



PLAN FOR IMPLEMENTING THE
CRIMINAL JUSTICE ACT OF 1964
(AS AMENDED)
18 U.S.C. § 3006A
[September, 2003]

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TITLE I — PREAMBLE

§ 1.01 *Adoption*. The Judges of the United States District Court for the District of Alaska adopt the following plan under the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (hereinafter referred to as "the Act"), Federal Death Penalty Act of 1994 (as amended), 18 U.S.C. § 3599, and the *Guidelines for the Administration of the Criminal Justice Act*, Volume VII, *Guide to Judiciary Policies and Procedures* (hereinafter referred to as "*CJA Guidelines*") promulgated by the United States Judicial Conference under subsection (h) of the Act, for the representation of any person otherwise financially unable to obtain adequate representation.

§ 1.02 *Statement of Policy*.

(a) **Objectives**. The objectives of this Plan are to:

- (1) Attain the ideal of equality before the law for all persons; and
- (2) Particularize the requirements of 18 U.S.C. §§ 3006A and 3599, and *CJA Guidelines* in a way that meets the needs of this district.

(b) **Administration of Plan**. This Plan will be administered so that those accused of crime, or otherwise eligible for services pursuant to the Act, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

§ 1.03 *Class Entitled to Representation*.

(a) **Mandatory Representation**. Representation must be provided for any financially eligible person who is:

- (1) Charged with a felony or Class A misdemeanor;
 - (2) A juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031 (see 18 U.S.C. § 5034 with regard to appointment of counsel);
 - (3) Charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - (4) Under arrest, when such representation is required by law;
 - (5) Entitled to appointment of counsel in parole proceedings;
 - (6) 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) Subject to a mental condition hearing under chapter 313 of Title 18, U.S.C.;
 - (8) In custody as a material witness;
 - (9) 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;
 - (10) Seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- or
- (11) Entitled to appointment of counsel under 18 U.S.C. § 4109.

(b) **Discretionary Representation.** Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who:

(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 seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 (*but see* paragraph (a)(10), above, regarding appointment of counsel in death penalty cases);

(3) Is charged with civil or criminal contempt who faces loss of liberty;

(4) 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;

(5) Is proposed by the United States attorney for processing under a pretrial diversion program; or

(6) Is held for international extradition under chapter 209 of title 18, United States Code.

(c) **Ancillary Matters.**

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

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

(d) **Scope of Representation.** Representation includes counsel and investigative, expert, and other services reasonably necessary for an adequate defense.

TITLE II — PROVISION FOR FURNISHING COUNSEL

§ 2.01 *General.*

(a) **Persons Furnishing Services.** This plan provides for the furnishing of legal services:

(1) By a Federal Public Defender Organization, supervised by a Federal Public Defender, serving the United States District Court for the District of Alaska; and

(2) By the appointment and compensation of private counsel in a substantial portion of cases.

(b) **Definition of Counsel.**

(1) The term “counsel” means any lawyer admitted to practice before the U.S. District Court for the District of Alaska.

(2) The term “private counsel” includes members of the CJA Panel established under this Plan, counsel furnished by a bar association, a legal aid agency, and a state or local defender organization.

(3) A claim for compensation by an entity furnishing counsel will be approved on the same basis as in the case of appointment of private counsel.

§ 2.02 *Determination of Appointment.*

(1) Unless otherwise ordered by the appointing judge or magistrate judge, the initial determination of whether a party entitled to representation will be represented by the Federal Public Defender Organization or by private counsel is within the discretion of the Federal Public Defender.

(2) Insofar as practical, private attorney appointments will be made in at least twenty-five percent (25%) of appointed cases.

TITLE III — FEDERAL PUBLIC DEFENDER ORGANIZATION

§ 3.01 *General.* The Federal Public Defender Organization for the District of Alaska, established under this plan in accordance with the provisions of ¶¶ (g)(1) and (g)(2)(A) of the Act, is to be headquartered in Anchorage, Alaska, and is responsible for rendering defense services on appointment throughout the district.

§ 3.02 *Judicial Conference Guidelines.* The Federal Public Defender Organization will operate in accordance with the provisions of ¶ (g)(2)(A) of the Act, as well as the *CJA Guidelines*.

§ 3.03 *Private Practice of Law Prohibited.* A Federal Public Defender may not engage in the private practice of law except as permitted in Canon 5(D) of the Code of Conduct for Federal Public Defenders.

