

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TENNESSEE

# **CRIMINAL JUSTICE ACT PLAN**

AS APPROVED BY THE SIXTH CIRCUIT, FEBRUARY 6, 2014

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
CRIMINAL JUSTICE ACT PLAN

CHAPTER I

AUTHORITY

Under the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of title 18, United States Code, and the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), Volume 7A of the Guide to Judiciary Policy, the Judges of the United States District Court for the Eastern District of Tennessee adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

CHAPTER II

STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance

1. The court, its clerk, the Community Defender Organization, and private attorneys appointed under the CJA must comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney will be provided by the clerk of court with a then- current copy of this Plan upon the attorney's first appointment under the CJA or designation as any member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk will maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel on the court's website and will make known to such attorneys its availability.

## CHAPTER III

### DEFINITIONS

#### A. Representation

“Representation” includes counsel and investigative, expert, and other services.

#### B. Appointed Attorney

“Appointed attorney” includes private attorneys and the Chief Community Defender and staff attorneys of the Community Defender Organization.

## CHAPTER IV

### PROVISION OF REPRESENTATION

#### A. Circumstance

1. Mandatory. Representation **shall** be provided for any financially eligible person who:
  - a. is charged with a felony or with a Class A misdemeanor;
  - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
  - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - d. is under arrest, when such representation is required by law;
  - e. is entitled to appointment of counsel in parole proceedings;
  - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
  - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
  - h. is in custody as a material witness;
  - i. is seeking to set aside or vacate a death sentence under section 2254 or 2255 of title 28, United States Code;
  - j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
  - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

1. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a Judge or United States Magistrate Judge determines that the interests of justice so require, representation **may** be provided for any financially eligible person who:
  - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
  - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of title 28, United States Code;
  - c. is charged with civil or criminal contempt and who faces loss of liberty;
  - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
  - e. is proposed by the United States Attorney for processing under a pretrial diversion program;
  - f. is held for international extradition under chapter 209 of title 18, United States Code.

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

#### B. Timely Appointment of Counsel

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States Magistrate Judge or District Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a Magistrate Judge or District Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

#### C. Number and Qualifications of Counsel

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:
  - a. Federal Capital Prosecutions. Under 18 U.S.C. § 3005, a person charged with a federal capital offense is **entitled** to the appointment of two attorneys, at least one of whom must be learned in the law applicable to capital cases. Under 18 U.S.C. § 3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

- b. Habeas Corpus Proceedings. Under 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255 is **entitled** to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.
2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases the following also applies:
    - a. Appointment of Counsel Prior to Judgment. Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Under 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the Community Defender.
    - b. Appointment of Counsel After Judgment. Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.
    - c. Attorney Qualification Wavier. Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a United States District Judge or Magistrate Judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of

the attorney's information is not protected as a privileged communication, counsel will advise the court.

## CHAPTER V

### COMMUNITY DEFENDER ORGANIZATION

#### A. Establishment

1. The Federal Defender Services of Eastern Tennessee, previously established in this district under the provisions of the CJA, is hereby recognized as a community defender organization for this district. The Bylaws of Federal Defender Services of Eastern Tennessee are incorporated as part of the Plan, and a copy of said Bylaws shall be maintained by the clerk of court and are attached to the original of this Plan.
2. The Community Defender Organization will be capable of providing legal services throughout the district and will maintain offices in Chattanooga, Knoxville, and Greeneville, Tennessee.

- B. Supervision of Defender Organization. The Community Defender will be responsible for the supervision and management of the Community Defender Organization. Accordingly, the Community Defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Community Defender.

## CHAPTER VI

### PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The existing, previously established Panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at **Appendix I** of this CJA Plan.

C. Ratio of Appointments. Where practical and cost-effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

## CHAPTER VII

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

- A. Appointment of Counsel. The court will appoint a member or members of the Special Death Penalty Habeas Corpus Panel, and/or the Community Defender with his or her consent or other attorney who qualifies for appointment under section 3599 of title 18, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code.
- B. Federal Community Defender. The Federal Community Defender, previously designated as a community defender organization pursuant to the provisions of the CJA, may be appointed as sole counsel in such proceedings.

## CHAPTER VIII

### DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel will be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA must conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct, as enacted by the Tennessee Supreme Court as Rule 8 of that Court's Rules.
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

## CHAPTER IX

### DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, notify the Community Defender who will discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA

Form 23) and arrange to have the person promptly presented before a Magistrate Judge or District Judge of this court for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview. Where time permits, and consistent with the ability of the pretrial services officer to have adequate time to interview the defendant and verify information prior to an initial appearance, the pretrial services officer shall attempt to have retained or proposed court appointed counsel present for eligible indigent or other defendants at the pretrial services interview.

