# PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS UNDER THE DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

## I. INTRODUCTION

A. Purpose of Plan.

This Plan provides for the furnishing of legal services to indigents who have been charged or face the possibility of being charged with criminal offenses. It consists of two major parts: Section II ("Superior Court Procedures") and Section III ("Court of Appeals Procedures"). The Plan addresses the appointment of counsel from the Public Defender Service of the District of Columbia, attorneys appointed under the Criminal Justice Act, D.C. Code § 11-2601 et seq. (2001), law students qualified to practice pursuant to Court of Appeals Rule 48, and qualified attorneys who have expressed an interest in being appointed to represent indigent clients on a pro bono basis. Appointments under this Plan pursuant to the Criminal Justice Act are not a matter of right, and will be made from panels designated and approved by the courts with due regard to the experience and qualifications of the individual attorney.

B. Supervisory Responsibility.

The Joint Committee on Judicial Administration shall oversee the operation of this Plan.

## II. SUPERIOR COURT PROCEDURES

A. The Appointment System.

(1) The Superior Court shall develop and maintain a central file of attorneys for appointment in proceedings covered by this Plan. The central file shall contain information concerning the education, experience and other qualifications of attorneys who have indicated a current interest in appointment in such proceedings. From such file, the Superior Court shall maintain panels of attorneys to receive appointments in such proceedings pursuant to procedures prescribed by Administrative Orders currently in effect or subsequently promulgated.

(2) Appointments shall be made so as to insure the full use of attorneys from the Public Defender Service and qualified law students participating in clinical programs. Qualified attorneys who have expressed an interest in appointments to represent indigent clients on a pro bono basis may be appointed within the discretion of the Court.

(3) The panels of attorneys developed shall be periodically reexamined to insure that the composition of such panels reflects due regard for attorneys with the highest qualifications available, and that the size of such panels is consistent with the needs of the Superior Court.

(4) The on-going administration of the panels of attorneys created by this Plan, as well as actual appointment authority for individual cases, shall be the responsibility of the Chief Judge of the Superior Court, who may delegate such administrative responsibility as he or she deems appropriate.

B. Determination of the Need for Counsel.

In every criminal case in which a person is charged with a felony, misdemeanor, or other offense involving the possibility of imprisonment, or with juvenile delinquency or in need of supervision, or with a violation of probation, and appears without counsel, the Court shall advise the person that he or she has the right to be represented by counsel and that counsel will be appointed if desired and if he or she is financially unable to obtain counsel.

In connection with any appointment of counsel made pursuant to the Criminal Justice Act, it shall be the duty of the Criminal Justice Act Office of the Public Defender Service, under the supervision of the Court, to determine whether a person is financially unable to obtain adequate representation. This obligation shall extend to both cases prosecuted by the United States and cases prosecuted by the District of Columbia. All statements made by a person in such an inquiry shall be made by affidavit, in such form as the Public Defender Service may prescribe, sworn to before a judicial officer, court clerk, deputy clerk, or notary public, and shall be retained in the case file. At any time while such person is represented by an attorney appointed pursuant to the Criminal Justice Act, the judicial officer presiding over such person's case may compare such affidavit with other statements made by such person when seeking pre-trial release or in the pre-sentence investigation process concerning his or her employment status or financial means and may take such action, if any, as may be appropriate under the circumstances and consistent with applicable law. If at any time after the appointment of counsel the Court finds that a person is financially able to obtain counsel or to make partial payment for representation, the Court may terminate the Criminal Justice Act appointment of counsel, order that any funds available to the person be paid as provided in D.C. Code § 11-2606 (2001), or take other appropriate action. Any funds required to be paid by the person pursuant to D.C. Code § 11-2606 shall be ordered payable to the Court.

If at any stage of the proceedings, the Court finds that a person is financially unable to pay counsel who had been retained, or to obtain other counsel, the Court may appoint counsel in accordance with the general procedure set forth herein. An attorney so appointed may claim compensation only for services rendered after the date of appointment.

C. Appointment of Counsel.

Upon finding that a person covered by this Plan is financially unable to obtain representation, the Court shall promptly appoint counsel to represent the person. In appointing counsel, the Court shall appoint a Public Defender Service attorney, a private attorney selected from the appropriate panel (except that an attorney not on the appropriate panel may be appointed in those exceptional circumstances where the judge deems such appointment to be necessary because of the unique situation of the person, provided that no voucher may be issued and no payment made until the judge has issued a written order setting forth in detail the particular exceptional circumstances requiring such appointment), a law student, an attorney who represented the defendant before the Court of Appeals and the case has been remanded to the Superior Court for further proceedings, or a qualified attorney who has expressed an interest in providing pro bono representation. A person shall not have the right to select his or her appointed counsel.