§ 3.04 *Reports.* The Federal Public Defender will submit to the Director of the Administrative Office of the United States Courts, at the time and in the form proscribed by the Director, reports of the organization's activities, its financial position, and proposed budget.

§ 3.05 *Staff Attorneys.*

(a) **Roster.** The Federal Public Defender will furnish the initial roster of staff attorneys and report any changes thereto to the Clerk of the Court.

(b) **Assignments.**

(1) The court will assign cases in the name of the Federal Public Defender.

(2) The Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in that office.

§ 3.06 *Administration of CJA Panel.* Administration of the CJA Panel in furtherance of this Plan is hereby delegated and assigned to the Federal Public Defender for the District of Alaska.

TITLE IV — COMPOSITION, ADMINISTRATION, AND
MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS

§ 4.01 *Composition of the Panel of Private Attorneys.*

(a) **Establishment.**

(1) The court will 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 Act.

- (2) Members of the CJA Panel:
 - [A] Serve for a period of three (3) years;
 - [B] Are eligible for reappointment; and
 - [C] Serve at the pleasure of the judges.

(b) Removal.

(1) A member of the CJA Panel may be removed by a majority vote of the active district judges.

(2) The Chief Judge may, without notice or hearing, immediately suspend any member of the CJA Panel who:

[A] Is disbarred from practice before the Supreme Court of the State of Alaska, or any other court before which the member is admitted to practice;

[B] Ceases to be a member of the federal bar of this district;

[C] Becomes the subject of a disciplinary action before the Alaska Supreme Court, or any other court before which the member is admitted to practice; or

[D] Is Arrested for a federal or state crime, other than an infraction or other criminal act for which under applicable law no term of incarceration may be imposed.

(3) In the absence of unusual circumstances, a member of the CJA Panel will not be removed except after consideration of the recommendation of the Panel Selection Committee or the Advisory Committee.

(4) The Federal Public Defender will be immediately notified when any member of the CJA Panel is removed or suspended.

(c) Size.

(1) The court will periodically fix the size of the CJA Panel.

(2) The panel will 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 proficiency in federal criminal defense work, and thereby provide a high quality of representation.

(d) Eligibility. Attorneys who serve on the CJA Panel must:

(1) Be members in good standing of the federal bar of this district;

(2) Have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, Federal Rules of Evidence, and the Guidelines promulgated by the United States Sentencing Commission;

(3) Have demonstrated an interest in providing criminal defense services; and

(4) Have a reputation for competent and vigorous representation.

(e) Continuing Legal Education. Attorneys on the CJA Panel are expected to keep current with developments in federal criminal defense law, practice and procedure.

(1) The Federal Public Defender will conduct:

[A] Monthly meetings for the CJA Panel, which meetings will include informal training sessions designed to keep panel members current with criminal defense practice in the district; and

[B] Annual CJA Panel meetings in Fairbanks and Juneau.

(2) Members of the CJA Panel are expected to attend at least three (3) monthly CJA meetings per year in Anchorage, or the annual meeting in Fairbanks and Juneau.

(3) [A] Other criminal defense CLEs may be substituted for CJA Panel meetings.

[B] A panel member attending a program sponsored or accredited by the Defender Services Division Training Branch of the Administrative Office of the U.S. Courts will be deemed to have satisfied all CLE requirements for the year in which attended and one (1) of the two (2) following years.

(f) **Composition.** The CJA Panel established pursuant to this section will be divided into four groups.

(1) Members available for appointment in pre-trial cases will be divided into felony and misdemeanor groups, based upon the level of experience in handling criminal cases.

(2) Members available for appointment in post-conviction cases will be divided into appeal and *habeas* groups.

(3) Members are assigned to one or more of the four groups by the Panel Selection Committee.

§ 4.02 *Application.*

(1) Application forms for membership on the CJA Panel will be made available, upon request, by the Federal Public Defender.

(2) Completed applications are to be submitted to the Federal Public Defender who will transmit the applications to the other members of the Advisory Committee established under § 4.04.

§ 4.03 *Panel Selection Committee.*

(a) **Establishment.** A Panel Selection Committee will be established by the court.

(b) **Membership.**

(1) The committee will consist of two (2) district judges (one of whom may be a senior judge willing to serve) and one (1) full-time magistrate judge.

