JUDICIAL COUNCIL APPROVED

JUL 26 2000

# GENERAL ORDER #1

**PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS AND THE OFFICE OF THE FEDERAL PUBLIC DEFENDER UNDER THE CRIMINAL JUSTICE ACT**

DATED: July 26 ,2000

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## 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, Volume VII, Guide to Judiciary Policies and Procedures* (CJA Guidelines), the judges of the United States District Court for the Northern District of New York, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the Criminal Justice Act.

## II. STATEMENT OF POLICY.

### A. Objectives.

1. The objective of the Plan is to attain equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of a crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, or for any service 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 §848(q) of the 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 (FPD), 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. The Clerk of Court shall provide each private attorney with a 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 by 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," members of the panel of private attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act, the Federal Public Defender and staff attorneys of the Federal Public Defender, and private attorneys when needed to supplement the CJA Panel.

## 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 §5031 of title 18, U.S.C.;

   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, U.S.C.;

   h. is in custody as a material witness;

   i. is seeking to set aside or vacate a death sentence under §2254 or §2255 of title 28, U.S.C.;

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 §4109 of title 18, U.S.C.;

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 United States magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

a. is charged with a petty offense (Class B or C misdemeanor, or an infraction), for which a sentence to confinement is authorized;

b. is seeking relief, other than to set aside or vacate a death sentence under §2241, §2254, or §2255 of title 28, U.S.C.;

c. is charged with civil or criminal contempt who faces the loss of liberty;

d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

e. is proposed by the United States attorney for processing under a pretrial diversion program;

f. is held for international extradition under chapter 209 of title 18, U.S.C.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection C of the CJA Plan.

**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 judge or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, or when a judge or magistrate 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 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 then two attorneys may be appointed to represent a defendant in such a case.

   b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. Section 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 Judgement. 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 then 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 then 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. Fact-finding. 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 inquires 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.

### 1. Establishment.

a. The Federal Public Defender Office for the Northern District of New York and District of Vermont, previously established on September 29, 1997 pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.

b. The Federal Public Defender shall be capable of providing legal services throughout the Northern District of New York and throughout the District of Vermont.

2. **Supervision of Defender Office.** The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Office. Accordingly, the Federal Pubic 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.

## 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 will be considered for membership on the CJA Panel.

B. **Organization**. The Plan for the composition, administration, and management of the Panel of private attorneys under the Criminal Justice Act is found at Appendix I of this Plan.

C. **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. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. §2254.

The Court shall appoint a member or members of the Special Death Penalty Habeas Corpus Panel, or the Federal Public Defender with his or her consent, or a qualified attorney recommended by the Federal Public Defender, or any other attorney who qualifies for appointment pursuant to §848(q) of title 21, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under §2254 of title 28, United States Code.

## VIII. DUTIES OF APPOINTED COUNSEL.

**A.** **Standards**. The services to be rendered to 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 and the American Bar Association's Model Code of Professional Conduct and any other standards for professional conduct adopted by this 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.

E. **Pro Bono Panel**. In recognition of the need for representation of indigent parties in civil actions, this Court has established the Pro Bono Panel of the Northern District of New York. The Panel shall include members of the CJA Panel in this Court. Any other attorney admitted to practice in this Court shall also be expected to participate in periodic training as offered by the Court and to accept no more than one Pro Bono assignment per year.

## IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

A. **Presentation of Accused for Appointment of Counsel**. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district , and those acting on their behalf, shall promptly inform any person who is in custody, or who otherwise may be entitled to counsel under the CJA, of their right to counsel, prior to any questioning, and that counsel shall be provided without cost if the person is unable to afford counsel. If the person requests counsel, federal law enforcement and prosecutorial agencies are encouraged to inform the person promptly of the existence of the Federal Public Defender Office and how to contact it, regardless of whether the Federal Public Defender may ultimately be appointed in their defense. In instances where the person indicates that he or she is not able to secure private representation, the Federal Public Defender shall be promptly notified. Law enforcement and related agencies must also comply with the provisions of Local Rule 5.1 of the Rules of Criminal Procedure for the Northern District of New York.

B. **Pretrial Services Interview**. This Court recognizes the importance of the advice of counsel for persons subject to proceeding under 18 U.S.C. §3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the United States Attorney shall include notification to the accused with the issuance of any criminal summons or appearance letter of their obligation to contact the Pretrial Services Office for the Northern District of New York at least forty-eight hours prior to their scheduled appearance with the Court to arrange for a pretrial services report to be completed. If the accused does not have retained counsel, the notification shall also include contact information for the office of the Federal Public Defender. Upon execution of an arrest warrant, law enforcement and related agencies shall comply with the requirements set forth in IX A. Early notification to the Federal Public Defender and Pretrial Services office will assist in the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the initial appearance and bail hearing.

