

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA  
OFFICE OF THE CLERK  
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200 N.W. 4TH STREET  
OKLAHOMA CITY, OKLAHOMA 73102-3092

ROBERT D. DENNIS  
CLERK

(405)231-4792

March 6, 1995

Mr. Abel Mattos, Chief  
Programs Branch  
Court Administration Division  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

Re: Amendments to Local Court Rules

Dear Mr. Mattos:

Enclosed please find a copy of the Amendments to the Local Court Rules for the Western District of Oklahoma dated February 1, 1995. Please let me know if you have any questions.

Sincerely,

*Robert D. Dennis*

Robert D. Dennis *RD*  
Court Clerk

RDD/cm  
Enc.

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RULE 1

RULES OF PROCEDURE; SCOPE OF RULES

(A) The rules of procedure in any proceeding in this Court shall be as prescribed by the laws of the United States, the Rules of the Supreme Court of the United States, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, any applicable Rules of the United States Court of Appeals for the Tenth Circuit, and these Rules.

(B) Where in any proceeding or in any instance there is no applicable rule of procedure, a judge may prescribe same.

(C) These Rules may be cited as Local Court Rules.

(D) The trial judge, in any civil or criminal case, may in his discretion waive any requirement of these Rules when in his opinion the administration of justice requires such waiver, provided, however, he may not waive any provision of the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, unless he is so authorized by such Rules.

RULE 1.5

TREATMENT OF 1993 AMENDMENTS TO  
THE FEDERAL RULES OF CIVIL PROCEDURE

(A) Local Rule 17(C) governing voluntary disclosure shall be applied in lieu of Fed. R. Civ. P. 26(a)(1).

(B) Neither the discovery materials nor a formal report of the voluntary disclosure required by Local Rule 17(C) shall be filed. The Court opts out of this requirement of Fed. R. Civ. P. 26(a)(4).

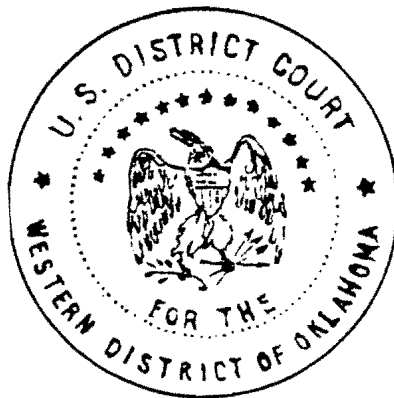
(C) Discovery shall not be stayed pending the meeting of counsel required by Fed. R. Civ. P. 26(f). The Court thus opts out of this requirement of Fed. R. Civ. P. 26(d).

(D) The discovery/planning meeting and written report required by Fed. R. Civ. P. 26(f) shall not be required as therein described. Instead, the provisions of Local Rule 17(A)-(E) shall control.

RULE 2

SEAL

The seal shall be of a circular design within the outer edge of which shall be the words "U. S. District Court, Western District of Oklahoma," arranged as shown by the impression thereof made hereon.



## RULE 6

### COSTS

(A) Upon the institution of any civil action, suit or proceeding, whether by original process, removal or otherwise, the party instituting such action, except the United States, shall pay to the Clerk a filing fee of \$120.00; except that on application for a writ of habeas corpus the filing fee shall be \$5.00. In forma pauperis proceedings may be filed without payment of a filing fee, and a full-time United States Magistrate may grant or deny such filing.

(B) In appeals in civil, bankruptcy, or criminal cases, a party filing a notice of appeal shall pay to the Clerk a filing fee of \$5.00, and in addition thereto shall pay any fees provided by the Judicial Conference of the United States incurred in connection with the appeal, except when on behalf of the United States or taken in forma pauperis.

(C) In addition to the fees for services rendered in cases heretofore enumerated, the Clerk shall charge and collect fees for miscellaneous services performed by him, as provided by the Judicial Conference of the United States, except when on behalf of the United States.

(D) In all cases the Marshal shall be authorized to require from every party an advance deposit sufficient to cover all services to be performed on behalf of such party, except when on behalf of the United States.

(E) A prevailing party who seeks to recover judgment for costs against an unsuccessful party pursuant to 28 U.S.C §§ 1920, 1921, and/or who seeks to recover attorney's fees as a part of the costs shall file with the Clerk separate applications for the recovery of said items and support the same with briefs. These applications shall include, inter alia, the following:

- (1) With respect to attorney's fees, the statutory or contractual authority for the request, and in an affidavit the amount of time spent on the case, the hourly fee claimed by the attorney, the hourly fee

usually charged by the attorney if this differs from the amount claimed in the case, and any other pertinent factors.

- (2) With respect to other claimed cost items, a full itemized bill of costs supported by invoices or other evidence in the form provided by the Clerk.

An application for costs, attorney's fees, or both submitted pursuant to this Rule shall be filed with the Clerk not more than fourteen (14) days after entry of judgment.

(F) The original and one copy of the verified bill of costs shall be filed upon forms provided by the Clerk, which shall have endorsed thereon proof of service upon the opposite party. The prevailing party shall provide either receipts, documents, or an affidavit in support of the following claims: deposition transcripts, air fare receipts, and exemplification and photocopy receipts. Receipts for deposition transcripts shall distinguish between the cost for original depositions and deposition copies.

(G) The original and one copy of each such application, including affidavit for attorney's fees and brief, shall have endorsed thereon proof of service upon the opposite party. Objections to the allowance of attorney's fees and cost must be filed within fifteen (15) calendar days from the filing of the application. The original and one copy of the objections, with accompanying brief, shall have endorsed thereon proof of service upon the opposite party.

(H) The Court may, for good cause shown, and upon written motion filed within the applicable period, extend the time for filing the application or objections thereto.