In an exceptionally complex case, two attorneys may be appointed to represent one defendant where the Court finds that it is in the interest of justice to do so, provided that the Court issues a written order at the time of appointment setting forth in detail the particular exceptional circumstances requiring the appointment of two attorneys. Except in the case of appointment of a Public Defender Service attorney, a law student or a pro bono attorney, appointment of a second attorney must be approved by the Chief Judge of the Superior Court, or his or her designee.

Appointed counsel shall, unless the appointment is terminated by order of the Court, continue to represent the person throughout the proceedings. In cases where an appeal is available as of right, appointed trial counsel shall advise the person of his or her right to appeal and to counsel on appeal. If requested to do so by the person, counsel shall file a timely notice of appeal and shall continue to represent the person until relieved by the Court of Appeals.

If appointed counsel wishes to be relieved prior to termination of the proceedings in the trial Court, counsel shall file a motion to withdraw with the judge before whom the case is then pending. Such motion shall be served on the government and the client.

With the agreement of counsel or in the interests of justice, the Court before whom a case is pending may substitute one appointed counsel for another at any stage of the proceedings.

D. Compensation.

(1) Individual payments under this Plan. Payments of fees and expenses to counsel appointed under this Plan, and payments for investigative, expert and other services incurred pursuant to Section II(D)(9) hereof, infra, shall be made in accordance with the procedures prescribed in this Plan and the policies in effect in the Fiscal Office of the District of Columbia Courts. Upon submission of claims for compensation, they shall be processed for payment by the Fiscal Officer or forwarded to the judicial officer for approval, as appropriate. Except with respect to "Guideline Vouchers" submitted pursuant to Section II(D)(5), infra, the judicial officer shall review all claims for compensation, and the Fiscal Officer shall process such claims. All claims shall be reviewed, processed and paid within 45 days from receipt by the Fiscal Officer, unless returned by the Fiscal Officer to the claimant as incomplete or otherwise deficient. Guideline vouchers shall be processed and paid within five business days of submission, as provided in Section II(D)(5)(d), infra.

(2) Maximum fees for counsel.

(a) Maximum hourly rate for counsel. The maximum hourly rate for attorneys shall be the rate established by D.C Code § 11-2604(a)(2001), as such statute may from time to time be amended.

(b) Maximum amounts for counsel. The maximum compensation to be paid to an attorney for any criminal or family case shall not exceed the maximum amounts established by D.C. Code § 11-2604(b)(2001), as such statute may from time to time be amended.

The maximum provided in the last sentence of 18 U.S.C.A. § 3006A(d)(2)(2001), as such statute may from time to time be amended, is established as the maximum for each attorney in Superior Court for any of the following representations:

(i) A post-trial motion made after entry of judgment;

(ii) A probation revocation proceeding;

(iii) A parole revocation proceeding;

(iv) Representing a material witness;

(v) Representing a person seeking relief under D.C. Code §§ 16-1901 or 23-110 (2001).

(vi) Representing a person where the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which the person faces a loss of life or liberty, any District of Columbia law requires the appointment of counsel;

(vii) Extradition proceedings; and

(viii) Representing a person in proceedings pursuant to D.C. Code § 24-502 (2001) or Chapter 5 of Title 21 of the District of Columbia Code (hospitalization of the mentally ill).

Representation of a person on a new trial shall be considered a separate case, and fees shall be paid on the same basis as on the original trial.

(c) Waiving maximum counsel fees. Payment in excess of any maximum amount may be made for extended or complex representation whenever such payment is necessary to provide fair compensation. A request for excess compensation shall be submitted by the attorney for approval by the Chief Judge of the Superior Court upon recommendation of the presiding judge in the case.

In determining whether representation should be considered "complex or extended," the presiding judge in the case and the Chief Judge shall consider the following factors:

(i) The number, nature and complexity of the charges, including the number of charged incidents, the severity of the potential penalties, and the number of co-defendants;

(ii) The complexity of the facts to be litigated in pre-trial motions and at trial, considering the number of potential lay and expert witnesses and whether investigation and preparation were greater than that which are normally required;

(iii) Any difficulties presented by the mental and physical health of the defendant, the availability of the defendant for consultation, or other circumstances unique to the defendant not normally encountered by counsel representing indigent defendants;

(iv) Whether unusual or complex legal, scientific or other issues were encountered in the case;

(v) The length of time the case has been pending and the length of the proceedings, including pre-trial, trial, and post-trial proceedings;

(vi) Any other facts and circumstances that reflect the unusual or extraordinary nature of the case.

