

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ORDER 09-05

As Amended August 4, 2009 - Effective September 1, 2009

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

Pursuant to the Report Of The Committee To Evaluate The Performance Of The Criminal Justice Act Plan For The District of Massachusetts, presented on April 27, 1993, the April 2009 Report of the Criminal Justice Act Board on Revisions to the Criminal Justice Act Plan, and pursuant to the provisions of the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A ("CJA"), the judges of the United States District Court for the District of Massachusetts (the "District Court") have adopted the following plan (the "Plan") for the adequate representation of any person otherwise financially unable to obtain adequate representation, and:

- (1) who is charged with a felony, misdemeanor (other than a Class B or C misdemeanor or infraction, as defined in 18 U.S.C. §3559(a), unless the defendant faces the likelihood of loss of liberty), juvenile delinquency (see 18 U.S.C. §5034), a violation of probation or parole; or
- (2) who is under arrest, when such representation is required by law; or
- (3) who is in custody as a material witness, or seeking collateral relief, as provided in 18 U.S.C. §3006A(a)(1)(G); or
- (4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which defendant faces loss of liberty, any federal law requires the appointment of counsel; or
- (5) who is facing a parole termination hearing pursuant to 18 U.S.C. §4211(c); or
- (6) who 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.; or
- (7) who is subject to a mental condition hearing or sexually dangerous person hearing under 18 U.S.C. §§ 4241 et seq or 4248; or
- (8) who is entitled to the appointment of counsel under 18 U.S.C. § 4109; or
- (9) who needs representation in a miscellaneous matter, such as a crack cocaine sentencing reduction motion, a grand jury witness, or a pre-charge target; or
- (10) who is otherwise eligible for the appointment of counsel, in the interests of justice.

Representation shall include counsel and investigative, expert and other services necessary for an adequate defense [see 18 U.S.C. §3006A(e)].

I.

PROVISION FOR FURNISHING COUNSEL

A. Federal Public Defender and Private Counsel

This Plan provides for the furnishing of legal services by a Federal Public Defender Organization, supervised by a Federal Public Defender ("FPD"). In addition, this Plan provides for the continued appointment and compensation of private counsel in a substantial proportion of cases.

B. Allocation of Representation

The court in its discretion will determine whether any party eligible for representation will be represented by the Federal Public Defender Organization or by private counsel. Insofar as practicable, private attorney appointments will be made in up to sixty-five (65) percent of the cases. For the sole purpose of allocation of cases as between private attorneys and the Federal Public Defender Organization, a "case" shall be deemed to be each defendant or other individual for whom counsel is appointed under the terms of the Criminal Justice Act, as amended, 18 U.S.C. §3006A.

II.

THE CRIMINAL JUSTICE ACT BOARD

A. The Board

The District Court shall establish a Criminal Justice Act Board ("CJA Board") consisting of ten private attorneys who agree to serve without compensation, and the FPD, who shall serve ex officio. A district judge, a magistrate judge, and the Clerk of the District Court, or the Clerk's designee, shall be appointed as liaisons with the CJA Board. The CJA Board shall be responsible for:

- (1) Implementing the Mentoring Program described below;
- (2) Annually evaluating applications and recommending to the District Court reappointments and new appointments to the CJA Panel of private attorneys for the Eastern Division of the District of Massachusetts (the "District");
- (3) Periodically evaluating applications and recommending to the District Court reappointments and new appointments to

the CJA Panels of private attorneys for the Central and Western Divisions of the District;

(4) Periodically evaluating applications and recommending to the District Court reappointments and appointments to the CJA Panel of private attorneys to provide representation in habeas corpus cases;

(5) Providing guidance concerning the FPD's office in response to requests from the FPD and on its own initiative;

(6) Working with the FPD to provide training programs for CJA Panel attorneys and other members of the criminal defense bar;

(7) Generally representing the interests of the CJA program in the District;

(8) Receiving, reviewing and making recommendations to the District Court concerning any comments or concerns regarding: (a) the performance of CJA Panel attorneys, (b) the fairness or functioning of the CJA Panel appointment process, or (c) the processing of CJA Panel payment vouchers; and

(9) Annually reporting to the District Court on the performance of the CJA Plan and, if appropriate, recommending revisions to it.