(I) The Clerk will forward applications for attorney's fees to the judge to whom the case is assigned. The Clerk will retain and, as soon as practicable after the period for filing objections has elapsed, consider applications for other costs, and after consideration of an application and any objections will make his written recommendation thereon allowing or disallowing the items, in whole or in part. If a bill of costs is properly and timely filed in accordance with this Rule and no written objection thereto is filed within the time herein specified, the claimed costs shall



be allowed in full. After the costs have been finally determined as provided herein, the Clerk will tax same in accordance with Rule 54(d), Federal Rules of Civil Procedure.

RULE 10

INTERROGATORIES AND REQUESTS FOR ADMISSIONS

(A) Each answer to an interrogatory under Rule 33, Federal Rules of Civil Procedure, shall be immediately preceded by the interrogatory being answered. The number of interrogatories to a party shall not exceed twenty-five (25) in number. Interrogatories inquiring as to the existence, location and custodian of documents or physical evidence each shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. The number of requests for admissions for each party is also limited to twenty-five (25). No further interrogatories or requests for admissions will be served unless authorized by the Court. If counsel for a party believes that more than twenty-five (25) interrogatories or requests for admissions are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories or requests for admissions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories or requests for admissions shall file a motion with the Court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories or requests.

(B) Discovery Material Not to be Filed. Depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed with the Clerk unless on special order of the Court or unless they are attached to a motion, response thereto, or are needed for use in a trial or hearing.

RULE 17

CIVIL STATUS AND SCHEDULING CONFERENCES; CRIMINAL PRETRIAL  
CONFERENCES; MANAGEMENT

(A) Scheduling. A status and scheduling conference will be scheduled in civil cases (excepting administrative reviews and prisoner cases) within one hundred twenty (120) days after service on a defendant in accordance with Rule 16, Federal Rules of Civil Procedure.

(B) Preparation by Counsel for Status and Scheduling Conference. Prior to the first status and scheduling conference, trial counsel for each of the parties shall confer and prepare a status report. Said report shall include, to the extent then known, the contentions of each party and the issues of fact and law. It will also contain a list of all exhibits, witnesses, and discovery materials to the extent then known, together with estimates of time needed to complete discovery and trial time. It shall be the duty of counsel for the plaintiff to arrange this conference and the duty of all counsel to jointly participate in and facilitate it. The information exchanged shall be incorporated into the status report. This status report will be prepared and signed jointly and filed as a single document with the Clerk of the Court no later than five (5) days prior to the status and scheduling conference. (The Status Report shall conform to the form required for Final Pretrial Order, attached to these Rules as Appendix IV, but shall be entitled "Status Report.")

(C) Exchange of Discovery Materials.

(1) Prior to the first status and scheduling conference, each party shall, without awaiting a discovery request, disclose to all other parties:

(a) the identity of any expert witness whom the party intends to call, together with the expert's qualifications, a statement of the substance of the expert's expected testimony, and a summary of the grounds for the expert's opinion;

(b) a general description, including the location, of all books, documents, data, compilations, and tangible things in the possession, custody or control of the party that are likely to bear significantly on any claim or defense;

(i) All exhibits shall be physically exchanged

or viewed and examined on or before a specified date, or no objections to the effect that exhibits have not yet been so seen will be entertained in a proposed final pretrial order or otherwise.

(c) the existence and content of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;

(d) a privilege log separately listing each document for which a privilege is asserted, including the date, author(s), addressee(s), general description of the subject matter, and the specific authority for assertion of the privilege.

(e) any witness who is known at the time to be likely to bear significantly on any claim or defense.

(2) Each party is under a continuing obligation to supplement or correct its disclosure if the party obtains additional information which makes previously disclosed information incorrect or incomplete.

(3) Every disclosure or supplementation by a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes the certification under, and is consequently governed by, the provisions of the Federal Rules of Civil Procedure. In addition, signing constitutes certification that the signer has read the disclosure, and that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

(4) Failure to comply with the requirements of this rule may result in the imposition of sanctions by the Court.

(D) Agenda at Conference.

(1) Counsel who will conduct the trial and pro se litigants shall attend any conference required by the Court. When justified by the circumstances, the Court may allow counsel to participate in such conference by telephone. Pro se litigants and counsel shall be prepared to discuss:

Rule 17 - Continued

- (a) the streamlining of claims and/or defenses;
- (b) the possibility of obtaining admissions of fact and of documents;
- (c) the avoidance of unnecessary proof and of cumulative evidence;
- (d) the identification of witnesses and documents;
- (e) the possibility of settlement or use of extra-judicial procedures;
- (f) the disposition of any pending matters;
- (g) the need for adopting special procedures for managing of difficult or protracted litigation that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and
- (h) all other appropriate matters.

(2) The Court, at the status and scheduling conference, will establish insofar as feasible the time:

- (a) to join other parties and to amend the pleadings;
- (b) to serve and hear motions;
- (c) to conduct and complete discovery; and
- (d) to file the submissions required by the Final Pretrial Order entered by the Court, said submissions including proposed voir dire, requested jury instructions or proposed findings of fact and conclusions of law, witness lists, exhibit lists, trial briefs, joint preliminary statements, stipulations, and hypothetical questions.

(3) The Court will also set, if necessary or feasible, the dates of any supplemental status and scheduling conferences, the date of the final pretrial conference, if any, and the date of trial.

(E) Preparation of Status Reports, Final Pretrial Orders, and Other Orders.

(1) Unless otherwise ordered by the Court, counsel for the plaintiff, with full and timely cooperation of other counsel

and pro se parties, is responsible for preparing, obtaining approval of all parties, and furnishing the Court any status reports, pretrial orders or other orders required by the Court or these Rules.