(2) Committee members will be appointed by, and serve at the pleasure of, the Chief Judge of the District of Alaska who will also select the committee chair.

(c) **Duties.**

(1) The committee will meet at least once each year to:

[A] Review the qualifications of applicants for the CJA Panel submitted to it by the Advisory Committee and appoint or reappoint to the panel those applicants best qualified to fill the vacancies; and

[B] Review the operation and administration of the panel over the preceding year, and recommend to the court any changes deemed necessary or appropriate by the committee regarding the appointment process and panel management.

(2) Upon the request of any judge or magistrate judge, the committee will review and recommend the removal or retention of any member of the CJA Panel.

(d) **Panel Vacancies.** If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the committee will request recommendations for appointment to the panel from the Advisory Committee, convene a special meeting to review the qualifications of the applicants, and select prospective members for appointment to the panel.

(e) **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.

(1) Training Panel members may be assigned by the court to assist members of the CJA Panel in a "second chair" capacity.

(2) Training Panel members are not eligible to receive appointments independently, and are not eligible to receive compensation for their services in assisting CJA Panel members.

(3) Prior service on the CJA Training Panel is not a prerequisite for membership on the CJA Panel, nor will service on the CJA Training Panel guarantee admission of an attorney to the CJA Panel.

§ 4.04 Advisory Committee.

(a) **Establishment.** The Federal Public Defender will establish an Advisory Committee of CJA Panel Attorneys.

(b) **Composition.**

(1) The Advisory Committee will consist of not less than three (3) nor more than five (5) members of the panel.

(2) Members of the committee will:

[A] Be selected by such means as the Federal Public Defender may determine is appropriate;

[B] Serve for a period of two (2) years and are eligible for more than one (1) successive term; and

[C] Serve without compensation.

(c) **Eligibility.** A member of the Advisory Committee must have served on the CJA Panel for a minimum of two (2) years and have handled at least seven (7) cases of varying types as an appointed attorney under the Act.

(d) **Recusal.**

(1) A member of the Advisory Committee (referred to as "committee member") must recuse himself or herself from any and all participation in the consideration of a matter concerning a panel member submitted to or before the committee or from attempting to influence others with respect to such consideration, where the committee member:

[A] Is the current or former law partner or associate of the panel member;

[B] Or the law firm or office with which the committee member is affiliated, represents the panel member;

[C] Or the law firm or office with which the committee member is affiliated, is a party to pending litigation in which the panel member, or the law firm or office with which the panel member is affiliated, is a party;

[D] Or the law firm or office with which the committee member is affiliated, represents a party in pending litigation in which the panel member, or the law firm or office with which the panel member is affiliated, is a party;

[E] Or his or her spouse is related to the panel member by consanguinity or affinity within the third degree according to the rules of civil law;

[E] Stands in the relation of guardian and ward, conservator and conservatee, employer and employee, or principal and agent to a panel member;

[F] Has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit against the panel member for malpractice;

[G] Has any personal bias or prejudice concerning the panel member which would prevent the committee member from fairly evaluating all of the evidence concerning that panel member; or

[H] Represents or represented one party in the matter for which the request for compensation is being reviewed where the panel member to be audited represents or represented another party.

(2) A committee member who represents one party to a pending matter where the panel member to be audited represents another party in the matter may recuse himself or herself, or be recused in the discretion of the committee Chair.

(3) [A] In the event that a committee member does not voluntarily recuse himself or herself, the committee Chair must, upon becoming aware of factors that may indicate a potential conflict of interest described in ¶ (d)(1), initiate an inquiry and make a determination as to whether or not such member should be recused.

[B] Any resulting determination by the committee Chair on recusal is final and binding.

(e) Federal Public Defender.

(1) The Federal Public Defender will be a permanent member of the Advisory Committee and will serve as committee chair, but will be entitled to vote only in the case of a tie vote.

(2) The Federal Public Defender will designate a member of the committee to serve as vice-chair.

(f) Confidentiality.

(1) [A] All information pertaining to a CJA panel member or an applicant for appointment to the panel provided to or obtained by the committee in performing its duties and responsibilities under this plan is the property of the U.S. District Court for the District of Alaska and is to be treated as confidential.

[B] Votes of the committee are also confidential.