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

## CHAPTER X

### MISCELLANEOUS

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

B. Claims. Claims for compensation of private attorneys providing representation under the CJA must be submitted on the appropriate CJA form to the clerk of the court. That office will review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, will forward the claim form for the consideration of the appropriate District Judge or Magistrate Judge in accordance with the provisions set out in **Appendix I**, attached hereto. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

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

## CHAPTER XI

### EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Sixth Circuit.

**APPENDIX I  
TO THE CRIMINAL JUSTICE ACT PLAN**

**PLAN FOR THE COMPOSITION, ADMINISTRATION,  
AND MANAGEMENT OF THE CJA PANEL**

**CHAPTER I**

**COMPOSITION OF PANEL OF PRIVATE ATTORNEYS**

**A. CJA Panel**

1. *Approval.* The Court will establish panels (hereinafter referred to as the "CJA Panels") of private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. There shall be a CJA Panel established for the Chattanooga, Greeneville and Knoxville divisions.<sup>1</sup> The Court will approve attorneys for membership on the CJA Panels after receiving recommendations from the Panel Selection Committees (the "Committees"), established pursuant to paragraph B of this Plan. Members of the CJA Panels will serve a term of three years at the pleasure of the Court.<sup>2</sup> Attorneys wishing to serve another term must submit an application prior to the expiration of their term.
2. *Size.* The Committees will fix periodically the size of the CJA Panels. The Panels shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that the CJA Panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation.
3. *Eligibility.* Attorneys who serve on the CJA Panels must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the *Federal Rules of Criminal Procedure*, the *Federal Rules of Evidence*, and the *United States Sentencing Guidelines*.

An attorney may be appointed to only one CJA Panel which shall be the one closest to the attorney's home or place of doing business.

An attorney must have accepted at least two appointments per year to be eligible to serve an additional term.

4. *Mandatory Continuing Legal Education.* CJA Panel attorneys shall annually attend at their expense a minimum of three hours of continuing legal education related to federal criminal practice. All seminars presented by Federal Defender Services of Eastern

---

<sup>1</sup> Appointments to Winchester cases will be from the Chattanooga panel.

<sup>2</sup> In order to stagger the terms and meet the size of the CJA Panel fixed by the Committee, following the approval of this Plan, all CJA Panel attorneys shall reapply and appointments will be made to terms of one, two and three years.

Tennessee or the Office of Defender Services will satisfy this requirement. CJA Panel attorneys must certify their attendance at other federal criminal practice seminars on forms provided by the Federal Community Defender by December 31 of each year. A copy of the agenda must also be attached to the form.

5. *Equal Opportunity.* All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, or disabling condition.
6. *Application.* Application forms for membership on the CJA Panel will be made available, upon request, by the Clerk of the Court. Completed applications will be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the appropriate Panel Selection Committee.

B. Panel Selection Committee

1. *Establishment.* There shall be a Panel Selection Committee established by the Court for the Chattanooga, Greeneville and Knoxville divisions. The committees will include one District Judge, one Magistrate Judge, one attorney who has served on the CJA Panel for three years or more, the District's Panel Representative to the CJA Panel Attorney's Conference, and the Federal Community Defender. The District Judge serving on the committee may appoint additional members. The committees will select their chairperson.
2. *Duties.*
  - a. The Panel Selection Committees will meet at least semiannually. The Committees will review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill any vacancies.

The Committees will also review the operation and administration of their CJA 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. The Committees will also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

- b. 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, or if there is a need to increase the size of the panel because of a change in criminal filings, the Committee will solicit applications, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.
  - c. When a Committee submits the names of applicants for panel membership to the Court for approval, the Committee will furnish information to the Court on

recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.5 of this Plan. At least once each year the Committees will provide the Court with information on the panel of attorneys in each of the categories listed in paragraph I.A.5 of this Plan.

C. CJA Training Panel

The Panel Selection Committees may establish a "CJA Training Panel" consisting of attorneys who do not have the experience required for membership on the CJA Panel. The Panel Selection Committees will establish district-wide requirements for Training Panel Attorneys. A Training Panel Attorney who does not complete the training requirements within two years of appointment to the Training Panel may be removed. Upon completion of the training requirements, a Training Panel Attorney may apply for membership to 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 may be eligible to receive appointments and compensation for their non-duplicative services in assisting CJA Panel members or the Federal Community Defenders in appropriate cases in the discretion of the appointing District or Magistrate Judge.

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.

## CHAPTER II

### ADMINISTRATION AND MANAGEMENT

A. Maintenance of List and Distribution of Appointments

The Clerk's Office will maintain a current list of all attorneys included on the CJA Panel with current office addresses, e-mail addresses, and telephone numbers. The Clerk's Office will also maintain a record of assignments to private counsel and when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Community Defender office and private attorneys according to the formula described in the CJA Plan for the District.