(2) The clerk who keeps the minutes of the status and scheduling conference shall have forms available substantially conforming to that attached to these Rules as Appendix V whereby the time and/or date fixed by the Court for the performance of specified duties may be inserted. Upon request therefor, counsel will be supplied with a copy of such form so that they may make their own notations of deadlines and of other orders prescribed by the judge presiding over the conference. Such executed form, when approved by the Court and filed, shall constitute the order of the Court as to such schedules without the necessity of filing of any other order to the same effect. Unless otherwise directed by the assigned judge, the form and content of a jointly prepared, proposed, Final Pretrial Order, conforming to the sample form shown at Appendix IV, attached hereto, shall be tendered to the Court by plaintiff's counsel on or before the first day of the month that the case is scheduled for trial.

(F) Default. Failure to prepare and file a required status report, failure to comply with the Final Pretrial Order, failure to appear at a conference, appearance at a conference substantially unprepared, or failure to participate in good faith may result in any of the following sanctions: the striking of a pleading, a preclusion order, staying the proceeding, default judgment, assessment of expenses and fees (either against a party or the attorney individually), or such other order as the Court may deem just and appropriate.

(G) Criminal Case -- Pretrial Conference. A pretrial conference may be held in criminal cases for the purpose of considering such matters as will promote a fair and expeditious trial. Such conference may, at the discretion of the Court, be conducted by a magistrate, as provided in Rule 39(B)(2) hereof.

(H) Criminal Case -- Stipulations -- Exhibits. Consistent with the applicable Federal Rules of Criminal Procedure, and whenever it can be done without violating or jeopardizing the

constitutional rights of the defendant in any criminal case, stipulations should be made at or prior to the pretrial conference with respect to the undisputed facts and the authenticity of documents. Each instrument which it is anticipated may be offered in evidence by either side (or photostatic copy of such instrument, if agreeable), should be marked with an exhibit number prior to the trial.

(I) Settlement Conferences. The Court may upon its own motion or at the request of any of the parties order a settlement conference at a time and place to be fixed by the Court. A magistrate or a district judge other than the judge assigned to the case, to be known as the settlement conference judge, shall conduct it. The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly and actively associated with the party or parties. Other interested parties such as insurers or indemnitor shall attend and are subject to the provisions of this Rule. Only the settlement conference judge may excuse attendance by any attorney, party or party's representative. The parties, their representatives and attorneys are required to be completely candid with the settlement conference judge so that he may properly guide settlement discussions, and the failure to attend a settlement conference or the refusal to cooperate fully may result in imposition of sanctions mentioned in paragraph (F) of this Rule. The settlement conference judge may issue such other and additional requirements of the parties or persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. The settlement judge will not discuss the merits of the case with the assigned judge but may discuss the status of motions and other procedural matters and shall have the right to meet jointly or individually with parties or persons or representatives interested in the outcome of the case without the

Rule 17 - Continued

presence of counsel. No statements, admissions, or conversations will, in any form, be used in the event of subsequent trial.

(J) Summary Jury Trial; Alternative Methods of Dispute Resolution. The Court may, in its discretion, set any civil case for summary jury trial, mandatory (nonbinding) arbitration (in accordance with Rule 43), mediation (in accordance with Rule 46) or other alternative method of dispute resolution as the Court may deem proper.



RULE 38

PLAN FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES  
IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208, Sections 3161, et seq.), the Speedy Trial Act Amendments Act of 1979 (Pub. L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. Sections 5036, 5057), the Judges of the United States District Court for the Western District of Oklahoma have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings (all section references are to Title 18 U.S.C.).

(A) Applicability.

(1) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this Court, including cases triable by the United States Magistrates, except for petty offenses as defined in 18 U.S.C. Sec. 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. (Sec. 3172)

(2) Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

(B) Priorities in Scheduling Criminal Cases. Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in Paragraph (E) should be given preference over other criminal cases. (Sec. 3164(a))

(C) Time Within Which an Indictment or Information Must be Filed.

(1) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be

Rule 38 - Continued

prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service. (Sec. 3161(b))

(2) Grand Jury Not in Session. If the defendant is charged with a felony to be prosecuted in this district, and no grand jury in the district has been in session during the 30-day period prescribed in subsection (1), such period shall be extended an additional 30 days. (Sec. 3161(b))

(3) Measurement of Time Periods. If a person has not been arrested or served with a summons on a federal charge, an arrest will be deemed to have been made at such time as the person (a) is held in custody solely for the purpose of responding to a federal charge; (b) is delivered to the custody of a federal official in connection with a federal charge; or (c) appears before a judicial officer in connection with a federal charge.

(4) Related Procedures.

(a) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(b) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

(D) Time Within Which Trial Must Commence.

(1) Time Limits. The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

- (a) The date on which an indictment or information is filed in this district;
- (b) The date on which a sealed indictment or information is unsealed; or
- (c) The date of the defendant's first appearance before a judicial officer of this district.

(Sec. 3161(c)(1))

(2) Retrial; Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within

70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the Court may extend the period if unavailability of witness or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days. (Sections 3161(d)(2), (e))

(3) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. (Sec. 3161(i))

(4) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(a) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge. (Sec. 3161(d)(1))

(b) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information. (Sec. 3161(h)(6))

(c) If the original indictment or information was dismissed on motion of the United States before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on

the subsequent charge had there been no previous charge.<sup>1</sup> (Sec. 3161(h)(6))

(d) If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(5) Measurement of Time Periods. For the purposes of this paragraph:

(a) If a defendant signs a written consent to be tried before a Magistrate and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.

(b) In the event of a transfer to this district under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this district when the papers in the proceeding or certified copies thereof are received by the Clerk.

(c) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(d) A trial in a nonjury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(6) Related Procedures.