(2) Members of the committee may not disclose to others in any manner during the course of consideration of any performance or fee review of a panel member, or evaluation of an application for appointment to the panel, the name of the panel member or applicant involved, the discussions, deliberations or action of the committee concerning any fee or performance review, or application for appointment, information obtained during investigation or deliberation of the committee, or any documents related to the foregoing, unless ordered to do so by a court of competent jurisdiction.

§ 4.05 *Duties and Responsibilities of Advisory Committee.*

(a) **General.** The Advisory Committee will generally advise the Federal Public Defender and the court on matters concerning administration of the CJA Panel, including but not limited to, membership on the CJA Panel and compensation of panel attorneys.

(b) **Recruitment/Review of Applications.** The committee will:

(1) Solicit applications for membership on the panel from all potential sources of qualified members, including, but not limited to, attorneys serving on the panel of private attorneys eligible to provide defense services to indigent defendants in the Alaska state court system;

(2) Maintain a current list of all applications for membership on the CJA Panel;

(3) Review all applications for membership; and

(4) After receiving such comment or information the committee deems necessary, and after due deliberation, by majority vote, make recommendations to the Panel Selection Committee concerning those applicants who should be included on the Panel.

(c) **Performance Reviews.**

(1) At the request of the court or the Panel Selection Committee, the committee will review and evaluate the performance of any panel member.

(2) The factors to be considered in evaluation of the performance of a panel member include, but are not necessarily limited to:

[A] Investigative and litigation skills;

[B] Rapport with clients;

[C] Strength in procedural and substantive legal knowledge and analysis; and

[D] Administrative matters, including billing accuracy.

(3) After receiving and consideration of the evaluations provided under subsection (g) and such other comment or information the committee deems necessary, and after due deliberation, the committee will make recommendations, by majority vote, to the Panel Selection Committee, concerning whether the attorney should be retained on the Panel.

(d) **Training Assistance.** The committee will assist the Federal Public Defender, in developing and conducting a regular program for providing training for members of the CJA Panels and pending applicants.

(e) **Voucher Review.** Upon request of the court or the appointed attorney, review and make recommendations in accordance with the procedures provided in the *CJA Compensation Policy*

Manual promulgated by the court with respect to claims for compensation or for services provided under 18 U.S.C. § 3006A(e).

(f) **Annual Review and Recommendations.** At least once each year, the committee will meet and confer to:

(1) Review the qualifications of applicants for the CJA Panel and, not later than fifteen (15) days before the date of the annual meeting of the Panel Selection Committee, submit recommendations for appointment or reappointment by the Panel Selection Committee of those applicants best qualified to fill the vacancies;

(2) Review the operation and administration of the panel over the preceding year, and recommend to the court any changes deemed necessary or appropriate by the committee regarding panel administration, composition, maintenance, and compensation; and

(3) Inquire as to the continued availability and willingness of each panel member to accept appointments.

(g) **Evaluations by the Judiciary.**

(1) Not later than thirty-five (35) days preceding the date of the annual meeting referred to in subsection (f), the Federal Public Defender will distribute to all judges and magistrate judges serving in the district a form soliciting an evaluation by each judge and magistrate judge, in such format as may be approved by the Chief Judge, of each applicant for appointment or reappointment to the panel.

(2) The evaluation form is to be:

[A] Returned to the Federal Public Defender not later than fifteen (15) days before the date of the annual meeting of the Committee; and

[B] Distributed to the committee members not later than ten (10) days before the annual meeting.

§ 4.06 *Selection for Appointment*

(a) **Maintenance of List and Distribution of Appointments.** The Federal Public Defender will:

(1) [A] 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, and

[B] furnish a copy of the list of attorneys included on the CJA Panel to each judge, magistrate judge, and the Clerk of Court; and

(2) [A] Maintain a public record of assignments to private counsel, and

[B] when appropriate, statistical data reflecting the proration of appointments between attorneys from the Office of the Federal Public Defender and private attorneys, according to the formula described in § 2.02.

(b) **Method of Selection.** Every effort will be made to ensure that counsel are appointed as expeditiously as possible, appointments are equitably distributed, and information on availability of counsel is maintained.

(1) To maintain a balanced distribution of appointments and compensation among members of the panel of attorneys, and quality representation for each CJA defendant, appointments from the list should be made on a rotational basis, subject to the Federal Public Defender's discretion to make exceptions due to:

- [A] The nature and complexity of the case;
- [B] An attorney's calendar and experience; and
- [C] Geographical considerations.