B. Method of Selection

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

Once a District Judge or Magistrate Judge has determined that counsel should be appointed for a person pursuant to the CJA, the Federal Community Defender shall be appointed to the case unless there is a conflict or the Federal Community Defender has met or exceeded its quota of cases. In such an event, the Clerk's Office will arrange for the next available Panel member on the list with no known conflict to attend the hearing. If the appointing District Judge or Magistrate Judge determines that the attorney should be excepted due to a conflict, the nature and complexity of the case, the attorney's experience, geographical considerations, or some other bona fide reason, the appointing District Judge or Magistrate Judge may appoint the next available attorney on the list who is qualified. In the event of an emergency or if an appointment must be made on a weekend, holiday, or other non-working hour, the appointing District Judge or Magistrate Judge may appoint any attorney or attorneys from the list referred to in paragraph A.

When the District Judge or Magistrate Judge presiding over the case, or the Chief Judge if a District Judge has not yet been assigned to the case, determines that the appointment of an attorney who is not a member of the CJA Panel is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting appointment, the attorney may be admitted to the CJA Panel pro hac vice and appointed to represent the CJA defendant. Consideration for preserving the integrity of the Panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the District, should possess such qualities as would qualify him or her for admission to the District's CJA Panel in the ordinary course of Panel selection.

The Clerk's Office shall keep an up-to-date list of each appointment made of CJA Panel members showing the appointments made and appointments declined (with the reason therefore, including unable to contact the attorney).

Approved by the Court: August 16, 2013.

s/Thomas A. Varlan  
Chief United States District Judge

FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE'

BY-LAWS

ARTICLE I

OFFICES

The principal office of the Corporation shall be located in Knoxville, Tennessee. The Corporation shall have such other offices, either within or without the State of Tennessee, as the Board of Directors may require from time to time.

The registered office of the Corporation required to be maintained in the State of Tennessee by the Tennessee Nonprofit Corporation Act (the Act) may, but need not, be identical with the principal office in the State of Tennessee; and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II

PURPOSE AND USE OF FUNDS

Section 2.1 Purpose. The purposes of the Corporation are those set forth in its charter of incorporation, as from time to time amended or restated (the Charter). The Corporation is organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the Code). Specifically, the Corporation is organized for the purpose of implementing the aims and purposes of the Criminal Justice Act by providing direct legal representation of indigent criminal defendants in the United States District Court for the Eastern District of Tennessee (the District), and to assist the judges of the District in managing and training the panel of private attorneys who also provide legal representation to the indigent criminal defendants of the District.

Section 2.2 Use of Funds. The Corporation is not formed for financial or pecuniary gain; and no part of the income, assets or profits of the Corporation is distributable to, or inures to, the benefit of its directors or officers or any other private person, except as provided in Section 4.12 and Section 5.10 as reimbursement for expenses or reasonable compensation for services rendered to the Corporation, and except to make payments and distributions in furtherance of the purposes of the Corporation, as set forth in the Charter and Section 2.1 above.

## ARTICLE III

### MEMBERS

Section 3.1 Members. The Corporation shall have no members.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 4.1 General Powers. The business and affairs of the Corporation shall be supervised by its Board of Directors, which shall exercise in the name of and on behalf of the Corporation all of the rights and privileges legally exercisable by the Corporation as a corporate entity, except as may otherwise be provided by law, the Charter, or these By-Laws. The Board of Directors, as the governing body of the Corporation, shall have the authority to receive, administer and distribute property on behalf of the Corporation in accordance with the purposes set forth in Article II of these By-Laws.

Section 4.2 Number, Tenure, and Qualifications. The number of directors of the corporation shall be not less than three (3) and not more than thirty (30). However, the number of directors may be increased or decreased from time to time by the Board of Directors by amendment of this By-Law; but no decrease shall have the effect of shortening the term of an incumbent director or reducing the number of directors below three. The initial Board of Directors shall be comprised of six persons who shall be appointed by the incorporator. The initial directors shall be appointed for the following terms of office: two directors shall be appointed for a term of one year; two directors shall be appointed for a term of two years; and two directors shall be appointed for a term of three years. Any addition to the number of directors up to thirty may be made by majority vote of the existing directors at any regular or special meeting. Additional directors shall have staggered terms as follows: All additional directors shall be ranked alphabetically by last name. The first director in the resulting list shall have a one-year term; the second a two-year term; the third a three-year term; the fourth a one-year term, and so on. As each initial or additional director's term of office expires, and thereafter, succeeding directors shall be elected for a term of three years by the Board of Directors. Each director shall hold office until his or her term shall have expired and a successor shall have been appointed and qualified, or until his or her earlier resignation, removal from office, or death. A retiring director may succeed himself or herself. Term limits for directors shall be in compliance with the Tennessee Non-Profit Corporation Act.

Directors shall be natural persons who have attained the age of twenty-one years, but need not be residents of the State of Tennessee. No director shall hold a position as a judge, criminal prosecutor, or court administrator during his or her term of office on the Board. In selecting persons to serve on the Board of Directors, consideration should be given to representation from all areas of the District.