(a) At the time of the defendant's earliest appearance before a judicial officer of this district, the officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate

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<sup>1</sup>Under the rule of this paragraph, if an indictment was dismissed on motion of the prosecutor on May 1, with 20 days remaining within which trial must be commenced, and the defendant was arrested on a new complaint on June 1, the time remaining for trial would be 20 days from June 1: the time limit would be based on the original indictment, but the period from the dismissal to the new arrest would not count. Although the 30-day arrest-to-indictment time limit would apply to the new arrest as a formal matter, the short deadline for trial would necessitate earlier grand jury action.

under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.

(b) The court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar. (Sec. 3161(a))

(c) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel will be grounds for a continuance or delayed setting only if approved by the Court and called to the Court's attention at the earliest practicable time.

(d) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information unless the Court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(e) At the time of the filing of a complaint, indictment, or information described in paragraph (6)(d), the United States Attorney shall give written notice to the Court of that circumstance and of his position with respect to the computation of the time limits.

(f) Any pretrial hearing shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the Court's criminal docket.

(E) Defendants in Custody and High-Risk Defendants.<sup>2</sup>

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<sup>2</sup>If a defendant's presence has been obtained through the filing of a detainer with the state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340 (356-57) n. 24 (1978).

(1) Time Limits. Notwithstanding any longer time periods that may be permitted under Paragraphs (C) and (D), the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

(a) The trial of a defendant held in custody solely for the purpose of trial on a federal charge filed in this district shall commence within 90 days following the beginning of continuous custody.

(b) The trial of a high-risk defendant shall commence within 90 days of the designation as high risk. (Sec. 3164(b))

(2) Definition of "High-Risk Defendant." A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

(3) Measurement of Time Periods. For the purpose of this paragraph:

(a) A defendant is deemed to be in detention awaiting trial when he is arrested on a federal charge or otherwise held for the purpose of responding to a federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(b) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the Court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(c) A trial shall be deemed to commence as provided in paragraphs (D)(5)(c) and (D)(5)(d).

(4) Related Procedures.

(a) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the Court at the earliest practicable time of the date of the beginning of such custody.

(b) The United States Attorney shall advise the Court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered by him to be high risk.

(c) If the Court finds that the filing of a "high risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the Court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the Court.

(F) Exclusion of Time From Computations.

(1) Applicability. In computing any time limit under Paragraphs (C), (D), or (E), the periods of delay set forth in 18 U.S.C. Sec. 3161(h) shall be excluded. Such period of delay shall not be excluded in computing the minimum period for commencement of trial under paragraph (G).

(2) Records of Excludable Time. The Clerk of the Court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the Clerk by the United States Attorney.

(3) Stipulations.

(a) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(b) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C.

Sec. 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(c) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the Court.

(4) Pre-Indictment Procedures.

(a) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in Paragraph (C), he may file a written motion with the Court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. Sec. 3161(h)(8), he shall file a written motion with the Court requesting such a continuance.

(b) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. Sec. 3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(c) The Court may grant a continuance under 18 U.S.C. Sec. 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(5) Post-Indictment Procedures.

(a) At each appearance of counsel before the Court, counsel shall examine the Clerk's records of excludable time for completeness and accuracy and shall bring to the Court's immediate



attention any claim that the Clerk's record is in any way incorrect.

(b) In the event that the Court continues a trial beyond the time limit set forth in section (D) or (E), the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S. C. Sec. 3161(h).

(c) If it is determined that a continuance is justified, the Court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. Sec. 3161(h)(8), the Court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(G) Minimum Period for Defense Preparation. Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed, or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed pro se. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to paragraph (D)(4), the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not begin to run. The Court will attempt to schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances. (Sec. 3161(c)(2))

(H) Related Procedures. If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

(I) Juvenile Proceedings.

(1) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. Sec. 5036.

(2) Time of Dispositional Hearing. If a juvenile is an adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. Sec. 5037(c).

(J) Sanctions.

(1) Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or to release from pretrial custody. Nothing in this Plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 U.S.C. Sections 3162 and 3164.

(2) High-Risk Defendants. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. Sec. 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his release conditions automatically reviewed. A high-risk defendant who is found by the Court to have intentionally delayed the trial of his case shall be subject to an order of the Court modifying his nonfinancial conditions of release under Chapter 207 of Title 18 U.S.C., to ensure that he shall appear at trial as required. (Sec. 3164(c))

(3) Discipline of Attorneys. In a case in which counsel (a) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (b) files a motion solely for the purpose of delay which he knows is frivolous and without merit, (c) makes a statement for the purpose of obtaining a continuance which he knows to be false

and which is material to the granting of the continuance, or (d) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. Sec. 3161, the Court may punish such counsel as provided in 18 U.S.C. Sections 3162(b) and (c).

(4) Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. Sec. 5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.

(K) Persons Serving Terms of Imprisonment. If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. Sec. 3161(j).

(L) Effective Dates.

(1) The amendments to the Speedy Trial Act made by Public Law 96-43 became effective August 2, 1979. To the extent that this revision of the district's Plan does more than merely reflect the amendments, the revised Plan shall take effect upon approval of the reviewing panel designated in accordance with 18 U.S.C. 3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. Sec. 3162 and reflected in paragraphs (J)(1) and (3) of this Plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980, and to indictments and informations filed on or after that date.

(2) If a defendant was arrested or served with a summons before July 1, 1979, the time within which an information or indictment must be filed shall be determined under the Plan that was in effect at the time of such arrest or service.

(3) If a defendant was arraigned before August 2, 1979, the time within which the trial must commence shall be determined under the plan that was in effect at the time of such arraignment.

Rule 38 - Continued

(4) If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under section (E) shall be computed from that date.