(2) In making appointments between the two pretrial groups into which the panel is divided under ¶ 4.01(f)(3), the Federal Public Defender must bear in mind that some felony cases are less complex and demanding, and therefore call for less experience, than some misdemeanor offenses (e.g., a simple charge of drug possession or distribution as compared to a Magnuson Act fishing violation).

(c) Notification of Appointment.

(1) Upon the determination of a need for counsel, the judge or magistrate judge will notify the Federal Public Defender, who will appoint the next panel member on the appropriate list after ascertaining that member's availability for appointment.

(2) [A] Appointments are to be made consistent with the status for distribution of cases between the Federal Public Defender and the panel of private attorneys.

[B] In the event of an emergency, *i.e.*, weekends, holidays, or other non-working hours of the office of the Federal Public Defender, the magistrate judge or judge may appoint any lawyer from the list.

[C] In all cases where panel members are appointed out of sequence, the judge or magistrate judge will notify the Federal Public Defender as to the name of the attorney appointed.

[D] This procedure may be modified by the court, on the advice of the Panel Selection Committee or the Advisory Committee, as, for example, by providing standby panel attorneys designated in advance to be available on call.

§ 4.07 Appointment of Non-Panel Attorneys.

(a) **In General.** 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 under the plan.

(b) **Exceptional Circumstances.** When the district judge presiding over the case, or the chief judge if the case has not yet been assigned to a district judge, determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interests of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting appointment of the attorney, the attorney may be admitted to the CJA Panel *pro hac vice* and appointed to represent the CJA-eligible defendant, provided that:

(1) To preserve the integrity of the panel selection process, these appointments should be made only in exceptional circumstances; and

(2) The attorney, who may or may not maintain an office in the district, should possess qualities that would qualify the attorney for admission to the district's CJA Panel in the ordinary course of panel selection.

§ 4.08 *Compensation — Filing of Vouchers.*

(a) **Submission.** Claims for compensation must be submitted, on the appropriate CJA form, to the office of the Federal Public Defender within forty-five (45) days from the completion of the services.

(b) **Policy and Procedure.** Vouchers must be prepared and will be processed in accordance with the requirements of the *CJA Compensation Policy Manual* adopted by this court, as amended from time to time.

(c) **Determination of Compensation.**

(1) Except as otherwise ordered by the presiding judge, compensation will be fixed as provided in the *CJA Compensation Policy Manual* adopted by this court.

(2) In cases where representation is furnished other than before the district judge, magistrate judge, or an appellate court, the district judge will fix the compensation and reimbursement to be paid.

TITLE V — DETERMINATION OF NEED FOR COUNSEL ADVICE OF RIGHT,
FINANCIAL INQUIRY, APPOINTMENT PROCEDURE

§ 5.01 *In General.*

(a) **Time for Appointment.** Counsel should be provided to persons financially eligible for representation as soon as feasible after they are taken into custody, when they appear before a federal judge or magistrate judge, when formally charged, or when otherwise entitled to counsel under the Act, whichever is the earliest to occur.

(b) **Determination of Eligibility.** The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.

§ 5.02 *Responsibilities of Federal Public Defender.*

(a) **Presentation of Accused for Appointment of Counsel.** As soon as practicable following the arrest of an individual in connection with a federal criminal charge or the appearance of the accused for an initial appearance, whichever occurs first, or when contacted by an individual who has been served with a summons, received a target letter from the United States Attorney, or has received a Pretrial Diversion Notification letter from the United States Attorney, the Federal Public Defender is responsible for asking the accused whether the individual is financially able to secure representation, and must, in those cases in which the individual so indicates:

(1) Assist the individual in completing a financial affidavit (CJA 23) for presentation to the court; and

(2) Immediately notify the U.S. Pretrial Services and Probation Office by telephone or electronically that a financial affidavit has been obtained from the defendant.

(b) Multiple Defendant Cases.

(1) Upon receipt of charging documents in cases involving multiple defendants, the Federal Public Defender must immediately:

[A] Investigate and determine whether an actual or potential conflict exists; and

[B] In the event that a actual or potential conflict exists, select an attorney or attorneys from the CJA Panel to represent the defendant or those defendants who meet eligibility requirements.

(2) Unless otherwise impracticable, the CJA Panel attorney(s) must be available to represent the defendant(s) at the same stage of the proceedings as is the Federal Public Defender.