The presiding judge in the case shall consider these factors, and any others that may be appropriate, and determine whether it was necessary for a competent and experienced criminal defense attorney to expend time over and above that compensated under the statutory maximums to effectively represent a defendant under the circumstances of the case. The fact that counsel expended hours above those compensated under a statutory maximum is not in itself sufficient to permit a judicial determination that representation was extended or complex.

(3) Standard Vouchers. In cases not eligible for guideline fee processing as provided below in Section II(D)(5) of this Plan, or where appointed counsel is of the view that the prescribed guideline fee would not adequately compensate him or her for work performed in the course of representation of the defendant, counsel shall submit a standard voucher (hereinafter called a "standard" or "non-guideline" voucher). The standard voucher shall contain an accounting describing a) the dates of the work performed in chronological order, b) the nature of the work performed with descriptions in accordance with voucher instructions, and c) all time expended to the tenth of an hour.

As provided in Section II(D)(5)(g), infra, where counsel elects to submit a standard voucher in cases eligible for guideline fee processing, the standard voucher must also be accompanied by a statement containing the reasons supporting the request for compensation above the applicable guideline fee and within the statutory maximum. The fact that counsel expended hours above those compensated under the guideline fee is not, in itself, sufficient reason for the judicial officer to approve payment above the guideline fee. Counsel must demonstrate that an experienced and competent criminal defense attorney would have expended the hours submitted and that the guideline fee schedule did not contemplate the representation provided.

(4) Reductions to Standard Vouchers.

(a) Reductions in the amount claimed by an attorney who has submitted a standard voucher may be made only where the judicial officer finds that (1) the work claimed was not performed, (2) the work claimed was not necessary, or (3) an unreasonable amount of time was spent for the work performed. An assessment of whether work was necessary should be based on the situation as it appeared at the time the work was performed.

(b) Reconsideration. Within 30 days after payment, an attorney may request that the judicial officer reconsider any reduction in the amount claimed. A copy of the

voucher must be attached to the request for reconsideration. The judicial officer shall decide the request for reconsideration within 60 days. In the event reconsideration is denied, the judicial officer shall explain the basis for the reduction, either in writing or in person, unless the voucher is annotated, which may served as a written explanation.

(c) Appeal. An appeal of a reduction may be made to the Chief Judge, or his or her designee (which cannot be the judicial officer associated with the case for which payment is sought) within 30 days of initial payment or denial of reconsideration.

(5) Guideline Fee System for Certain Offenses.

(a) Guideline fee schedule. The Chief Judge of the Superior Court shall establish a committee responsible for recommending to the Chief Judge a schedule of certain offenses eligible for guideline fee treatment pursuant to this Plan as well as the applicable guideline fee. The schedule shall be published as an administrative order of the Chief Judge after review and approval. The committee shall also be responsible for recommending modifications of the schedule to the Chief Judge. The schedule may be modified from time to time. The guideline schedule shall be established and may be modified based on a determination of the average time a competent and experienced criminal defense attorney would expend to provide effective representation to a client charged with a guideline offense.

(b) Cases eligible. Whether a case falls within the guideline fee schedule is determined by the lead offense charged in each case. Only one guideline fee per case shall be approved, irrespective of the number of other charges within the same case. If the case is resolved on the basis of an offense lesser than the greater offense charged, the guideline fee for the greater offense shall be paid. If non-guideline offenses are charged together with a guideline fee offense, the guideline fee does not apply. Multiple guideline fee offenses charged in multiple cases arising out of the same circumstances shall be eligible for payment of one guideline fee in each case.

(c) Filing of guideline fee voucher. Upon completion of a case eligible for a guideline fee, an attorney shall submit a simplified voucher (hereafter "guideline voucher") within thirty (30) days after the completion of the case. The guideline voucher shall contain the nature and date of the disposition and a brief statement of the services rendered. A case is completed upon dismissal, dismissal for want of prosecution, nolle prosequi, substitution by retained counsel, acquittal, or sentencing after plea or trial. Representation in a case where the defendant is entered into the diversion program is not considered completed

until the defendant completes or is terminated from the diversion program. Upon approval, the guideline fee shall compensate counsel for all work performed in representation of the defendant including any motion for reduction of sentence.

(d) Payment of guideline fee. Upon submission of a guideline voucher for payment of the guideline fee, the Fiscal Officer shall process such voucher for payment, without reduction, within five business days of submission.