Section 4.3 Limited Personal Liability of Directors. No person who is or was a director of the Corporation, nor such person's heirs, executors or administrators, shall be personally liable to the Corporation for monetary damages for breach of fiduciary duty as a director; provided, however, that this provision shall not eliminate or limit the liability of any such person (a) for any breach of a director's duty of loyalty to the Corporation; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (c) under Section 48-58-304 of the Act, as amended from time to time. No repeal or modification of the provisions of this Section 4.3, either directly or by the adoption of a provision inconsistent with the provisions of this Section, shall adversely affect any right or protection, as set forth herein, existing in favor of a particular individual at the time of such repeal or modification.

Section 4.4 Annual Meeting The annual meeting of the Board of Directors shall be held in August, or at such other time and date following the close of the Corporation's fiscal year as shall be determined by the Board of Directors. The purpose of the annual meeting shall be to elect officers and transact such other business as may properly be brought before the meeting. If the election of officers shall not be held on the day herein designated for any annual meeting of the Board of Directors, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Board as soon thereafter as may be convenient.

Section 4.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at least semi-annually, unless postponed by common consent of the Board, for the purpose of the transaction of such business as may properly be brought before the meeting. Regular meetings shall be held at such time, date, and place as the Board of Directors shall from time to time determine.

Section 4.6 Special Meetings. Special meetings of the Board of Directors may be called by the President, or at the request of any director with the agreement of two-thirds of the Board. The President shall fix the place, either within or without the State of Tennessee, for holding any special meeting.

Section 4.7 Notices. Notice of each annual or special meeting shall be given no fewer than ten (10) days nor more than two (2) months prior thereto. The notice provided for in this Section shall be

by telegram or written notice delivered personally or mailed to each director at his or her business or home address or electronically mailed to an address provided by the director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. If electronically mailed, such notice shall be delivered when transmitted by sender. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. The business to be transacted at, or the purpose of, any special meeting of the Board of Directors must be specified in the notice of such meeting.

Section 4.8 Quorum and Participation in Meeting. A majority of the total number of directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The members of the Board, or any committee designated by the Board, may participate in a meeting of the Board or of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another; and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting. The directors shall be promptly furnished a copy of the minutes of the meetings of the Board.

Section 4.9 Manner of Acting/Conflicts of Interest. Each director shall be entitled to one vote upon any matter properly submitted for a vote to the Board of Directors. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, except as may otherwise be specifically provided by law, by the Charter, or by these By Laws. Members of the Board absent from any meeting shall be permitted to vote at such meeting by written proxies. Roberts Rules of Order, Newly Revised, shall control parliamentary procedure at all meetings, unless these By-Laws or the Charter provide otherwise in any particular.

Consistent with Article XI of these By-Laws, no director shall be entitled to vote on any action to be taken by the Board of Directors when such action may create or has the appearance of creating a conflict of interest between the Corporation and such director. Each director who has a potential conflict of interest with the Corporation shall disclose such potential conflict of interest to the Board of Directors prior to any vote to be taken regarding such matter. A "conflict of interest" shall include, but not be limited to, and shall be deemed to exist whenever any director has a direct or indirect financial interest that will be impacted by any action or vote taken by the Board.

Section 4.10 Action Without a Meeting. Any action required or permitted to be taken at a meeting by the Board, or by a committee thereof, may be taken without a meeting if all voting members of the Board or committee, as the case may be, consent in writing to taking such action without a meeting. If all members entitled to vote on the action shall consent in writing to taking such action without a meeting, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the members. The action must be evidenced by one or more written consents describing the action taken, signed in one or more counterparts by each member entitled to vote on the action, indicating each signing member's vote or abstention on the action taken. All such written consents and actions shall be filed with the minutes of the proceedings of the Board or committee. A consent signed under this Section shall have the same force and effect as a meeting vote of the Board, or any committee thereof, and may be described as such in any document.

Section 4.11 Vacancies. Any vacancy occurring in the Board of Directors, including vacancies created by the removal of Directors with or without cause, shall be filled by the affirmative vote of a majority of the remaining directors, so long as the requirements of Section 4.2 are met. A director designated to fill a vacancy shall serve for the unexpired term of his or her predecessor in office, or, if there is no predecessor, until the next election of directors. If a vacancy is not filled within ninety (90) days of the event which resulted in there being fewer directors than required by the By-Laws or Charter, any director may apply to a court having equity jurisdiction in the county in which the Corporation has its principal office to have such court appoint a sufficient number of directors so that the Corporation will have the number of directors required by its By-Laws or Charter, whichever number is greater. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the Board of Directors for a term of office continuing only until the next election of directors.