(3) *It will not be the policy of the court to appoint the Federal Public Defender on an interim basis in multiple defendant cases.*

§ 5.03 *Duties of Federal Law Enforcement and Related Agencies*

(a) Upon Arrest.

(1) In any case in which the defendant has not waived counsel, federal law enforcement officials are responsible for notifying the Federal Public Defender of the arrest of an individual in connection with a federal criminal charge.

(2) Notice under this subsection is to be made telephonically or electronically.

(b) Pretrial Services Interview. When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial interview without counsel, financially eligible defendants will be furnished appointed counsel prior to being interviewed by a pretrial services officer.

(1) If counsel has not been appointed and the defendant so requests, unless notified by the Federal Public Defender that a financial affidavit has already been obtained from the defendant, the pretrial services officer will:

[A] Obtain the necessary financial information from the defendant during the pretrial interview;

[B] Have the defendant execute a financial affidavit (CJA Form 23);

[C] Transmit a copy of the CJA 23 electronically to the Federal Public Defender; and

[D] Submit the CJA 23 to the court.

(2) When counsel has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release hearing (see 18 U.S.C. § 3154(1)) or a detention hearing held under 18 U.S.C. § 3142(f).

(c) Notice of Initial Appearance. Upon scheduling the initial appearance of a defendant in custody, the Clerk of the Court will immediately electronically transmit to the Federal Public Defender notice of the date and time set, together with a copy of the charging documents.

(d) Target Letters. Target letters sent by the Office of the United States Attorney should provide the address and telephone number of the Federal Public Defender unless the Office of the

United States Attorney has been informed that the target has already retained private counsel or waived the right to counsel.

(e) Pretrial Diversion.

(1) The Office of the United States Attorney should include the address and telephone number of the Federal Public Defender in the Pretrial Diversion Notification letter sent to the offender.

(2) Upon receipt of a Pretrial Diversion Referral, if the defendant is not represented by counsel and the defendant so requests, unless notified by the Federal Public Defender that a financial affidavit has already been obtained from the defendant, the pretrial services officer will:

[A] Obtain the necessary financial information from the defendant during the initial interview;

[B] Have the defendant execute a financial affidavit (CJA Form 23);

[C] Transmit a copy of the CJA 23 electronically to the Federal Public Defender; and

[D] Submit the CJA 23 to the court.

§ 5.04 Fact-Finding.

(a) **In General.** Fact-finding concerning the person's eligibility for appointment of counsel may be completed prior to the person's first appearance in court. Other officers or employees of this court (*i.e.*, clerk, deputy clerk, or pretrial services officer) may be designated by the court to obtain or verify the facts upon which the determination is to be made.

(b) CJA 23.

(1) Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (CJA Form 23), and the completed form executed before a judicial officer or employee.

(2) Employees of law enforcement agencies and United States attorney offices should not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning eligibility of the person.

(c) Appearance Before the Court.

(1) Upon the appearance of a person before a magistrate judge or judge as provided above, or at any proceeding in which a person who is entitled to representation under this Plan appears without counsel, the court must advise the person of the right to be represented by counsel and that counsel may be appointed if the person is financially unable to afford adequate representation.

(2) Unless the person waives representation by counsel, the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, will appoint counsel to represent the person.

[A] If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry may follow the appointment of counsel as soon thereafter as is practical.

[B] All statements made by a person in requesting counsel or during the inquiry into eligibility must be either (a) by affidavit sworn to before the court, Clerk of the Court or deputy clerk, or a notary public, or (b) under oath in open court.

(3) Appointment of counsel may be made retroactive to include representation provided prior to appointment.

§ 5.05 *Separate Counsel*. The court will appoint separate counsel for persons having conflicting interests that cannot be represented by the same counsel or when other good cause is shown.

§ 5.06 *Capital Cases*.

(a) **In General**. When a person is charged with a federal capital crime or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or § 2255, the person is entitled to the appointment of one or more qualified attorneys.

(b) **Appointment of Additional Counsel**. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers are urged to appoint at least two (2) attorneys.

(1) If the appointment of counsel is made before judgment, at least one (1) attorney so appointed must have been admitted to practice for not less than five (5) years in the court in which the case will be prosecuted, and must have had not less than three (3) years experience in the actual trial of felony prosecutions in that court.