RULE 40

PLAN OF THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA PURSUANT TO THE  
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED  
(18 U.S.C. § 3006A, ET SEQ.),  
FOR THE REPRESENTATION OF INDIGENT DEFENDANTS

Pursuant to the provisions of the Criminal Justice Act Revision of 1984, i.e., 18 U.S.C. § 3006A, et seq., [hereinafter referred to as "the Act"], the Judges of the United States District Court for the Western District of Oklahoma adopt the following amended Plan for the representation of any person otherwise financially unable to obtain adequate representation:

- (1) who is charged with a felony, 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 [see 18 U.S.C. § 5034], or with a violation of probation, 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 subsection (g) of the Act, or
- (4) 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, or
- (5) who is entitled to appointment of counsel in parole proceedings under Chapter 311 of Title 18, U.S.C.

Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

(A) Provision for Furnishing Counsel.

(1) This Plan provides for the furnishing of legal services by a Federal Public Defender Organization, supervised by a Federal Public Defender, and serving the United States District Court for the Western District of Oklahoma. In addition, this Plan

provides for the appointment and compensation of private counsel in a substantial proportion of cases. The term "private counsel" includes counsel furnished by a bar association or a legal aid agency, and a claim by such an organization for compensation will be approved on the same basis as in the case of the appointment of private counsel.

(2) The determination of whether a party entitled to representation will be represented by the Federal Public Defender Organization or by private counsel is within the discretion of the appointing Judge or Magistrate.

(B) Federal Public Defender Organization.

(1) The Court has determined that the use of a Federal Public Defender Organization, as defined in subsection (g)(2)(A) of the Act, serving this district will facilitate the representation of persons entitled to the appointment of counsel under the Act, and that the Western District of Oklahoma is one in which at least two hundred (200) persons annually require the appointment of counsel, as required by subsection (g)(1) of the Act, concerning the qualifications necessary to establish such an organization.

A Federal Public Defender Organization with offices in Oklahoma City, Oklahoma, has been properly established.

(2) The Federal Public Defender Organization shall operate pursuant to the provisions of subsection (g)(2)(A) of the Act, as well as the Guidelines for the Administration of the Criminal Justice Act, promulgated by the United States Judicial Conference pursuant to subsection (h) of the Act.

(3) Neither the Federal Public Defender nor any appointed staff attorney may engage in the private practice of law.

(4) The Federal Public Defender 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 organization's activities, its financial position and proposed budget.

(5) The Federal Public Defender shall furnish to this Court the initial roster of staff attorneys and shall report any changes thereto to this Court.

(6) In order to ensure the effective supervision and management of the Federal Public Defender Organization, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in the Federal Public Defender office. Accordingly, the Court will assign cases in the name of the Federal Public Defender Organization rather than in the name of individual staff attorneys.

(7) The Federal Public Defender Organization will make such arrangements with federal, state, and local investigative and police agencies as will adequately assure that at the earliest practicable stage, persons arrested under circumstances where such representation is required by federal law may promptly have counsel furnished them by the organization. In communities where an organization attorney is not available, such investigative and police agencies shall have access to the name, address and telephone number of an attorney from the panel of private attorneys approved by the Court, as described in section (C) of this Plan.

(C) Panel of Private Attorneys.

(1) Composition of Panel of Private Attorneys.

(a) Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to provide representation under the Act. The Court shall approve attorneys for membership on the Panel after receiving recommendations from the "Panel Selection Committee," established pursuant to part (2) of this section. Members of the CJA Panel shall serve at the pleasure of the Court.

(b) 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 Criminal Justice Act 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.

(c) 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 and the Federal Rules of Evidence.

(d) Terms. The initial CJA Panel established pursuant to this amended Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the Panel for a term of one year, members of the second group will serve on the Panel for a term of two years, and members of the third group will serve on the Panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.

(e) Reappointment. A member of the CJA Panel shall not be eligible for reappointment to the Panel for the one-year period immediately following expiration of his or her term, unless waiver of this restriction is certified by the Court.

(f) Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Federal Public Defender. Completed applications shall be submitted to the Federal Public Defender, who will transmit the applications to the chairperson of the Panel Selection Committee.

(2) Panel Selection Committee.

(a) Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one Magistrate, one attorney who is entering the third year of his or her term as a member of the CJA Panel, and the Federal Public Defender. The Committee shall select its own chairperson.

(b) Duties.

(i) The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

(ii) At its annual meeting, the Committee shall also review the operation and administration of the Panel over the preceding year, and recommend to the Court any changes



deemed necessary or appropriate by the Committee regarding the appointment process and Panel management.

(iii) The Committee shall also inquire annually as to the continued availability and willingness of each Panel member to accept appointments.

(iv) If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the Panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated, and shall be immediately eligible for reappointment, notwithstanding the one-year restriction imposed by paragraph (1)(e) of this section, provided that the portion of the expired term actually served by the member did not exceed eighteen (18) months.

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

(D) Selection for Appointment.

(1) Maintenance of List and Distribution of Appointments. The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Federal Public Defender shall furnish a copy of this list to each Judge and Magistrate. The Federal Public Defender shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical

data reflecting the proration of appointments between the Federal Public Defender Organization and private attorneys, according to the formula described in part (1) of section (A) of this Plan.

(2) Method of Selection.

(a) 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.

(b) Upon the determination of a need for the appointment of counsel, the Court shall notify the Federal Public Defender of the need for counsel and the nature of the case.

(c) The Federal Public Defender shall advise the Court as to the status of distribution of cases as between the Federal Public Defender Organization and the Panel of private attorneys. If the Court decides to appoint an attorney from the Panel, the Federal Public Defender shall determine the name of the next Panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing Judge or Magistrate.

(d) In the event of an emergency, i.e., weekends, holidays, or other nonworking hours of the office of the Federal Public Defender, the Court may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the Court shall notify the Federal Public Defender as to the name of the attorney appointed and the date of appointment.

(E) Determination of Need for Counsel.

(1) Advice of Right, Financial Inquiry, Appointment Procedure.