Section 4.12 Compensation. No director shall receive compensation for his or her services. However, any director who serves the Corporation in another capacity may receive reasonable compensation therefore.

Section 4.13 Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any Corporation matter is taken shall be presumed to have assented to the action taken, unless his or her dissent shall be entered in the minutes of the meeting, or unless he or she shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 4.14 Removal. Any or all of the directors may be removed for cause or without cause by vote of a majority of the Board of Directors. For purposes of this provision, "cause" shall mean final conviction of a felony, declaration of unsound mind by court order, adjudication of bankruptcy, non-acceptance of office, conduct prejudicial to the interest of the Corporation, or unexcused absence from three (3) consecutive regular meetings. Removal of a director shall also constitute removal as an officer of the Corporation and as a member of all committees of the Board.

Section 4.15 Resignation. A director may resign membership at any time by tendering a resignation in writing to the President. A resignation shall become effective upon the date specified in such notice, or, if no date is specified, upon receipt of the resignation by the Corporation at its principal place of business. Assumption of a judicial, prosecutorial, or court administration office shall constitute a constructive resignation of membership effective immediately upon assumption of such office.

Section 4.16 The Community Defender (Chief Attorney) of Corporation. The Community Defender shall be the Chief Attorney and principal administrative officer of the Corporation and, as such, shall manage all of the business and affairs of the Corporation, including, without limitation, the supervision of its staff. The Community Defender shall serve as an ex-officio non-voting member of the Board of Directors, the Executive Committee and all committees. The Community Defender shall be responsible to the Board of Directors, shall report annually to the Board, making budget and program recommendations, and shall perform such other duties as the Board of Directors may designate from time to time. The Community Defender shall serve a term of four years, unless sooner removed for just cause as defined in the Corporation's written personnel policies and procedures and in any written contract of employment which may be entered into between the Community Defender and the Corporation, or unless he or she sooner resigns. A Community Defender may be engaged by the Board of Directors for consecutive terms of office. The initial Community Defender shall be Leah J. Prewitt. The Community Defender and all other staff shall be compensated for services to the Corporation in such amounts, and according to such terms and conditions, as shall from time to time be determined by the Board of Directors, but such salary and benefits shall be competitive with the salary and benefits of the United States Attorney for the District and his or her staff.

Section 4.17 Equal Opportunity Employer. The Corporation shall be an equal opportunity employer and shall not discriminate in its employment practices regarding any group or class protected by federal or state employment discrimination laws. The Corporation shall engage in affirmative action employment practices to encourage full participation by all persons without regard to race, sex, national origin, religion, handicap, or other factor not related to the performance of the functions of the Corporation.

## ARTICLE V

### OFFICERS

Section 5.1 Number. There shall be a President, Vice-President, and Secretary of the Corporation, each of whom shall be elected in accordance with the provisions of this Article. The Board may also elect such other officers and assistant officers as the Board may deem necessary or appropriate. Except for the offices of President and Secretary, any two or more offices may be held by the same person.

Section 5.2 Election and Term of Office. The officers shall be elected by the Board from among its members at its annual meeting every two years. Each officer shall hold office for a term of two years, or until his or her earlier death, resignation or removal from office in the manner hereinafter provided.

Section 5.3 President. The President shall be the Chair of the Board of Directors and principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control the affairs of the Corporation. He or she shall, when present, preside at all meetings of the Board of Directors and the Executive Committee, and shall in general perform all of the duties, and have all of the authority, incident to the office of the chief executive officer of a corporation, and such other duties as may from time to time be prescribed by the Board of Directors. The President may sign, with the Secretary or any other proper officer thereunto authorized by the Board of Directors, deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution shall be expressly delegated by the Board of Directors or By-Laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed.

Section 5.4 Vice-President. In the absence of the President, or in the event of his or her death, inability, or refusal to act, the Vice-President shall perform the duties of the President (pending election, if necessary, of a successor pursuant to Section 5.8 below), and when so acting, shall have all the powers of, and be subject to all the restrictions upon the President. Any Vice-President shall perform such other duties as may from time to time be assigned by the President or by the Board of Directors.

Section 5.5 Secretary. The Secretary shall keep the minutes of the proceedings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; be custodian of the corporate records and of the seal, if any, of the Corporation and see that the seal is affixed to all documents, the execution of which is duly authorized on behalf of the Corporation under its seal; keep a register of the post office address of each member of the Board of Directors, which address shall be furnished to the Secretary by each Director; and in general perform all duties incident to the office of secretary and such other duties as may from time to time be assigned by the President or by the Board of Directors.

