were rendered in

connection with a case disposed of entirely before the United States magistrate judge, will submit it to the chief judge of the circuit, or his or her delegate, for review and approval. The court or United States 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 Fed. R. Crim. P. 17 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.

2. Discretionary. Whenever a judge or United States 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 United States magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States 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 United States magistrate judge after making appropriate inquiries concerning the person's financial condition.

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 United States 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 United States 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 United States 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 United States 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 "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 United States 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 United States 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 United States 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 United States 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 United States 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 United States 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 United States 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 United States magistrate judge.

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 United States 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

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