The ten private attorneys on the CJA Board shall be appointed by the District Court to serve staggered three-year terms. At least four members shall not be on any CJA Panel. Also, at least one member shall be from the Western Division of the District, and at least one member shall be from the Central Division of the District. The District Court shall designate the Chair of the CJA Board from among these ten members, to serve for a two-year term. The Chair may create one or more subcommittees of the CJA Board to handle specific areas of responsibility. The District Court shall also designate the district judge and the magistrate judge to serve as liaisons to the CJA Board. The Clerk of the District Court shall either serve as liaison, or designate a member of the Clerk's staff to serve as liaison to the CJA Board, and shall provide administrative support to the CJA Board.

III.

FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

The District Court has determined that the use of a Federal Public Defender Organization, as defined in 18 U.S.C. §3006A(g)(2)(A), serving the District of Massachusetts, will facilitate the representation of persons entitled to the appointment of counsel under the Criminal Justice Act of 1964, as amended, and that the District of Massachusetts is a district in which at least two hundred (200) persons annually require the appointment of counsel, pursuant to 18 U.S.C. §3006A(a) pertaining to the qualifications necessary to establish such an organization. A Federal Public Defender Organization has been established, with headquarters in Boston, Massachusetts, capable of rendering defense services on appointment throughout the District of Massachusetts.

B. New Hampshire and Rhode Island Branch Offices

The FPD is authorized to establish branch offices in Concord, New Hampshire, to provide defense services on appointment throughout the District of New Hampshire, and in Providence, Rhode Island, to provide defense services on appointment throughout the District of Rhode Island. Such branch offices shall be under the supervision of the FPD for the District of Massachusetts, and to the extent the caseload in each district permits, and pursuant to the direction of the FPD, the staff of any office shall be available to assist the staff of the other offices.

C. Governing Provisions

The FPD shall operate pursuant to the provisions of 18 U.S.C. §3006A(g)(2)(A), as well as the Guidelines for the Administration of the Criminal Justice Act, promulgated by the United States Judicial Conference pursuant to 18 U.S.C. §3006A(h).

D. Private Practice

Neither the FPD nor any appointed staff attorney may engage in the private practice of law.

E. Reports and Budget

The FPD shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by the Director, reports of the activities and the

financial position and proposed budget of the office. Copies of such reports shall be furnished to the District Court and to the Judicial Council of the First Circuit.

F. Roster of Staff

The FPD shall furnish to the District Court the roster of Assistant Federal Defenders in the FPD's office and shall report any changes thereto to the District Court.

G. Staffing and Recruitment

The FPD's Boston office shall be staffed to accept at least thirty-five (35) percent of the appointments in the Eastern and Central Divisions annually. Efforts should be made to assure that the FPD and the staff of the FPD's office are both highly qualified and sensitive to the diverse population they represent. This should include efforts to assure that minorities and women are appropriately represented in these positions.

H. Training and Resources

The FPD's office shall take the lead in providing educational programs for the CJA Panel and other members of the bar. Such training is important to enhancing the quality of representation of indigents and to making the CJA Panel accessible to able attorneys who have limited federal criminal experience. Similarly, the FPD's office shall serve as a central repository for materials which may be valuable to members of the CJA Panel, such as legal memoranda on recurring issues and jury instructions.

IV.

PANEL OF PRIVATE ATTORNEYS

A. Panel List - Eastern Division of the District

The District Court shall approve, and regularly review and revise a list of private attorneys to serve as the CJA Panel for the Eastern Division of the District of Massachusetts, based at Boston, and shall annually approve a list of attorneys to fill the vacancies of those CJA Panel members whose terms have expired. The size of the Panel should be such that each panel member will receive at least two appointments each year. CJA Panel members shall serve for staggered, three year terms. The CJA Board shall annually solicit and review new applications for the Panel, as possible replacements for the approximately one third of the panel whose term expires each year, and shall make appropriate recommendations to the District Court. Incumbent panel attorneys may be reappointed to further three-year terms,

but must complete a new application, and shall not be assured reappointment.

B. Panel List - Western and Central Divisions of the District

The District Court shall approve, and regularly review and revise a list of private attorneys to serve as the CJA Panels for the Central Division of the District of Massachusetts, based in Worcester, and the Western Division of the District of Massachusetts, based in Springfield. When any judicial officers are sitting in the Eastern Division of the District, they shall utilize the panel and procedures set forth herein for the Eastern Division.