(2) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five (5) years, and must have had not less than three (3) years experience in the handling of appeals in felony cases in the court.

(3) The court for good cause may appoint an attorney whose background, knowledge, or experience would otherwise enable the attorney to provide proper representation in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

§ 5.07 *Continuity and Duration of Appointment*.

(a) **In General**. A person for whom counsel is appointed must be represented at every stage of the proceedings from initial appearance before the United States magistrate judge or the district court judge through appeal, including ancillary matters appropriate to the proceedings.

(1) Unless relieved by the appointing district court judge or magistrate judge, appointed counsel must represent the defendant in every subsequent stage of available judicial proceedings, including post-judgment ancillary matters.

(2) A matter is ancillary to the proceedings, when the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal charge.

(3) If a United States magistrate judge appoints counsel to represent a person and the person is later before a district court judge in connection with the same charge, the same counsel will appear before the district court judge to represent the person until the district court judge has had the opportunity to make an independent determination as to whether appointment of counsel in the proceeding is appropriate and, if so, who should be appointed.

(b) Capital Cases.

(1) In the interest of justice and judicial and fiscal economy, unless precluded by a conflict of interest, presiding judicial officers are urged to continue the appointment of state post-conviction counsel, if qualified under § 5.03.

(2) In federal capital prosecutions and in federal death penalty *habeas corpus* proceedings, unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, counsel appointed must represent the defendant in every subsequent stage of available judicial proceedings, including—

[A] pretrial proceedings,

[B] trial,

[C] sentencing,

[D] motion for a new trial,

[E] appeal,

[F] application for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and

[G] in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

(c) **Substitution of Counsel.** The court, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

§ 5.08 *Appeal.*

(a) Duty to Advise of Right to Appeal and File Notice of Appeal.

(1) In the event that a defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder must advise the defendant of the right of appeal and of the right to counsel on appeal.

(2) If requested to do so by the defendant in a criminal case, counsel must file a timely notice of appeal.

(b) Continued Representation. The attorney must continue to represent the defendant on appeal unless or until relieved by the district court or the court of appeals.

§ 5.09 *Partial Payment or Reimbursement by Represented Defendant.*

(a) In General. If at any time after appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of a person furnished representation, the court may terminate the appointment of counsel or authorize payment as provided in subsection (f) of the Act, as the interests of justice may dictate.

(b) Responsibility of Counsel. 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 the representation, and the source of the attorney's information is not protected

as a privileged communication, counsel must advise the court of the change in financial circumstances.

(c) **Judicial Action.**

(1) The court will 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 the party.

(2) The amount so paid or payable by the party will be considered by the court in determining the total compensation to be allowed to the attorney.

(d) **Third-party Payments.** No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless the payment is approved by order of the court.

(e) **Change in Financial Condition.** If at any stage of the proceedings, including an appeal, the court finds that the party is financially unable to pay counsel whom he or she had retained, the court may appoint counsel as provided in the Act and authorize payment of the appointed attorney as therein provided, as the interests of justice may dictate.

TITLE VI — INVESTIGATIVE, EXPERT, AND OTHER SERVICES

§ 6.01 *Non-Capital Cases.*

(a) **With Prior Authorization.**

(1) Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for adequate representation, may request the services in an *ex parte* application before a judge or before a United States magistrate judge, if the services are required in connection with a matter over which the magistrate judge has jurisdiction or if a judge otherwise refers the application to a magistrate judge for findings and report.

(2) Upon finding, after appropriate inquiry in the *ex parte* proceedings, that the services are necessary, and that the person is financially unable to obtain them, the judge or the magistrate judge, as the case may be, will authorize counsel to obtain the services.

(3) [A] The maximum that may be paid to a person or organization for services so authorized, exclusive of reimbursement for expenses reasonably incurred, may not exceed the maximum amount specified in ¶ (e)(3) of the Act and set forth in the *CJA Guidelines* unless payment in excess of that limit is—

(i) certified by the presiding judge or the magistrate judge (if the services were rendered in connection with a case disposed of entirely before the magistrate judge) as necessary to provide fair compensation for services of an unusual character or duration, and

(ii) the amount of the excess payment is approved by the Chief Judge of the Court of Appeals for the Ninth Circuit (or an active or senior circuit judge to whom excess compensation approval authority has been delegated).

