

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

AMENDED PLAN FOR IMPLEMENTING THE CRIMINAL JUSTICE ACT OF 1964,  
AS AMENDED, 18 U.S.C. § 3006A

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended (CJA), section 3006A of title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the Judges of the United States District Court for the Northern District of West Virginia, adopt this amended Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk, the federal public defender organization, attorneys furnished by a bar association or legal aid agency, and private attorneys appointed under the CJA shall comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the clerk of court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member

of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk shall maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and shall make known to such attorneys its availability.

### III. DEFINITIONS

A. "Representation" includes counsel and investigative, expert, and other services.

B. "Appointed attorney" includes private attorneys, the federal public defender and staff attorneys of the federal public defender organization, and attorneys furnished by a bar association, a legal aid agency, and a state or local defender organization.

### IV. PROVISION OF REPRESENTATION

#### A. Circumstance.

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

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
- c. is 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);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255

of title 28, United States Code;

- j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- 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; or
- 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 magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a 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.

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 magistrate judge after making appropriate inquiries concerning the person's financial condition.

2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment.

1. The federal public defender organization of the Northern District of West Virginia, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the federal public defender organization for this district.

2. The federal public defender organization shall be capable of providing legal services throughout the district and shall maintain offices in Clarksburg, West Virginia, and Wheeling, West Virginia.

B. Supervision of Defender Organization. The federal public defender shall be responsible for the supervision and management of the federal public defender organization. Accordingly, the federal public defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the federal public defender.

C. Management of CJA Panel. The federal public defender shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel subject to the provisions of this Plan.

VI. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

B. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

VII. 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*; *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.

### VIII. 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 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 magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

B. 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.

### IX. PROVISION FOR FURNISHING COUNSEL

This plan provides for the furnishing of legal services by attorneys from a panel of private counsel, selected in accordance with the procedures set forth in Title X of this plan.

### X. 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.

3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have sufficient experience to demonstrate competence 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.

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. Panel - Subpanel - Term. The CJA Panel established pursuant to this plan shall be divided into subpanels with a subpanel maintained for each of the Divisions of Court as defined in LR Gen P 77.02 of the Local Court Rules. Members will be assigned to the subpanel based upon the location of his/her principal office for the practice of law.

In order to establish the initial CJA Panel pursuant to this plan, the Federal Public Defender shall ascertain which attorneys are interested and willing to serve on the CJA Panel. The Panel Selection Committee shall review the qualifications of the applicants and recommend for approval by the Court, those applicants qualified. Three years (3) after the initial panel is established and every (3) years thereafter, the CJA Panel shall be reviewed and revised following a procedure similar to that used for the creation of the initial panel. In each instance, the existing panel will continue until the new panel is approved by the Court.

6. Reappointment. A member of the CJA Panel shall be eligible for reappointment to the panel.

\_\_\_\_\_ 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 magistrate judge, one attorney who is a member of the CJA Panel, and the Federal Public Defender. The Committee shall select its own Chairperson.

##### 2. Duties.

a. The Panel Selection Committee shall meet at least once a year to consider applications for inclusion on the CJA Panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants qualified.

At its annual meeting, the Committee shall also 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.

The Committee may also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

b. 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 shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the court for approval.

c. When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph X.A.4. of this model plan. At least once each year the Committee shall provide the court with information on the panel of attorneys in each of the categories listed in paragraph X.A.4. of this model plan.

#### C. CJA TRAINING PANEL

Each Panel Selection Committee may establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a "second chair" capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

#### D. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, together with information regarding the qualifications and experience of each member of the panel. The Federal Public Defender shall furnish a copy of this list to each judge and magistrate judge. The Federal Public 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 Defender office and private attorneys, according to the formula described in the

CJA Plan for the District.

E. 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 magistrate judge shall notify the Federal Public Defender of the need for counsel and the nature of the case.

In determining the panel member to be appointed, appropriate consideration shall be given to the nature and complexity of the case, potential conflicts of interest, the division of the Court to which the case has been assigned for trial, the residence of the person to be represented or the place of incarceration, if the person is in custody and such other factors as may be relevant to the ability of the attorney to provide adequate representation. After consideration of these factors, the Federal Public Defender shall determine the next available name on the appropriate division panel who is available for appointment, and shall provide the name to the appointing judge or magistrate.

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 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 magistrate judge shall notify the Federal Public Defender as to the name of the attorney appointed and the date of the appointment.

XI DETERMINATION OF NEED FOR COUNSEL

A. Advice of Right, Financial Inquiry, Appointment Procedure.

Counsel should be provided to persons financially eligible for representation as soon as feasible. The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or magistrate after making appropriate inquiries concerning the person's financial condition.

To the extent it is feasible to do so, factfinding concerning the person's eligibility for appointment of counsel should 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 such determination is to be made. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (CJA Form 23) and the form shall be completed and executed before a judicial officer or employee. Employees of law enforcement agencies or United States Attorneys offices should not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.

Upon appearance of a person before a magistrate 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 shall advise the person of the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford adequate representation. Unless the person waives representation by counsel, the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the person. If the need for the assistance of counsel is immediate and apparent, and the person states under oath he or she is financially unable to obtain counsel, the inquiry may follow the appointment of counsel as soon thereafter as is practical. All statements made by a person requesting counsel or during the inquiry into eligibility shall be either (a) by affidavit sworn to before the court, a court clerk or deputy, or a notary public, or (b) under oath in open court.