C. Criteria for Panel Membership

The minimum criteria for membership on any CJA Panel are that each attorney:

- (1) Be a member in good standing of the bar of the United States District Court for the District of Massachusetts and the bar of the Massachusetts Supreme Judicial Court;
- (2) Have at least five years experience as a member of the bar;
- (3) Have sufficient experience to furnish high quality representation to criminal defendants in the District Court;
- (4) Be familiar with (a) the Federal Rules of Criminal Procedure; (b) the Federal Rules of Evidence; (c) the Bail Reform Act of 1984, (d) the Federal Sentencing Guidelines; and (e) such other statutes and rules as may be enacted from time to time with respect to criminal cases in the District Court (This requirement may be satisfied by attendance at the mandatory introductory training session);
- (5) Agree to accept appointments in the full range of CJA cases (other than attorneys who are only members of the habeas or other specialized panel);
- (6) For the Boston panel, agree to take part in the duty day system by accepting at least two duty days per year;
- (7) Demonstrate an interest and experience in the practice of criminal law, or have other equivalent experience;
- (8) Be registered for CM/ECF; and,
- (9) Agree to attend continuing legal education programs.

D. Application Process

The application process shall be publicized in the Massachusetts Lawyers Weekly and other relevant publications, and local bar associations shall be enlisted in the effort to solicit applications, with particular emphasis on recruiting members of minority groups and women. Each revision of a list should seek to assure that the CJA Panel is accessible to newcomers and reflects the diversity of the defendant population and of the bar.

E. Mentoring Program

A Mentoring Program, based in Boston, shall be established by the CJA Board to provide an opportunity for attorneys, who at present lack the experience to serve on the CJA Panel, who apply to work without compensation on CJA cases with members of the Panel who agree to serve as mentors, and with the FPD's office. Applicants to the Mentoring Program may be accepted from the Western and Central Divisions of the District, but may be required to travel to Boston to participate in the program. Participation in this program would contribute to the development of the qualifications necessary to serve on the CJA Panel, but should not assure automatic future admission to the CJA Panel. In selecting participants for this program, however, consideration should be given to whether an individual would, if eventually made a member, contribute to the diversity of the CJA Panel.

F. Special Lists of Panel Attorneys

Based on the recommendation of the CJA Board, the District Court has established a panel of attorneys to represent indigent petitioners in habeas corpus cases, brought pursuant to 28 U.S.C. §§ 2254 and 2255, when the judicial officer exercises discretion to appoint counsel.

The CJA Board may, as part of its continuing evaluation of this Plan, consider the possible need for additional lists, based on foreign language fluency, or expertise in specialized areas of the law, such as immigration matters and sexually dangerous person litigation. The CJA Board may then make appropriate recommendations to the District Court, which may adopt such further lists as it deems appropriate.

G. Record Keeping

1. The Clerk of the District Court shall maintain a current computerized roster of all attorneys included on the CJA Panel list for the Eastern Division of the District, as approved by the District Court with current office addresses and telephone numbers. The deputy clerk in charge in the Western Division, and

the deputy clerk in charge in the Central Division, shall each also maintain a current roster of all attorneys included on the CJA Panel list for such division. Records shall also be maintained by the Clerk of the District Court and his or her deputies in a manner which will permit judicial officers and the CJA Board to monitor the rate of appointments to the FPD's office and to the CJA Panel, and to monitor the distribution of appointments among members of the CJA Panel.

H. Use of Associates and Others

Counsel appointed from the CJA Panel may use associates, paralegals, legal assistants, and law students in the course of providing representation; however, the CJA Panel member is the lawyer responsible for the client's matter. All court appearances must be attended by the appointed CJA Panel member, unless specifically excused by the judicial officer. Appointed counsel may claim compensation for services furnished by associate counsel, paralegals, legal assistants, and law students in accordance with §§ 2.11 and 3.16 of Chapter VII of the Guide to Judiciary Policy and Procedure: Appointment of Counsel in Criminal Cases.

V.