(a) In every criminal case in which a person is entitled to representation as provided in the preamble of this Plan and appears without counsel, the Court shall advise the person of

the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford adequate representation. Unless the person waives representation by counsel in writing, the Court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the person. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry may follow the person's request for appointment of counsel as soon thereafter as is practicable. All statements made by a person in requesting counsel or during the inquiry into eligibility shall be either (i) by affidavit sworn to before the Court, a Court Clerk or Deputy, or a Notary Public, or (ii) under oath in open Court.

(b) In appointing counsel, the Court shall select the Federal Public Defender Organization or an attorney from the Panel of private attorneys approved by the Court, except in extraordinary circumstances where it becomes necessary to make another selection of a member of the Bar of this Court.

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

(2) Continuity and Duration of Appointment. A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the United States Magistrate or the district court judge through appeal, including ancillary matters appropriate to the proceedings. If a United States Magistrate appoints counsel to represent a person and the person is later before a district court judge in connection with the same charge, the same counsel shall appear before the judge to represent the person until the judge has had the opportunity to make an independent determination as to whether appointment of counsel in the proceedings is appropriate and, if so, who should be appointed.

(3) Appeal. In the event that a criminal defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do

so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal. Counsel's duties under his appointment by the trial court include: (a) arranging for timely transmission of the record on appeal as provided by Fed.R.App.P. 10 and 11; (b) filing a docketing statement in accordance with Tenth Circuit Rule 8; (c) if requested, filing a memorandum opposing summary disposition. See 10th Cir. R. 4(b). Counsel's appointment remains in full force and effect until relieved of his duties by order of the district court or the court of appeals.

(4) Partial Payment or Reimbursement.

(a) If at any time after appointment of counsel the Court finds that the person is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of a person furnished representation, the Court may terminate the appointment of counsel or authorize payment as provided in subsection (f) of the Act, as the interests of justice may dictate.

(b) If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court. The Court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such party. In such event, the amount so paid or payable by the party shall be considered by the Court in determining the total compensation to be allowed to such attorney. No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the Court.

(c) If at any stage of the proceedings, including an appeal, the Court finds that the party is financially unable to pay counsel whom he or she had retained, the Court may appoint counsel as provided in the Act, and authorize such payment as therein provided, as the interests of justice may dictate.

(d) The Court, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

(5) Discretionary Representations. Any person in custody as a material witness, or seeking relief under §§ 2241, 2254, or 2255 of Title 28, or § 4245 of Title 18, United States Code, may be furnished representation pursuant to this Plan whenever the Court determines that the interests of justice so require and that such person is financially unable to afford adequate representation. Such appointments are discretionary pursuant to subsection (g) of the Act, and payment for such representation shall be in accordance with the provisions of the Act and this Plan.

(F) Investigative, Expert, and Other Services.

(1) Upon Request. Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request such services in an ex parte application before the Judge or before a United States Magistrate if the services are required in connection with a matter over which the Magistrate has jurisdiction, or if a Judge otherwise refers such application to a Magistrate for findings and report. Upon finding, after appropriate inquiry in such ex parte proceedings, that the services are necessary, and that the person is financially unable to obtain them, the Judge or the Magistrate, as the case may be, shall authorize counsel to obtain the services. The maximum which may be paid to a person or organization for services so authorized shall not exceed \$1000 exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the Judge, or by the Magistrate if the services were rendered in connection with a case disposed of entirely before the Magistrate, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit.

(2) Without Prior Request. Counsel appointed under the Act may obtain, subject to later review, investigative, expert, or

other services without prior authorization, if necessary for adequate representation. However, the total cost for services obtained without prior authorization may not exceed a maximum of \$300 and expenses reasonably incurred, for each person or organization providing the services. This \$300 limit may be waived, however, if the presiding Judge or Magistrate, if the services were rendered in a case disposed of entirely before the magistrate, finds, in the interest of justice, that timely procurement of necessary services could not await prior authorization. Counsel may request ratification for investigative, expert, or other services within the \$300 limit by submitting an application for ex parte review by the Judge, or by a United States Magistrate if the services were rendered in connection with a matter over which the Magistrate has jurisdiction.

(3) Ex Parte Applications. Ex parte applications for services other than counsel shall be heard in camera, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial Court, subject to further order of the Judge or Magistrate.

(4) Claims. Claims for compensation of persons providing investigative, expert, and other services under the Act shall be submitted on the appropriate CJA form to the office of the Federal Public Defender. The Federal Public Defender 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 for the consideration of the appropriate Judge or Magistrate.

(5) Federal Public Defender Organization. The Federal Public Defender Organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this section, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its budget authorization for these specific categories.

(G) Payment for Representation by Private Counsel.

Rule 40 - Continued

(1) Hourly Rates. Any private attorney appointed under this Plan shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding \$60 per hour for time expended in Court, and \$40 per hour for time reasonably expended out of Court. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the Court.

(2) Maximum Amounts. For representation of a person before the Judge or the United States Magistrate, or both, the compensation to be paid to a private attorney appointed under this Plan shall not exceed \$3,500 for each attorney in a case in which one or more felonies are charged, and \$1,000 for each attorney in a case in which only misdemeanors are charged. For representation in connection with a post-trial motion made after entry of judgment, a probation revocation proceeding, a parole proceeding, or for discretionary appointments as provided in subsection (a)(2) of the Act, the compensation shall not exceed \$750 for each attorney in each proceeding in each Court.

(3) Waiving Maximum Amounts. Payment in excess of any maximum amount provided in the previous paragraph may be made for extended or complex representation whenever the presiding Judge, or the United States Magistrate, if the representation was furnished exclusively before the Magistrate, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit.

(4) Filing Claims.

(a) Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Federal Public Defender. The Federal Public Defender shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding Judge, or to the United States Magistrate if the representation was furnished exclusively before the Magistrate. In cases where representation is furnished other than

Rule 40 - Continued

before the district judge, magistrate, or an appellate court, the district court judge shall fix the compensation and reimbursement to be paid.

