

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MARGARET CARTER
CLERK

JOHN JOSEPH MOAKLEY
UNITED STATES COURTHOUSE
1 COURTHOUSE WAY, SUITE 2500
BOSTON, MA 02210
(617) 748-9057

NOTICE OF ADOPTION OF AMENDMENT TO LOCAL RULE 46.5

The United States Court of Appeals for the First Circuit previously provided notice of proposed amendments to Local Rule 46.5. No comments were received.

The court hereby provides notice of the final amendments. A copy of Local Rule 46.5, with the amendments incorporated, is attached.

/s/ Margaret Carter, Clerk

January 23, 2015

Local Rule 46.5. Appointment of Counsel in Criminal Cases

The United States Court of Appeals for the First Circuit adopts the following Plan to implement the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, P.L. 88-455, as amended October 12, 1984, P.L. 98-473, and November 14, 1986, P.L. 99-651 to which references must be made. The purpose of this Plan is to provide adequate representation and defense of all persons to the extent provided therein including cases where a person faces loss of liberty or is in custody as a material witness. The court notes at the outset that the Act does not diminish the traditional responsibility of members of the Bar to accept appointments. It recognizes that compensation will, in most instances, be something less than full, and appreciates that service by counsel will represent a substantial measure of public dedication. The court notes, and incorporates herein, the entirety of the current United States Court of Appeals for the First Circuit CJA Reference Manual, which is periodically updated and amended, and includes policies, procedures, and regulations in accordance with the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, Guide to Judiciary Policies and Procedures.

- (a) **Request for Counsel.** Every person or eligible witness desiring counsel and that the government pay for the expense of appeal, whether or not the person had court-appointed counsel in the district court, shall address to this court a request in writing and a statement of the person's inability to pay. The court may make such further inquiry of the person's need as it may see fit. This inquiry may also be addressed to previously retained counsel, with the objective of ascertaining that present inability to pay is not a result of past excessive compensation. Such inquiry is not aimed at depriving an indigent of counsel but at the relatively few counsel who might reasonably be considered to have used up all of the available funds for doing only part of the work.
- (b) **Appointment of Counsel.** The court may appoint counsel who represented the person in the district court, or counsel from a panel maintained by the court, or otherwise. The addition or deletion of names from the panel and the selection of counsel shall be the sole and exclusive responsibility of the court but the actual administration thereof may be conducted by the clerk of this court. The person may ask for appointment of counsel who represented the defendant in the district court or for the nonappointment of such counsel, but shall not otherwise request any specific individual. The court shall give consideration to such request, but shall not be bound by it. A request for relief by trial counsel, upon a showing of cause, shall be given due consideration. It is recognized that counsel on appeal may require different qualifications than for trial. The substitution of counsel on appeal shall not in any way reflect upon the ability or upon the conduct of prior counsel. The Administration Office shall be notified promptly of each appointment, and of each order releasing counsel.
- (c) **Duration and Substitution of Counsel.** The court notes, and incorporates herein, the provisions of section (c) of the Act, except the references therein to magistrates. Except when relieved by the court, counsel's appointment shall not terminate until, if the person loses the appeal, counsel informs the person of that fact and of the person's right to petition for certiorari and the time period, and has prepared and filed the petition if the

person requests it and there are reasonable grounds for counsel properly to do so (see Rule 10 of the Rules of the Supreme Court of the United States). If counsel determines that there are no reasonable grounds and declines to file a petition for certiorari requested by the person, counsel shall so inform the Court and request leave to withdraw from the representation by written motion stating that counsel has reviewed the matter and determined that the petition would be frivolous, accompanied by counsel's certification of the date when a copy of the motion was furnished to the person. If the person does not wish to apply for certiorari or does not respond to the notification, counsel shall so inform the court by letter, which action shall terminate the representation. The clerk will inform the person in writing of the fact and effective date of the termination of counsel's appointment.

- (d) **Payment for Representation and Services other than Counsel.** The court notes sections (d) and (e) of the Act and incorporates the pertinent portions herein. Expenses described in the Act do not include overhead and such matters as secretarial expenses not ordinarily billed to clients, but a reasonable charge for copying briefs may be allowed. For additional guidance, see the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, Guide to Judiciary Policies and Procedures.

All claims, whether for compensation, or for expenditures, shall be submitted promptly after the completion of all duties, at the risk of disallowance. If counsel files a petition for a writ of certiorari, counsel's time and expenses involved in the preparation of the petition should be included on the voucher for services performed in this court. After court approval all orders for payment shall be processed through the Administrative Office.

- (e) **Receipt of Other Payments.** The provisions of section (f) of the Act are incorporated herein. Appointed counsel shall be under a continuing duty to report to the court any circumstances indicating financial ability on behalf of the person to pay part or all of the person's counsel fees or expenses. The court shall in no instance permit counsel who receives payments under the Act to frustrate the intent of the limitations contained in sections (d) and (e) by the receipt of other payment, either during, before, or after such representation.
- (f) **Forms.** For the appointment of counsel, the making of claims, and all other matters for which forms shall have been approved by the Administrative Office, such forms shall be used as a matter of course.
- (g) **Effective Date and Amendments.** This amended Plan shall take effect on November 14, 1986. It may be amended at any time with the approval of the Judicial Council. [The present plan incorporates amendments made on December 16, 2002 and on January 23, 2015.]