APPOINTMENT OF COUNSEL

A. Selection of Counsel - Eastern Division of the District

The judicial officers sitting in the Eastern Division of the District shall appoint counsel for indigent individuals in criminal matters. In general, appointments will be made using a duty day system. Under the duty day system, a member of the CJA Panel and a lawyer from the FPD will be available to accept appointments on each day that the District Court is open. The Clerk's Office will assign a CJA Panel member to have responsibility to be CJA duty attorney. The Federal Defender will assign a lawyer from that office to be FPD duty attorney. The Clerk's Office shall strive to ensure that duty days are evenly spread among Panel members, to the extent practicable.

The CJA duty attorney shall be expected to accept appointments to at least one case, if one is available for the CJA duty attorney, on the day when the CJA Panel member is serving as duty attorney. If multiple cases require appointment of counsel on a single day, and if the CJA and FPD duty attorneys cannot accept appointment to all of the cases on the particular day, the judicial officer shall appoint counsel for the excess cases from the CJA Panel. Those appointments shall be made to CJA Panel members in accordance with the CJA Assignment Program.

In exceptional circumstances, a judicial officer shall have the discretion to appoint an attorney not on the CJA Panel, or a CJA Panel member other than the duty attorney, in order to serve the interests of justice, judicial economy, continuity in representation, or if there is some other compelling circumstance warranting such appointment. A record concerning any such exceptional appointment shall be prepared by the appointing judicial officer, and the Clerk's office shall maintain such record and other documentation, separate from the case file, concerning each appointment and containing sufficient information to monitor the performance of the appointment process.

B. Selection of Counsel - Western and Central Divisions of the District

The judicial officers sitting in the Western and Central Divisions of the District shall appoint counsel for indigent individuals in criminal matters. Such appointment shall normally be made from the FPD or from the list of CJA Panel attorneys maintained in each division. The appointing judicial officers shall attempt to provide a fair distribution of appointments among the CJA Panel attorneys. In exceptional circumstances, a judicial officer shall have the discretion to appoint an attorney not on the CJA Panel, in order to serve the interests of justice, judicial economy, continuity in representation, or if there is some other compelling circumstance warranting such appointment. A record concerning any such exceptional appointment shall be prepared by the appointing judicial officer, and the deputy clerk in charge in each division shall maintain and regularly forward to the Clerk's office such record and other documentation, separate from the case file, concerning each appointment and containing sufficient information to monitor the performance of the appointment process.

C. Process of Appointment

In every criminal case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in 18 U.S.C. §1, unless the defendant faces the likelihood of loss of liberty), or with juvenile delinquency by the commission of an act which, if committed by an adult would be such a felony or misdemeanor, or with a violation of probation, supervised release, or parole, or for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he or she faces loss of liberty, any federal law requires the appointment of counsel, and the defendant appears without counsel, the judicial officer shall advise the defendant that he or she has the right to be represented by counsel and that counsel will be appointed if the defendant is financially unable to afford adequate representation. Unless the defendant waives representation by counsel in writing, the

judicial officer, if satisfied after appropriate inquiry and after a financial affidavit has been executed by the defendant, that he or she is financially unable to obtain counsel, shall appoint counsel to represent the defendant. A defendant may not choose the counsel who shall provide representation, but may state any objection to a counsel whose appointment is under consideration. Appointment of counsel may be made retroactive to include representation furnished pursuant to the Plan prior to appointment. The judicial officer shall appoint separate counsel for defendants having interests that cannot be represented by the same counsel or when other good cause is shown. All statements made by a defendant in requesting counsel or during the inquiry into eligibility shall be either (a) by affidavit sworn to before a judicial officer, a court clerk or his or her deputy, or a notary public, or (b) under oath before a judicial officer. A financial affidavit shall not be considered part of the public record, unless so ordered by the judicial officer, after notice and a hearing.

D. Scope of Representation

A person for whom counsel is appointed shall be represented at every stage of the proceedings from the initial appearance before the judicial officer through appeal, including ancillary matters appropriate to the proceedings. If at any time after appointment of counsel the judicial officer finds that the person is financially able to obtain counsel or to make partial payment for the representation, the judicial officer may terminate the appointment of counsel or authorize payment as provided in the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A(f), as the interests of justice may dictate. If at any stage of the proceedings in the district court, the judicial officer finds that a person is financially unable to pay counsel whom he or she retained, the judicial officer may appoint counsel as provided in the Criminal Justice Act of 1964, as amended, and authorize payment as therein provided, as the interests of justice may dictate. The judicial officer in the interests of justice may substitute one appointed counsel for another at any stage of the proceedings.