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

(H) Miscellaneous.

(1) 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, such forms shall be used by the Court, the Clerk, the Federal Public Defender Organization, and counsel.

(2) Guidelines for the Administration of the Criminal Justice Act. The Court, Clerk of the Court, Federal Public Defender Organization, and private attorneys appointed under the Act and this Plan, shall comply with the provisions of the Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to the Judiciary Policies and Procedures).



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

**WHEREAS**, the number of death row inmates who will exhaust their state court remedies and be in a position to seek federal habeas corpus relief in this district is expected to increase;

**WHEREAS**, representation of persons who have been convicted and sentenced to death requires a specialized knowledge of state and federal appellate procedure, certiorari practice, state and federal habeas corpus procedure, criminal and Eighth Amendment jurisprudence and entails an extraordinary commitment of time;

**WHEREAS**, this court is responsible for ensuring the adequate representation of financially eligible persons seeking federal habeas corpus relief when such representation is required in the interest of justice;

**WHEREAS**, the Oklahoma Appellate Public Defender System, a state public defender organization, has a Capital Post Conviction Unit which furnishes representation, and assistance in connection with the representation of death-sentenced inmates in the State of Oklahoma;

**WHEREAS**, the Capital Post Conviction Project of the Oklahoma Appellate Public Defender System is authorized to provide representation and assistance in federal death penalty habeas corpus cases;

**WHEREAS**, subsection (g) of the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A [hereinafter referred to as "the Act"] authorizes the establishment of Community Defender Organizations in adjacent districts in which at least 200 persons annually require the appointment of counsel, and the Western, Northern, and Eastern Districts of Oklahoma meet that requirement,

**IT IS THEREFORE ORDERED**, that the Plan for the Implementation of the Criminal Justice Act for the Western District of Oklahoma, (dated July 15, 1985) is hereby amended to provide for the designation of the Oklahoma Appellate Public Defender System as a Community Defender Organization in accordance with subsection (g)(2)(B) of the Act, subject to the conditions set forth below:

Rule 40 - Continued

1. The Oklahoma Appellate Public Defender System [hereinafter referred to as OAPDS] is authorized by this Plan to provide representation, assistance, information, and other related services to eligible persons and appointed attorneys in connection with federal death penalty habeas corpus cases pursuant to subsection (g)(2)(B) of the Act. As provided in the Criminal Justice Act Plans for the Northern and Eastern Districts of Oklahoma, OAPDS also may provide such services in those courts. The governing laws of OAPDS are incorporated as part of the Plan, and a copy of these laws shall be maintained by the Clerk of the Court and attached to the original of this plan.

2. OAPDS shall operate pursuant to the provisions of subsection (g)(2)(B) of the Act, the terms and conditions of the sustaining grant approved by the Judicial Conference of the United States, and the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures), promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Act.

3. OAPDS shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year.

4. OAPDS shall furnish to this court the initial roster of staff attorneys and shall report any changes thereto to the court.

5. The goal of OAPDS will be to assist the court in ensuring that adequate representation is provided to persons under death sentence who seek federal habeas corpus relief. Toward that end OAPDS will perform the following functions:

a. OAPDS shall monitor all capital litigation in the State of Oklahoma.

b. OAPDS shall screen and recruit qualified members of the private bar who are willing to provide representation in death penalty post-conviction proceedings in federal court and submit a list of such attorneys to the court for approval as a "Special Death Penalty Habeas Corpus Panel."

c. In each federal death penalty habeas corpus case in which the court has determined that counsel shall be

appointed, OAPDS shall provide to the court the name of the next available member of the "Special Death Penalty Habeas Corpus Panel." In cases where the interest of justice requires the appointment of more than one attorney, OAPDS shall furnish the name of two attorneys.

d. OAPDS shall be authorized to serve as counsel of record, and shall recommend to the court those cases in which its appointment as counsel of record is appropriate.

e. Upon the request, pursuant to subsection (e) of the Act and paragraph 3.16 of the Guidelines for the Administration of the Criminal Justice Act, of appointed or pro bono counsel in a federal habeas corpus death penalty case, OAPDS shall provide consulting services in such areas as, but not limited to, records completion, exhaustion of state remedies, identification of issues, review of draft pleadings and briefs.

f. OAPDS will coordinate resources with other state and national organizations providing legal assistance to death-sentenced inmates.

g. OAPDS will maintain a brief bank and clearinghouse of materials to assist lawyers in death penalty habeas corpus cases in federal courts.

h. OAPDS will perform such other tasks as may be necessary to ensure that adequate representation is provided to financially eligible persons in federal death penalty habeas corpus proceedings.

6. In order to ensure the effective supervision and management of OAPDS, the deputy appellate public defender in charge of the Capital Post Conviction Unit of OAPDS will be responsible for the assignment of cases (both as counsel of record and as consultant) among the staff attorneys in capital post conviction unit of OAPDS. Accordingly, the court will assign cases in the name of the designated deputy appellate public defender rather than in the name of individual staff attorneys.

7. OAPDS may obtain investigative, expert, or other services without regard to the requirements or limitations set forth in the Plan dated July 15, 1985, with respect to procurement of such

Rule 40 - Continued

services by panel attorneys, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

The provisions of the Plan shall remain in effect except to the extent that they are inconsistent with the provisions of this addendum, in which case the provisions of the addendum shall govern.

RULE 41

PLEA AGREEMENT PROCEDURE

Plea agreement procedures of the court shall be in accordance with Fed.R.Crim.P. 11(e), as applied individually by judges of the Court.