(e) Procedure in guideline case where bench warrant is issued. Thirty days after a bench warrant is issued in a guideline case, the attorney may submit a guideline voucher for the full guideline amount even though the case has not been completed. If the bench warrant is executed, or if the defendant otherwise reappears, the attorney is expected to complete representation of the defendant without submitting a second guideline voucher. If for any reason a second attorney must be appointed in such a case, the second attorney may submit a second guideline voucher and receive payment for the full guideline amount.

(f) Probation revocation arising from guideline fee case. An attorney representing a defendant in probation revocation proceedings arising out of an offense within the guideline fee schedule may elect to be paid a separate fee equal to one-third of the guideline fee for the offense upon submission of an appropriate guideline voucher, or may elect to file a standard voucher.

(g) Payment in excess of guideline fee. The Court may approve payment above the guideline fee and within the statutory maximum applicable to the offense. For such cases, within fifteen (15) days after appointment, counsel shall elect to file a standard voucher, with supporting documentation, identifying the factors prescribed in Section II(D)(2)(c) of this Plan, supra, that counsel asserts warrant the submission of a standard voucher. If counsel has not elected to file a standard voucher, counsel shall submit a guideline voucher as set forth in II(D)(5)(c). As provided in that section, the fact that counsel expended hours above those compensated under the guideline fee or that the matter is expected to go to trial is not, in itself, sufficient reason for the judicial officer to approve payment above the guideline fee. Counsel must submit a concise statement that demonstrates that an experienced and competent criminal defense attorney will have to expend hours that the guideline fee schedule does not contemplate.

(h) Complex or extended representation. Claims for compensation and reimbursement in cases eligible for guideline fee treatment above the applicable statutory

maximum shall be submitted and approved in accordance with Section II(D)(2)(c) of this Plan ("Waiving maximum counsel fees"), supra.

(6) Interim Payments. In extended cases, counsel may seek interim payments of fees under such conditions and for such time period as may be approved by the Court. In the event that the aggregate interim fees exceed the maximum fee allowed, counsel must comply with the procedures for the approval of such excess compensation under the provisions of section II(D)(2)(c) ("Waiving maximum counsel fees"), supra.

(7) Time limitation on claims. Except for guideline vouchers as set forth in Section II(D)(5)(c), claims for compensation or reimbursement must be filed within 120 days of the termination of the representation, provided that if the 120th day falls on a weekend or holiday, the due date will be the court day immediately following the 120th calendar day. For purposes of this time limitation, representation will be considered to be terminated 30 days after the issuance of a bench warrant for the defendant. Representation in a case where the defendant is entered into the diversion program is not considered terminated until the defendant completes or is terminated from the diversion program. Exceptions to the time limitation contained in this paragraph will be considered only where it can be documented that it was impossible to file a claim because of actual physical or mental incapacity or death of the attorney furnishing the representation, or a reason of comparable seriousness. Press of business will not be grounds for exception. Any waiver of the limitation must be recommended by the judicial officer presiding over the case and approved by the Chief Judge of the Superior Court or his or her designee.

(8) Travel outside metropolitan area. Attorneys appointed to represent indigent persons who incur expenses for travel in connection with such representation outside the Washington, D.C. metropolitan area (e.g., Washington, D.C., Montgomery and Prince George's Counties, Md., Arlington and Fairfax Counties, Va.) without prior approval of the Court shall not be reimbursed for such travel expenses.

(9) Investigative, expert and other services.

(a) Upon request. Counsel (whether or not appointed under the Criminal Justice Act) for a person who is financially unable to obtain investigative, expert or other services necessary for an adequate defense may request such services in an ex parte application to a judicial officer. Upon finding that the services are necessary and that the person is financially unable to obtain them, the Court shall authorize counsel to obtain such services. The judicial officer shall establish a limit on the amount that may be expended or

promised for such services within the maximum prescribed by law. Except with regard to investigative services, any voucher for expert or other services shall be pre-approved by a judicial officer and shall be signed by the person expected to provide the services prior to submission for pre-approval.

(b) Without prior request. Counsel may obtain investigative services without prior authorization, subject to later review, where the total number of hours of investigative services does not exceed ten for a misdemeanor, twenty for a felony assigned to a judge presiding over a Felony II calendar, and thirty-five for a felony assigned to a judge presiding over a Felony I calendar. No greater amount may be subsequently approved for investigative services obtained without prior authorization. In appropriate cases a sworn application may be made by counsel to the Court for the ex parte review by the judge and for ratification of such expenses.

(c) Quality of services. The court will in all cases hold counsel accountable to obtain only qualified investigators certified by the Public Defender Service, and qualified experts.

## III. COURT OF APPEALS PROCEDURES

A. Composition and Maintenance of a Panel of Attorneys.

The Court of Appeals shall develop and maintain a panel of practicing attorneys who are approved by the court as competent to provide adequate representation on appeal for persons qualifying under the Criminal Justice Act.