Counsel who represented a defendant in the district court is obligated to continue the representation through the filing of any post-trial motions and the filing of a notice of appeal. Once a notice of appeal is docketed in the Court of Appeals, the continuing obligations of counsel shall be governed by the Local Rules of the United States Court of Appeals for the First Circuit, including the appointment of counsel and changes in representation. A proceeding under 28 U.S.C. 2255, or other collateral challenge, is not a post-trial motion for these purposes. With leave of court, counsel may also represent a defendant with respect to the placement or a prisoner in the prison system or any related issues. If a former client contacts

counsel after representation terminates regarding a matter that may require the assistance of counsel, former counsel is required either to seek leave of court to resume representation, or to advise the client how to request new counsel by contacting the court. Nothing in this provision is intended to create a new right to counsel with respect to post-trial matters where such a right is not otherwise established by law.

E. Discretionary Appointments

Any person seeking relief under §§2241, 2254, or 2255 of title 28, or individuals who are subjects, or targets, or who have received a grand jury subpoena may be furnished representation pursuant to this Plan whenever the judicial officer determines that the interests of justice so require and such person is financially unable to afford adequate representation. Such appointments are discretionary and payment for such representation shall be in accordance with the provisions of the Act and this Plan.

VI.

PAYMENT FOR REPRESENTATION BY PRIVATE COUNSEL

A. Hourly Rates

Any private attorney appointed under this Plan shall, at the conclusion of the representation or on an interim basis, if authorized by the judicial officer, be compensated at the rate set by the Judicial Conference of the United States for the District, and funded by the Congress of the United States, as provided in 18 U.S.C. § 3006A(d)(1). Such attorney shall be reimbursed for expenses reasonably incurred.

B. Maximum Amounts

The maximum amount of compensation to be paid to a private attorney appointed under this Plan shall not exceed the amounts set forth in 18 U.S.C. §3006A(d)(2), unless waived by the judicial officer.

C. Waiving Maximum Amounts

Payment in excess of any maximum amount set forth in 18 U.S.C. § 3006A (d)(2) may be made for extended or complex representation whenever the district judge before whom the representation was rendered, or the magistrate judge, if the representation was furnished exclusively before the magistrate judge, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is

approved by the Chief Judge of the Court of Appeals for the First Circuit or the Chief Judge's designee.

E. Filing Claims

A claim for compensation and reimbursement shall be made to the District Court for representation before the judicial officer. Within forty-five (45) days of final disposition the claimant shall file the claim with the Clerk of the District Court for the District of Massachusetts who is authorized to select a deputy to coordinate duties assigned under this Plan. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the judicial officer, and the compensation and reimbursement applied for or received in the same case from any other source. The judicial officer shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished exclusively before a magistrate judge, the claim shall be submitted to the magistrate judge who shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the magistrate judge, the district court, or an appellate court, the district court shall fix the compensation and reimbursement to be paid.

Whenever compensation is to be fixed by the court, the judge most familiar with the matter shall have authority to act, or in that judge's absence or in the event of any uncertainty, the chief judge or the Miscellaneous Business Docket (MBD) judge may act for the court.

If the compensation claimed exceeds the maximum amount set forth in § 3006A(d)(2), counsel seeking compensation shall submit a memorandum explaining why the judicial officer should approve a waiver of the maximum amount, as provided in § 3006A(d)(3).

If the judicial officer contemplates reducing the requested compensation, the attorney shall be given an opportunity to justify in writing the amount claimed. This paragraph does not afford any right to a hearing.

F. New Trials

For purposes of compensation and other payments authorized under the Criminal Justice Act of 1964, as amended, and this Plan, an order by a court granting a new trial shall be deemed to initiate a new case.

G. Appeals

If a defendant is convicted following trial or is sentenced following a plea, counsel appointed hereunder shall advise the

defendant regarding the right to appeal and of the right to counsel on appeal, including the effect of any appeal waiver, and this obligation shall not be affected or diminished by similar advice given to the defendant by the judicial officer. If a defendant does wish to appeal, counsel shall file a timely notice of appeal and shall continue to represent the defendant unless or until relieved by the court of appeals.