APPENDIX V  
 IN THE UNITED STATES DISTRICT COURT FOR THE  
 WESTERN DISTRICT OF OKLAHOMA

Plaintiff,	)	
	)	
vs.	)	Case No. _____
	)	
	)	
Defendant.	)	TRACK: _____

**SCHEDULING ORDER**

Date \_\_\_\_\_ Time \_\_\_\_\_ To \_\_\_\_\_

Judge \_\_\_\_\_ Clerk \_\_\_\_\_ Total \_\_\_\_\_

JURY TRIAL DEMANDED \_\_\_\_\_ NONJURY TRIAL \_\_\_\_\_ Trial Docket \_\_\_\_\_

Appearing for Plaintiff: \_\_\_\_\_

Appearing for Defendant: \_\_\_\_\_

**THE FOLLOWING DEADLINES ARE SET BY THE COURT**

(May not be extended except by Court order pursuant to Local Court Rule 14)

- |   |     |  |
|---|-----|--|
| 1. Motions to join additional parties to be filed by _____  |     | deposed* _____   |
| 2. Motions to amend pleadings to be filed by _____  | 5.  | Plaintiff to submit to defendant final <b>exhibit</b> list and any exhibits not previously submitted.* _____ |
| 3. (a) Plaintiff to submit to defendant list of <b>expert witness(es)</b> by _____<br><br>(b) Plaintiff to submit to defendant <b>final list of witnesses</b> in chief, including expert witnesses, together with addresses and brief summary of expected testimony where witness has not already been deposed* _____ | 6.  | Defendant to submit to plaintiff final <b>exhibit</b> list and any exhibits not previously submitted* _____  |
| 4. (a) Defendant to submit to plaintiff list of <b>expert witness(es)</b> by _____<br><br>(b) Defendant to submit to plaintiff <b>final list of witnesses</b> in chief, including expert witnesses, together with addresses and brief summary of expected testimony where witness has not already been                | 7.  | Discovery to be completed by _____   |
|   | 8.  | Plaintiff's final contentions to be submitted to defendant's counsel by _____                                |
|   | 9.  | Defendant's final contentions to be submitted to plaintiff's counsel by _____                                |
|   | 10. | All dispositive motions to be filed by _____   |
|   | 11. | All stipulations to be filed by _____  |

APPENDIX V - Continued

12. Motions in limine to be filed by \_\_\_\_\_
13. Requested jury instructions to be submitted on or before \_\_\_\_\_
14. Joint Statement of case to be submitted on or before \_\_\_\_\_
15. Requested voir dire to be submitted by: \_\_\_\_\_
16. Trial Briefs to be filed by \_\_\_\_\_
17. NON JURY CASES ONLY: Proposed findings and conclusions of law to be submitted no later than \_\_\_\_\_
18. Any objections to the above trial submissions to be filed 5 days thereafter.
19. Final pretrial order approved by all counsel to be submitted to the Court by \_\_\_\_\_
20. Plaintiff's counsel is directed to initiate settlement discussions with defendant \_\_\_\_\_ and report status of such discussions to the Court no later than \_\_\_\_\_
21. Supplemental Status Conference to be set \_\_\_\_\_
22. Final Pretrial to be set \_\_\_\_\_
23. This case is hereby assigned to the **Special Management Track**.

A **Joint Specialized Case Management Plan** shall be filed by \_\_\_\_\_ and include the following topics:

(1) Identification of lead and liaison counsel and the responsibilities of each; (2) suggestions for maintaining confidentiality; (3) a description of, and the sequence of, discovery to be had under relevant provisions of the Federal Rules of Civil Procedure; (4) in class action cases, a proposed timetable for class issue discovery, briefing, and hearing; (5) a timetable for the filing and service of dispositive motions under Fed.R.Civ.P. 12 and/or Fed.R.Civ.P. 56; (6) proposals relating to the addition of parties, bifurcation, and special needs concerning service of process; and (7) subjects bearing upon the administration of the case, including consideration of the appointment of a special master to administer discovery, resolving initial discovery disputes, identifying a custodian of exhibits, and serving notices and court orders to multiple parties when necessary.

24. This case is referred to Mandatory Arbitration under Local Rule 43 .
- This case is referred to Consensual Arbitration under Local Rule 43 .
- The proposed Arbitration Hearing date is \_\_\_\_\_.
- The Court exempts the case from Arbitration .

25. This case is referred to Mediation under Local Rule 46 .
- A Mediation Session will be held between \_\_\_\_\_ and \_\_\_\_\_.
26. The parties consent to trial by a magistrate judge.
27. IT IS ORDERED that all exhibits intended to be offered herein be premarked at least \_\_\_\_\_ days before the commencement of the trial. The Clerk will supply labels for this purpose.
28. Other: \_\_\_\_\_
- 

BY ORDER OF THE COURT  
 ROBERT D. DENNIS, CLERK

By: \_\_\_\_\_  
 Deputy Clerk

**NOTICE: READ CAREFULLY**

\* All provisions of Local Rule 17, as amended, all other applicable local rules and the provisions of the Court's Civil Justice Expense and Delay Reduction Plan apply. The parties are admonished to comply with the requirements concerning the physical exchange of exhibits. The exchange of witnesses required by numbers 3 and 4 above shall be by letter with two copies of the letter of transmittal to be submitted to the Clerk of this Court for filing. Except for good cause shown, no witness shall be permitted to testify in chief for any party unless such witness' name was listed in the letter of transmittal. The exchange of exhibits required by numbers 5 and 6 above shall also be accomplished by **ACTUAL PHYSICAL EXCHANGE, OR BY MAKING SUCH EXHIBITS AVAILABLE FOR VIEWING AND EXAMINATION BEFORE THE SPECIFIED DATE.** If upon completion of such exchange of exhibits a party does not make written objection thereto within five (5) days, all objections to said exhibit or exhibits are deemed waived. If written objection is so filed, the basis of same shall be spelled out in detail by way of brief. Further, in the event of objection both sides shall, in the pretrial order, state the rule or rules upon which they rely.