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ADMINISTRATIVE OFFICE OF THE

UNITED STATES COURTS

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TRANSMITTAL	21	**VOLUME**	7	**CHAPTER**	1, 2, 3, 5, & 6

FOR THE GUIDE TO JUDICIARY POLICIES AND PROCEDURES

TO:

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

The Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures* have been updated to incorporate amendments to the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and other guideline sections, subsequent to the passage of the "Judicial Administration and Technical Amendments Act of 2008," Pub. L. No. 110-406, enacted on October 13, 2008. (See October 16, 2008, Memo from the Director at http://jnet.ao.dcn/img/assets/5982/dir8-128.pdf). Additionally, several technical revisions have been made to multiple sections of the CJA Guidelines. The changes are detailed in the chart below.

As of Transmittal 20, the AO has discontinued providing updates of Volume 7 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. Questions concerning these updates should be directed to the Office of Defender Services, Legal and Policy Branch Duty Attorney at (202) 502-3030.

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

Section-by-Section Comparison Chart

Type of Change	Old Information	New Information	Reason for Change
E	Volume 7 of the *Guide* contains references to 21 U.S.C. § 848(q), a statute that creates a right to federally appointed and compensated counsel (as well as payment for reasonably necessary investigative, expert, and other services) for "financially unable" defendants in certain capital representations.	In Chapter 1, the text of 21 U.S.C. § 848(q) has been replaced by the text of 18 U.S.C. § 3599. Citations to 21 U.S.C. § 848(q) have been removed in Chapter 5, paragraph 5.01(B) and replaced with references to the appropriate sections of 18 U.S.C. § 3599. References to 21 U.S.C. § 848(q) in the CJA forms and form instructions will be updated in future transmittals.	As part of the USA Patriot Improvement and Reauthorization Act of 2005, the text of 21 U.S.C. § 848(q) was repealed (Pub.L. 109-177, Title II, §§ 221(4), 222(c), Mar. 9, 2006, 120 Stat. 231, 232), and recodified as 18 U.S.C. § 3599.
E	Paragraph 2.22(A)(1), FN 4 and Paragraph 6.02(A)(1), FN 4	Paragraphs 2.22A(1) and 6.02A(1) were amended in Transmittal 20 to update the maximum hourly compensation rates for attorneys appointed under the Criminal Justice Act and related statutes before the public law citation was available. Footnote 4 from paragraphs 2.22(A)(1) and 6.02(A)(1) have been updated to include the appropriate citation.	The public law citation is now available.
R	Paragraph 2.01(E)(5) notes that "administrative deportation proceedings before the Immigration and Naturalization Service" are not covered by or compensable under the Criminal Justice Act.	Paragraph 2.01(E)(5) has been revised to reflect the restructuring of the Immigration and Naturalization Service (INS) following September 11, 2001, and incorporate the resulting changes in statutory terminology regarding immigration proceedings. The revisions simply update the guideline, and do not further limit or expand representations currently allowed or prohibited under the Criminal Justice Act.	The Judicial Conference approved the Defender Services Committee's recommendation (JCUS-MAR 08, p. 16) to amend the paragraph 2.01(E)(5) to correctly refer to the U.S. Citizenship and Immigration Services (USCIS), instead of INS, and other changes in statutory terminology related to immigration proceedings.

R	Paragraph 2.01A(1)(v) provides for the appointment and payment of counsel under the Criminal Justice Act in parole proceedings for financially eligible persons, and notes that Congress enacted a savings provision in the Sentencing Reform Act of 1984, as amended by the Parole Commission Phaseout Act of 1996, to allow certain laws relating to parole to remain effective until the expiration of the sentence received by persons specified in the savings provision.	Paragraph 2.01A(1)(v) has been revised to reflect recent legislation extending the expiration date of the savings provision that allows for the continued performance of the functions of the United States Parole Commission.	Congress enacted the United States Parole Commission Extension Act of 2008 (Pub. L. No. 110-312, 122 Stat. 3013 (Aug. 12, 2008)). This Act extends the previous savings provision to provide for the continued performance of the functions of the United States Parole Commission, as to specified persons, from twenty-one years to twenty-four years after November 1, 1987.
R	The Criminal Justice Act, 18 U.S.C. § 3006A(d)(2) sets forth the case compensation maximums for particular types of appointments. These amounts are also incorporated into Paragraph 2.22B of Volume 7 of the *Guide*.	In Chapter 1, the statutory text of the Criminal Justice Act has been updated to reflect recent legislation increasing the case compensation maximums. Paragraph 2.22B has been revised to reflect increases to the case compensation maximum amounts.	The Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406, was enacted on October 13, 2008, and amends subsection (d)(2) of the Criminal Justice Act to raise the case compensation maximums applicable to appointed private attorneys. The amendment also provides for the case maximums to increase “simultaneously” with changes in the maximum hourly compensation rate.

R	The Criminal Justice Act, 18 U.S.C. § 3006A(d)(2) allows the chief judge of the court of appeals to delegate the approval of excess compensation vouchers of attorneys and investigative, expert, and other service providers to active circuit judges. Similarly, certain provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), recodified in part at 18 U.S.C. § 3599, provide the same delegation authority for the approval of excess vouchers of expert, investigative, and other services in capital cases. The delegation authority provided in these two acts has been incorporated into Paragraphs 2.22B(1)(i), 2.22B(3), 3.02A, and 6.03B of Volume 7 of the *Guide*.	The statutory text of both the Criminal Justice Act and 18 U.S.C. § 3599 have been revised in Chapter 1 to reflect recent legislation that expands the authority of the chief judge of the court of appeals to delegate the approval of excess compensation vouchers to senior circuit judges. Paragraphs 2.22B(1)(i), 2.22B(3), 3.02A, and 6.03B of Volume 7 of the *Guide* have also been revised to include this expanded delegation authority.	The Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406, was enacted on October 13, 2008, and amends the Criminal Justice Act to expand the authority of the chief judge of the court of appeals to delegate the approval of excess compensation vouchers of attorneys, investigative, expert, and other service providers to include senior circuit judges. This act also amends 18 U.S.C. § 3599, to allow the same delegation authority for the approval of excess vouchers of expert, investigative, and other services in capital cases. Prior to the amendment, this delegation was limited to active circuit judges.