Appointment of counsel may be made retroactive to include representation furnished pursuant to this plan prior to appointment.

The court shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown.

B. Continuity and Duration of Appointment.

A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the United States magistrate or the district court judge through appeal, including ancillary matters appropriate to the proceedings. 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. If a United States magistrate 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 shall appear before the judge to represent the person until the 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 shall be appointed.

C. Appeal.

\_\_\_\_\_ In the event that a defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder shall advise the defendant of the right to appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal. The attorney shall continue to represent the defendant on appeal unless or until relieved by the district court or the court of appeals.

D. Partial Payment or Reimbursement.

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.

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 shall advise the court. The court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such party. In such event, the amount so paid or payable by the party shall be considered by the court in determining the total compensation to be allowed to such attorney. No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the court.

If, at any stage of the proceedings, including appeal, the court finds that the party is

financially unable to pay counsel to whom he or she had retained, the court may appoint counsel as provided in the Act, and authorize such payment as therein provided, as the interests of justice may dictate.

The court, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

## XII INVESTIGATIVE, EXPERT, AND OTHER SERVICES

### A. With Prior Authorization.

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 such services in an ex parte application before a judge or before a United States magistrate, if the services are required in connection with a matter over which the magistrate has jurisdiction or if a judge otherwise refers such application to a magistrate for findings and report. Upon finding, after appropriate inquiry in such ex parte proceedings, that the services are necessary, and that the person is financially unable to obtain them, the judge or the magistrate, as the case may be, shall authorize counsel to obtain the services. The maximum which may be paid to a person or organization for services so authorized shall not exceed \$1,000 exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the judge, or by the magistrate if the services were rendered in connection with a case disposed of entirely before the magistrate, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the Court of Appeals for the Fourth Circuit, (or an active circuit judge to whom excess compensation approval authority has been delegated). If it can be anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court and the chief judge of the circuit (or the active circuit judge to whom excess compensation approval authority has been delegated).

### B. Without Prior Authorization.

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

the total cost for services obtained without prior authorization may not exceed a maximum of \$300 and expenses reasonably incurred, for each person or organization providing the services. This \$300 limit may be waived, however, if the presiding judge or magistrate (if the services were rendered in a case disposed of entirely before the magistrate) in the interest of justice finds that timely procurement of necessary services could not await prior authorization.

C. Ex Parte Applications.

Ex parte applications for services other than counsel shall be heard in camera, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until final disposition of the case in the trial court, subject to further order of the judge or magistrate.

D. Claims.

Claims for compensation of persons providing investigative, expert, and other services under the Act shall be submitted on the appropriate CJA form, to the Federal Public Defender. That office shall review the claim form for mathematical and technical accuracy, as well as for reasonableness and necessity, 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 of the appropriate judge or magistrate.

XIII. PAYMENT FOR REPRESENTATION BY PRIVATE COUNSEL

A. Hourly Rates.

Any private attorney appointed under this plan shall, at the conclusion of the representation, or any segment thereof, be compensated at the rate approved by the by the Judicial Conference of the United States Courts, unless the Judicial Conference determines that higher maximum rates are justified. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court.

B. Maximum Amounts.

For representation of a person before the district judge or the United States magistrate, or both, the compensation to be paid to a private attorney appointed under this plan shall not exceed \$5,200 for each attorney in a case in which one or more felonies are charged, and \$1,500 for each attorney in a case in which only misdemeanors (including petty offenses as set forth in subsection (a)(2)(A) of the Act) are charged. For any other representation required or authorized by the Act, compensation is limited to \$1,200 for each attorney in each proceeding. This includes, but is not limited to, representation of persons charged with a violation of probation and supervised release, persons entitled to appointment of counsel in parole proceedings under chapter 311 of title 18, U.S.C., material witnesses in custody, and persons seeking relief under section 2241, 2254, or 2255 of title 28, U.S.C.

C. Waiving Maximum Amounts.

Payment in excess of any maximum amount provided in the previous paragraph may be made for extended or complex representation whenever the presiding judge, or the United States magistrate, if the representation was furnished exclusively before the magistrate, 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 Fourth Circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated).

D. Filing Claims.

Claims for compensation shall be submitted, on the appropriate CJA form, to the Federal Public Defender. That office 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 to the United States magistrate if the representation was furnished exclusively before the magistrate. In cases where representation is furnished other than before the district judge, magistrate, or an appellate court, the district court judge shall fix the compensation and reimbursement to be paid.

In case where the amount of compensation and reimbursement approved by the reviewing judicial officer is less than was requested by appointed counsel, the judicial officer should notify appointed counsel that the claim has been reduced, and provide an explanation for the reasons for

the reduction.

XIV. 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. Supersession.

This plan supersedes all prior Criminal Justice Act Plans of this court.

XV. EFFECTIVE DATE

This plan as amended shall take effect immediately upon its approval by the Judicial Council of the Fourth Circuit Court of Appeals.

DATED:      this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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IRENE M. KEELEY  
UNITED STATES DISTRICT COURT JUDGE

\_\_\_\_\_  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT COURT JUDGE

\_\_\_\_\_  
W. CRAIG BROADWATER  
UNITED STATES DISTRICT COURT JUDGE

\_\_\_\_\_  
ROBERT E. MAXWELL  
UNITED STATES DISTRICT COURT JUDGE