C. **Notice of Indictment or Criminal Information**. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

## X. MISCELLANEOUS.

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

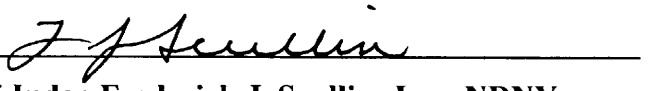
B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form to the office of the Clerk of the court. That office shall review the claim form for mathematical and technical accuracy, and for conformity with the CJA *Guidelines*, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The Court may also direct the Office of the Federal Public Defender to review claim forms for mathematical and technical accuracy, and for conformity with the CJA *Guidelines*. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans for this court.

## XI. Effective Date.

This Plan and Appendix I, the Plan for the composition, administration, and management of the Panel of private attorneys under the CJA shall become effective when approved by the Judicial Council of the Second Circuit.

**SO ORDERED FOR THE COURT ON** July, 13, **2000**



**Chief Judge Frederick J. Scullin, Jr. - NDNY**

**APPROVED BY THE JUDICIAL COUNCIL FOR THE SECOND CIRCUIT ON** July, 26, **2000**

Judicial Council Approved

**Chief Judge Ralph K. Winter - CCA**

**APPENDIX - I.**

**UNITED STATES DISTRICT COURT**

**for the**

**NORTHERN DISTRICT OF NEW YORK**

# PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

## I. COMPOSITION OF THE 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 on a quarterly basis. 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 demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that;
Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan.

However, when the district judge or magistrate judge presiding over the case, or the chief judge if a district judge or magistrate 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. Notice of the opportunity to apply for membership on the CJA Panel shall be provided to attorneys at the time of admission to the bar of this Court. The applications shall also be available at the office of the Clerk and on the Court's Web Page. (www.nynd.uscourts.gov)

5. Terms. CJA Panel members shall serve at the pleasure of the court. Members of the panel shall serve continuously until they resign or are removed from the panel.

6. Removal from the Panel. Membership on the CJA Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges, as they, in their sole discretion, may determine.

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 Court for review and approval on a quarterly basis.

## B. CJA PANEL COMMITTEE.

1. Membership. A CJA Panel Committee shall be established by the Court. The Committee shall consist of one district judge, one magistrate judge, the Federal Public Defender, two attorneys from the Syracuse and Albany Divisions, and one from the Binghamton office. The Clerk of Court or Chief Deputy Clerk shall serve as an *ad hoc* member of the Committee to provide administrative support. The Committee shall be chaired by the district judge appointed.

2. Duties.

a. The Committee shall be responsible for the oversight of the CJA Panel and the Criminal Justice Act Plan. At least once annually, the Committee shall review the operation and administration of the panel and make recommendations to the Court as to any necessary changes to the CJA Plan. The Committee shall also ascertain the continued availability and willingness of each panel member to accept appointments. The Committee may also make recommendations to the Court with respect to appointment of new panel members or the removal of existing panel members. The Clerk of Court shall provide the Committee with all relevant information concerning the assignment of panel members.

b. The Committee shall assist the Court by working with local bar associations regarding recruitment efforts in furtherance of the Equal Opportunity statement in Paragraph I.A.4 of this Plan. The Clerk of Court will assist the Committee by:

1. Notifying bar associations and advertising in legal journals to solicit participation of qualified practioners who are female, disabled or a member of some other minority;

2. Contacting current or former members of the panel, as well as prominent local attorneys to seek recommendations for appointment to the panel of qualified applicants who are female, disabled or a member of some other minority.

### C. CJA TRAINING PANEL - 2ND CHAIR PROGRAM.

The court in its discretion, may establish a "*CJA Training Panel - 2nd Chair Program*," 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, or Federal Public Defender in a voluntary "*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 - 2nd Chair Program 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.

## II SELECTION FOR APPOINTMENT

### A. MAINTENANCE OF LIST AND DISTRIBUTION OF CJA APPOINTMENTS.

The Clerk of the Court shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses, telephone and fax numbers, e:mail addresses, as well as a statement of qualifications and experience. The Clerk shall furnish a copy of this list to each judge and magistrate judge, the list shall also be made available to the Federal Public Defender. The Clerk 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 Organization and private attorneys, according to the formula described in the CJA Plan for the District.