Section 5.6 Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article IX of these By-Laws; disburse the funds of the Corporation in accordance with the directives of the Board of Directors, taking proper vouchers for such disbursements, and render to the Board of Directors, at its annual meeting and at such other times as may be suggested by the Board, an account of all the transactions of the treasurer and of the financial condition of the Corporation; and in general perform all of the duties incident to the office of treasurer and such other duties as may from time to time be assigned by the President or by the Board of Directors. The Corporation shall pay the premiums on any corporate surety bonds furnished for the Treasurer. Nothing in these By-Laws shall require that the Board of Directors appoint a Treasurer for the Corporation, as the office of Treasurer is purely optional and at the sole discretion of the Board of Directors.

Section 5.7 Removal. Any Board member removed from office pursuant to Section 4.14 hereof shall be automatically removed as an officer. The Board may remove any officer when, in its judgment, the best interests of the Corporation will be served thereby.

Section 5.8 Vacancies. A vacancy in any office held by a director, because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board after a director's vacancy has been filled for the unexpired portion of the term in accordance with Section 4.12, or in the case of resignation from office, but not from the Board, at any time after the resignation is received.

Section 5.9 Resignation. An officer may resign his or her office at any time by tendering a resignation in writing to the President, or in the case of resignation of the President, to the Secretary. A resignation shall become effective upon the date specified in such notice, or if no date is specified, upon receipt of the resignation by the Corporation at its principal place of business.

Section 5.10 Compensation and Expenses. No officer of the Corporation shall receive compensation for services. However, reasonable expenses incurred by all of the officers in the course of conducting the affairs of the Corporation shall be reimbursed by the Corporation upon proper substantiation.

Section 5.11 Voting Securities of Corporation. Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Corporation to attend and to act and vote at any meetings of security holders, partnerships, or corporations in which the Corporation may hold securities, and at such meetings shall possess and may execute any and all rights and powers incident to the ownership of such securities which the Corporation might have possessed and exercised if it had been present. The Board of Directors may from time to time by resolution confer like powers upon any other person or persons.

## ARTICLE VI

### STANDARDS OF CONDUCT

Section 6.1 Standards of Conduct A director or an officer of the Corporation shall discharge his or her duties as an officer or director, including duties as a member of a committee:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner he or she personally believes to be in the best interests of the Corporation.

Section 6.2 Reliance on Third Parties. In discharging his or her duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers of employees of the Corporation who the director or officer reasonably believes to be reliable and competent in the matters presented;

- (b) Legal counsel, public accountants or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence; or
- (c) A committee of the Board of which the director or officer is not a member, as to matters within its jurisdiction, if the director or officer reasonably believes the committee merits confidence.

Section 6.3 Bad Faith. A director or officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by Section 6.2 unwarranted.

Section 6.4 No Liability. A director or officer is not liable for any action taken, or any failure to take action as an officer or director, if he or she performs the duties of the office in compliance with the provisions of this Article, or if he or she is immune from suit under the provisions of Section 48-58-601 of the Act.

Section 6.5 No Fiduciary. No director or officer shall be deemed to be a fiduciary with respect to the Corporation or with respect to any property held or administered by the Corporation, including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

## ARTICLE VII

### EXECUTIVE COMMITTEE

Section 7.1 Membership. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate three or more of its members to serve as an Executive Committee. The designation of the Executive Committee and the delegation of authority thereto shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

Section 7.2 Authority. The Executive Committee, when the Board of Directors is not in session, shall have and may exercise all the authority of the Board of Directors except to the extent, if any, that such authority shall be limited by these By-Laws. All action taken by the Executive Committee shall be subject to ratification by the Board. However, the Executive Committee shall not have the authority to do the following: authorize distributions on behalf of the Corporation; approve or recommend dissolving the Corporation or revoking a voluntary; approve or recommend a merger or sale, pledge or transfer of all or substantially all of the Corporation's assets; elect, appoint, or remove or fill any vacancies on the Board of Directors or

any of its committees; adopt, amend or repeal the Charter of By-laws of the Corporation; or amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable.

Section 7.3 Meetings. Regular meetings of the Executive Committee may be held at such times and places as the Executive Committee may from time to time fix by resolution, upon not less than five (5) business days notice prior thereto. Special meetings of the Executive Committee may be called by any member with the concurrence of a majority of the members of the Committee upon not less than one (1) business day notice prior thereto. The notices provided for in this Section shall state the place, date, and hour of the meeting, and the business proposed to be transacted at the meeting. The notices must be written, and if mailed, shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the member of the Committee at his or her home or business address. If electronically mailed to an address provided by the director, such notice shall be delivered when transmitted by the sender.

Section 7.4 Quorum. A majority of the voting members of the Executive Committee shall constitute a quorum for the transaction of business at any meeting thereof. Action of the Executive Committee must be authorized by the affirmative vote of a majority of all voting members at a meeting at which a quorum is present.

Section 7.5 Action Without A Meeting. Any action required or permitted to be taken by the Executive Committee at a meeting may be taken without a meeting in accordance with the provisions of Section 4.11 of these By-Laws.