[B] If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the trial judge and the chief judge of the circuit

(or the active or senior circuit judge to whom excess compensation approval authority has been delegated).

(b) Without Prior Authorization.

(1) Counsel appointed under the Act may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for adequate representation.

(2) [A] The total cost for services obtained, exclusive of reimbursement for expenses reasonably incurred, without prior authorization may not exceed the maximum specified in ¶ (e)(2) of the Act and set forth in the *CJA Guidelines* for each person or organization providing the services.

[B] The limit may be waived, however, if the presiding judge or magistrate judge (if the services were rendered in a case disposed of entirely before the magistrate judge) in the interest of justice finds that timely procurement of necessary services could not await prior authorization.

§ 6.02 *Capital Cases.*

(a) **Inapplicability of CJA Limitations.** The presiding judge must set compensation for investigative, expert, and other services in an amount reasonably necessary to obtain such services in federal capital cases or in federal death penalty *habeas corpus* proceedings without regard to CJA limitations.

(b) With or Without Prior Authorization.

(1) Upon a finding in *ex parte* proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant in a federal capital case or in a federal death penalty *habeas corpus* proceeding, the presiding judge will authorize counsel to obtain the services on behalf of the defendant.

(2) Upon a finding that timely procurement of necessary investigative, expert, or other services could not await prior authorization, the presiding judge may authorize the services *nunc pro tunc*.

§ 6.03 *Ex Parte Applications.*

(a) **Hearing In Camera.** *Ex parte* applications for services other than counsel will be heard *in camera*, and, except to the extent as otherwise provided by law, may not be revealed without the consent of the person represented.

(b) **Applications Sealed.** The application will be placed under seal until the final disposition of the case in the trial court, subject to further order of the presiding judge or magistrate judge.

§ 6.04 *Claims.*

(a) **Submission.** Claims for compensation of persons providing investigative, expert, and other services must be submitted, on the appropriate CJA form, to the office of the Federal Public Defender within forty-five (45) days from the completion of the services.

(b) **Policy and Procedure.** Vouchers must be prepared and will be processed in accordance with the requirements of the *CJA Compensation Policy Manual* adopted by this court, as amended from time to time.

§ 6.05 *Federal Public Defender Organization*. The Federal Public Defender Organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this title, *provided that* total expenditures of the organization for investigative, expert, and other services do not exceed its budget authorization for these specific categories.

TITLE VII — PAYMENT FOR REPRESENTATION BY PRIVATE COUNSEL

§ 7.01 *Non-Capital Cases*.

(a) **Hourly Rates**.

(1) Any private attorney appointed under this Plan will, at the conclusion of the representation, or any segment thereof, be compensated at a rate not exceeding the hourly rates prescribed by subsection (d) of the Act, unless the Judicial Conference determines that higher maximum rates, not to exceed the current statutory maximum, are justified for particular places of holding court.

(2) An appointed attorney will be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court.

(b) **Maximum Amounts**. For representation provided under the Act, compensation paid to any private attorney appointed under this Plan may not exceed the maximum amount prescribed by ¶ (d)(2) of the Act and set forth in the *CJA Guidelines*.

(c) **Waiver of Maximum Amounts**. Payment in excess of the maximum amounts authorized by the Act may be made for extended or complex representation whenever the presiding judge or magistrate judge (if the representation were furnished exclusively before the magistrate judge) certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Court of Appeals for the Ninth Circuit (or by an active or senior circuit judge to whom excess compensation approval authority has been delegated).

§ 7.02 *Capital Cases*. An attorney appointed to represent a defendant charged with a federal capital crime or seeking to vacate or set aside a death sentence imposed either by a state or federal court will be compensated at a rate and in an amount as specified in § 630 of the *CJA Guidelines*.

TITLE VIII — MISCELLANEOUS

§ 8.01 *Forms*. Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office of the U.S. Courts, those forms must be used by the court, Clerk of the Court, Federal Public Defender Organization, and other appointed counsel.

§ 8.02 *Guidelines for the Administration of the Criminal Justice Act*. The court, Clerk of the Court, Federal Public Defender Organization, and private attorneys appointed under the Act and this Plan must comply with the provisions of the Judicial Conference's *CJA Guidelines*.

TITLE IX — EFFECTIVE DATE

Subject to the approval of the Judicial Council of the Ninth Circuit, this Plan will take effect on September 1, 2003.