The Clerk of Court shall also maintain a record of each refusal ("pass") by a panel attorney, and the reason for each pass. If the Clerk's Office determines that a panel member has repeatedly passed assignments, the Clerk may refer the name of the attorney to the Court. The Court shall then consider the information provided by the Clerk and make such further inquiry as it deems appropriate.

### B. METHOD OF SELECTION.

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate judge shall notify the Clerk of Court, or Federal Public Defender of the need for counsel and the nature of the case.

The Clerk of Court shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the panel of private attorneys. If the judge or magistrate judge decides to appoint an attorney from the panel, the Clerk shall determine the name of the next panel member on the list who is available for appointment, and shall provide the name to the appointing judge or magistrate judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge, or magistrate judge, may appoint any attorney from the list if a member of the Federal Public Defender's Office is not available. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Clerk of Court, or Federal Public Defender as to the name of the attorney appointed and the date of the appointment.

## C. SPECIAL CIRCUMSTANCES.

If after appointment, counsel learns that a client is financially able to pay all or part of the fee for legal representation and the source of the attorney's information is not a privileged communication, counsel shall so advise the presiding judge. The presiding judge will take appropriate action, including but not limited to: permitting assigned counsel to continue to represent the defendant; terminating the appointment of counsel, or ordering any funds available to the party to be paid as provided in 18 U.S.C. section 3006A(f) as the interests of justice may dictate. Any amount paid by the party will be considered by the presiding judge in determining the total compensation allowed to the attorney.

## D. INVESTIGATIVE, EXPERT AND OTHER SERVICES.

1. Upon Request. Counsel for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense may request such services *ex parte* before a judge or magistrate judge having jurisdiction over the case. Such application shall be heard *in camera* and shall not be revealed without the consent of the defendant. On finding that the services are necessary and that the person is financially unable to afford them, the judge or magistrate judge shall authorize them. An order setting forth the type, purpose, and limitations of such services will be issued by the Court. The judge or magistrate judge may establish a limit on the amount that may be expended or committed for such services within the maximum prescribed by 18 U.S.C. section 3006A(e)(3).

2. Without Prior Request. Counsel appointed pursuant to this Plan may obtain subject to later review, investigative, expert, or other services without prior judicial authorization if they are necessary for an adequate defense. The total cost of services so obtained may not exceed the maximum prescribed by 18 U.S.C. section 3006(A)(e)(2) per individual or corporation providing the services (exclusive of reasonable expenses). However, in the interests of justice and upon finding that timely procurement of necessary services could not await prior authorization, a judge or magistrate judge (in a case entirely disposed of by the magistrate judge) may approve payment for such services after they have been obtained, even if the services exceed the maximum prescribed by 18 U.S.C. section 3006(A)(e)(2).

3. Necessity of Affidavit. Statements made by or on behalf of the party in support of requests for investigative, expert, and other services shall be made or supported by affidavit and filed with the Court *in-camera* for review and consideration.

## E. COMPENSATION - FILING OF VOUCHERS.

Claims for compensation shall be submitted on the appropriate CJA form accompanied by the CJA voucher worksheets to the office of the Clerk of Court. 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 of the appropriate judge or magistrate judge. The Court may also direct the Office of the Federal Public Defender to review claim forms for mathematical and technical accuracy, and for conformity with the CJA Guidelines. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

1. Maximum Amounts for Counsel. For representation of a defendant before a magistrate judge or judge of this court, or both, the compensation paid any attorney shall not exceed the maximum prescribed by 18 U.S.C. section 3006A(d)(2).

2. Waiver of Limits on Counsel Fees. Payment in excess of any maximum amount prescribed by 18 U.S.C. section 3006A(d)(2) for counsel fees or for other services may be made for extended or complex representation whenever the judge or magistrate judge (if the representation was entirely before the magistrate judge) certifies that the amount sought is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Second Circuit or such active Circuit Judge to whom the Chief Judge has delegated approval authority. Counsel claiming such excess payment shall submit a detailed memorandum justifying counsel's claim that the representation was in an extended or complex case and that the excess payment is necessary to provide fair compensation.

3. Reduction of CJA Payment. In any case where the judge or magistrate judge intends to reduce the amount of payment requested in a voucher, the CJA attorney shall be notified of the amount of the intended reduction, and may request an opportunity for review by the judicial officer. After review of any submission by appointed counsel and the completion of any steps deemed appropriate by the court, the judicial officer shall then take action on the voucher consistent with this Plan, the CJA, and the interests of justice.