Section 7.6 Procedure. The Executive Committee may fix its own rules of procedure, provided such rules are not inconsistent with these By-Laws. The Executive Committee shall keep regular minutes of its proceedings and report its proceedings to the Board of Directors for its information at the next meeting of the Board held after such

## ARTICLE VIII

### COMMITTEES

Section 8.1 Committees of the Board. All committees shall consist of two or more members, shall be under the control of and serve at the pleasure of the Board of Directors, shall have charge of such duties as may be assigned to them by the Board or these By-Laws, shall maintain a permanent record of their actions and proceedings, and shall regularly submit a report of their actions to the Board, which shall ratify the actions of each Committee. The President, or his or her designee, shall serve on each committee as an ex-officio member; and the Community Defender shall serve on each committee as an ex-officio non-voting member.

Section 8.2 General Provisions for Standing Committees.

(a) Unless otherwise provided, the Board shall appoint the members of all standing committees at each annual meeting of the Board, or as soon as practicable thereafter, to hold office for a term of one year, commencing immediately following the meeting at which they are appointed and ending after the close of the next annual meeting of the Board at which their successors are appointed and qualified, or until their earlier death, resignation or removal. Committee members need not be members of the Board of Directors, but shall be selected based on their expertise and familiarity with respect to the subject matter of the committee to which they are appointed.

(b) The President shall appoint all chairs of all standing committees from among the membership of the Board of Directors.

(c) A member of a standing committee may resign at any time by giving notice both to the President of the Board and the chair of the committee from which the member is resigning.

(d) The Board may remove a member of a standing committee when, in its judgment, the best interests of the corporation will be served by such removal.

(e) The President of the Board of Directors shall fill all vacancies in the chairs of standing committees, and the Board shall fill all other vacancies in standing committees.

(f) Meetings of standing committees may be called by their respective chairs or by the President of the Board of Directors. Each committee shall meet as often as is necessary to perform its functions.

(g) Each standing committee may adopt rules for its own governance, provided such rules are not inconsistent with the law, the Charter or these By-Laws.

(h) A majority of the voting members of a committee shall constitute a quorum for the transaction of business at any committee meeting. The act of a majority of the members of a standing committee present at a meeting at which a quorum is present shall be the act of the committee. Unless otherwise provided, a chair of a standing committee shall be entitled to vote on any question before the committee.

(i) Each standing committee may invite additional individuals with expertise or familiarity in a pertinent area to meet with and assist the committee. Such individuals shall not vote or be counted in determining the existence of a quorum, and may be excluded from any executive session of the committee.

Section 8.3 Standing Committees. The Board of Directors shall maintain the following standing committees, and such additional standing committees as it may determine from time to time to be necessary or desirable for its proper functioning:

(a) Nominating Committee. This committee shall present a slate to the Board of Directors for election of Board members and officers at its annual meeting. It shall also provide orientation for new Board members.

Section 8.4 Ad Hoc Committees. The Board may from time to time by resolution create such ad hoc committees as it believes necessary or desirable to investigate matters or advise the Board. Ad hoc committees shall limit their activities to the accomplishment of the tasks for which they are created and shall have no power to act except as specifically conferred by resolution of the Board. Such committees shall operate until their tasks have been accomplished or until earlier discharged by the Board.

## ARTICLE IX

### REPORTS, CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 9.1 Annual Report. In accordance with 18 U.S.C. Section 3006A(h)(2)(B), the Board of Directors shall submit to the Judicial Conference of the United States an annual report setting forth the activities and financial position of the Corporation, and its anticipate caseload and expenses for the coming year.

Section 9.2 Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract, or execute and deliver any instrument, in the name of or on behalf of the Corporation; and such authority may be general or confined to specific instances.

Section 9.3 Negotiable Instruments. All checks, drafts, notes or other obligations of the Corporation shall be signed by such of the officers of the Corporation, or by such other person(s), as may be authorized by the Board of Directors.

Section 9.4 Deposits. The monies of the Corporation may be deposited in the name of the Corporation in such bank(s) or financial institution(s) as the Board of Directors shall designate from time to time and shall be drawn out by check signed by the officer(s) or person(s) designated by resolution adopted by the Board of Directors.

Section 9.5 Loans to Directors and Officers Prohibited. Consistent with T.C.A. Section 48-58-303, no loans or advances, other than customary travel advances, shall be made by the Corporation to any of its directors or officers.