VII.

SERVICES OTHER THAN COUNSEL [18 U.S.C. §3006A(e)]

A. Upon Request

Counsel for any person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the district judge, or the magistrate judge if the services are required in connection with a matter over which the magistrate judge has jurisdiction, shall authorize counsel to obtain the services requested. The maximum which may be paid to a person for services so authorized shall not exceed the amount set forth in § 3006A(e)(3), exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the district judge, or by the magistrate judge if the services were rendered in connection with a case disposed of entirely before the magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Court of Appeals for the First Circuit or the Chief Judge's delegate

B. Without Prior Request

Counsel appointed under the Criminal Justice Act, as amended, and this Plan may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed the amount set forth in § 3006A(e)(2) and expenses reasonably incurred, and payment in excess of that amount may not be approved.

C. Federal Public Defender Organization

The provisions of this section do not apply to the Federal Public Defender Organization established by and operating under this Plan.

VIII.

RECEIPT OF OTHER PAYMENTS

Whenever the judicial officer finds that funds are available for payment from or on behalf of a person furnished representation under the Criminal Justice Act, as amended, and this Plan, the judicial officer may authorize or direct that such funds be paid to the appointed attorney, to any person authorized to render investigative, expert, or other services, or to the District Court for deposit in the Treasury. Except as so authorized or directed, no appointed attorney may request or accept any payment or promise of payment for providing services or representation to a defendant.

IX.

MISCELLANEOUS

A. Forms

Where standard forms have been approved by the Judicial Conference of the United States or an appropriate Committee thereof and have been distributed by the Administrative Office of the United States Courts, such forms shall be used by the District Court, the Clerk, the judicial officers, the Federal Public Defender Organization, and private counsel appointed under the Criminal Justice Act, as amended, and this Plan.

B. Guidelines for the Administration of the Criminal Justice Act

The judicial officers, Clerk of the District Court, Federal Public Defender Organization, and private attorneys appointed under the Criminal Justice Act, as amended, and this Plan, shall comply with the provisions of the Judicial Conference's Guidelines for the Administration of the Criminal Justice Act.

X.

EFFECTIVE DATE

This plan shall take effect immediately upon its approval by the Judicial Council of the First Circuit, or on September 1, 2009, whichever is later. It shall supersede the Plan for Implementing the Criminal Justice Act of 1964, as amended, adopted by this District Court on June 1, 1993, effective on July 1, 1993, and amended on July 10, 2001, except counsel appointed under the earlier Plan to represent particular defendants shall be authorized to complete the services for which they were appointed and shall be entitled to be paid under the earlier Plan for such services and expenses.

THE FOREGOING PLAN IS AMENDED BY THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, AS OF THIS 4th DAY OF August, 2009.

/s/ Mark L. Wolf
Mark L. Wolf
Chief Judge

/s/ Joseph L. Tauro
Joseph L. Tauro
United States District Judge

/s/ Rya W. Zobel
Rya W. Zobel
United States District Judge

/s/ William G. Young
William G. Young
United States District Judge

/s/ Douglas P. Woodlock
Douglas P. Woodlock
United States District Judge

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

/s/ Richard G. Stearns
Richard G. Stearns
United States District Judge

/s/ Patti B. Saris
Patti B. Saris
United States District Judge

/s/ Nancy Gertner
Nancy Gertner
United States District Judge

/s/ Michael A. Ponsor
Michael A. Ponsor
United States District Judge

/s/ George A. O'Toole
George A. O'Toole
United States District Judge

/s/ F. Dennis Saylor IV
F. Dennis Saylor IV
United States District Judge

/s/ Edward F. Harrington
Edward F. Harrington
Senior United States District
Judge

/s/ Morris E. Lasker
Morris E. Lasker
Senior United States District
Judge

THE FOREGOING PLAN IS APPROVED BY THE JUDICIAL COUNCIL OF THE FIRST CIRCUIT AS OF THE 1st DAY OF September, 2009.

/s/ Gary Wente
Gary Wente, Circuit Executive
Secretary to the Judicial Council