The selection and removal process for this list shall be developed and directed by the judges of the Court of Appeals to ensure that the composition of the panel reflects due regard for attorneys with the highest qualifications and that the size of the panel is consistent with the needs of this court. Applicable procedures and process shall be published by the Court of Appeals from time to time by way of administrative order.

B. Determination of the Need for Appointment of Counsel.

Where the Superior Court has appointed counsel to represent a criminal defendant during trial, thereby determining that the appellant is financially unable to obtain counsel, the Court of Appeals will accept this finding and appoint an attorney on appeal without additional proof of eligibility.

Where the request for appointment of counsel under the Act is made for the first time on appeal, the Court of Appeals shall first inquire into and make a finding as to whether the person is financially capable of obtaining counsel.

The Court of Appeals may, at any time after appointment of counsel, reexamine the financial status of the party for whom counsel has been appointed, and if it is found that the person is financially able to obtain counsel, the appointment may be terminated. If a party for whom counsel has been appointed retains the services of counsel during the pendency of the appeal, the prior appointment of counsel shall be terminated.

C. When Counsel Shall Be Appointed.

A financially eligible defendant or respondent shall be entitled to the appointment of counsel in the direct appeal from any criminal conviction, adjudication of delinquency or need for supervision, order directing incarceration, order directing extradition or order hospitalizing an individual under the mental health statute. Appointment of counsel in all other appeals taken from criminal, delinquency and need for supervision cases, including habeas corpus appeals and collateral D.C. Code §23-110 appeals, is within the discretionary authority of the Court of Appeals. Selection of counsel is made by the Court of Appeals and a party does not have the right to designate that a specific counsel be appointed.

D. Payment.

All claims for compensation and reimbursement for expenses reasonably incurred pursuant to representation under the Criminal Justice Act in furtherance of the appeal and any related responsibilities of counsel shall be itemized and prepared on prescribed forms and filed with the Clerk of the Court of Appeals. All such claims shall be filed promptly and in any event not later than one hundred (120) days after the termination of the attorney's representation. Each voucher shall be submitted in accordance with the District of Columbia Rules of Professional Conduct.

The hourly rates of compensation and maximum amount of compensation for a specific appeal are established in accordance with the Criminal Justice Act, D.C. Code § 11-2604 (2001 ed.), as such statute may from time to time be amended..

Submission of vouchers requesting payment for an amount exceeding the allowable maximum compensation must be accompanied by a statement outlining the need for a waiver of the maximum amount. The statement shall identify the specific reasons, such as the nature and complexity of the appeal, the need to communicate or meet with the client, any unusual or

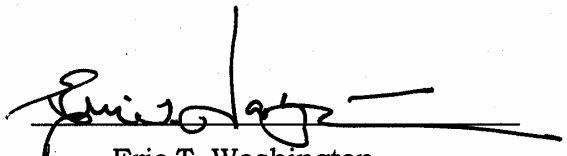
complex legal issues presented by the appeal and any other facts or circumstances, that justify exceeding the presumptive maximum compensation. Upon recommendation of the presiding judge, the final decision on vouchers requesting excessive compensation shall be made by the Chief Judge of the Court of Appeals.

Attorneys appointed to represent clients who incur expenses for travel in connection with such representation outside the metropolitan area, as defined by further administrative order of the Court of Appeals, shall not seek reimbursement for such expenses unless prior approval is sought and given by the Court of Appeals.

## IV. EFFECTIVE DATE

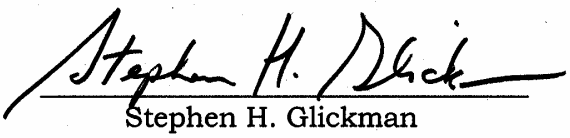
This amended Plan shall take effect on March 1, 2009, and may be amended from time to time by the Joint Committee on Judicial Administration.

**APPROVED:** The Joint Committee on Judicial Administration



Eric T. Washington
Chief Judge, District of Columbia
Court of Appeals

Lee F. Satterfield
Chief Judge, Superior Court
of the District of Columbia



Stephen H. Glickman
Associate Judge, District of Columbia
Court of Appeals

Geoffrey M. Alprin
Associate Judge, Superior Court
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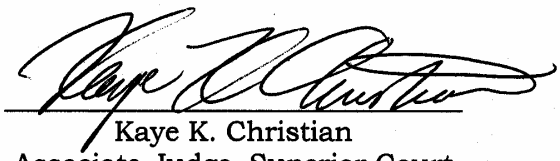

Kaye K. Christian
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