## ARTICLE X

### INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 10.1 Mandatory Indemnification of Directors and Officers. To the maximum extent permitted by the provisions of Sections 48-58-501, et. seq., of the Act, as amended from time to time (provided, however, that if an amendment to the Act in any way limits or restricts the indemnification rights permitted by law as of the date hereof, such amendment shall apply only to the extent mandated by law and only to activities of persons subject to indemnification under this Section which occur subsequent to the effective date of such amendment), the Corporation shall indemnify and advance expenses to any person who is or was a director or officer of the Corporation, or to such person's heirs, executors and administrators, for the defense of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal (any such action, suit or proceeding being hereinafter referred to as the "Proceeding"), to which such person was, is or is threatened to be made, a named defendant or respondent, which indemnification and advancement of expenses shall include counsel fees actually incurred as a result of the Proceeding or any appeal thereto, reasonable expenses actually incurred with respect to the Proceeding, all fines (including any excess tax assessed with respect to an employee benefit plan), judgments, penalties and amounts paid in settlement thereof, subject to the following conditions:

(a) The Proceeding was instituted by reason of the fact that such person is or was a director or officer of the Corporation; and

(b) The director or officer conducted himself or herself in good faith, and he or she reasonably believed (i) in the case of conduct in his or her official capacity with the Corporation, that his or her conduct was in its best interest; (ii) in all other cases, that his or her conduct was at least not opposed to the best interests of the Corporation; and (iii) in the case of criminal proceedings, that he or she had no reasonable cause to believe his or her conduct was unlawful. The conduct of a director or officer with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interest of the participants in, and beneficiaries of, the plan, shall be conduct that satisfies the requirements that such person's conduct was at least not opposed to the best interests of the Corporation. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent is not, of itself, determinative that the director or officer did not meet the standard of conduct herein described.

Section 10.2 Permissive Indemnification of Employees and Agents  
The Corporation may, to the maximum extent permitted by the provisions of Section 48-58-501, et seq., of the Act, as amended from time to time (provided, however, that if an amendment to the Act in any way limits or restricts the indemnification rights permitted by law as of the date hereof, such amendment shall apply only to the extent mandated by law and only to activities of persons subject to indemnification under this Section which occur subsequent to the effective date of such amendment), indemnify and advance expenses in a Proceeding to any person who is or was an employee or agent of the Corporation, or to such person's heirs, executors and administrators, to the same extent as set forth in Section 10.1 above, provided that the Proceeding was instituted by reason of the fact that such person is or was an employee or agent of the Corporation and met the standards of conduct set forth in Subsection 10.1(b) above. The corporation may also indemnify and advance expenses in a Proceeding to any person who is or was an employee or agent of the Corporation to the extent, consistent with public policy, as may be provided by the Charter, by these By-Laws, by contract, or by general or specific action of the Board of Directors.

Section 10.3 Non-Exclusive Application. The rights to indemnification and advancement of expenses set forth in Sections 10.1 and 10.2 above are contractual between the Corporation and the person being indemnified, and his or her heirs, executors and administrators, and are not exclusive of other similar rights of indemnification or advancement of expenses to which such persons may be entitled, whether by contract, by law, by the Charter, by a resolution of the Board, by these By-Laws, by the purchase and maintenance by the Corporation of insurance on behalf of a director, officer, employee or agent of the corporation, or by an agreement with the Corporation providing for such indemnification, all of which means of indemnification and advancement of expenses are hereby specifically authorized. The rights of indemnification and advancement of expenses set forth in this Article X shall also apply, as appropriate, to any person who was an officer, director, employee or agent (or to such person's heirs, executors and administrators) who served in any capacity for another association, corporation, partnership or trust at the request of this Corporation.

Section 10.4 Non-Limiting Application. The provisions of this Article X shall not limit the power of the Corporation to pay or reimburse expenses incurred by a director, officer, employee or agent of the Corporation in connection with such person's appearing as a witness in a Proceeding at a time when he or she has not been made a named defendant or respondent to the Proceeding.

Section 10.5 Prohibited Indemnification. Notwithstanding any other provision of this Article X, the Corporation shall not indemnify or advance expenses to or on behalf of any director, officer, employee or agent of the Corporation, or such person's heirs, executors or administrators:

(a) If a judgment or other final adjudication adverse to such person establishes his or her liability for any breach of the duty of loyalty to the Corporation, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or under Section 48-58-304 of the Act; or

(b) In connection with a Proceeding by or in the right of the Corporation in which such person was adjudged liable to the Corporation; or

(c) In connection with any other Proceeding charging improper personal benefit to such person, whether or not involving action in his or her official capacity, in which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her.

Section 10.6 Repeal or Modification Not Retroactive. No repeal or modification of the provisions of this Article X, either directly or by the adoption of a provision inconsistent with the provisions of this Article, shall adversely affect any right or protection, as set forth herein, existing in favor of a particular individual at the time of such repeal or modification.

## ARTICLE XI

### CONFLICTS OF INTEREST

Section 11.1 General. A conflict of interest transaction is a transaction with the Corporation in which a director or officer of the Corporation has a direct or indirect interest. A director or officer of the Corporation has an indirect interest in a transaction if, but not only if, a party to the transaction is another entity in which the director or officer has a material interest, or of which the director or officer is a general partner, director, or officer. A conflict of interest transaction is not voidable on the basis for imposing liability on the director or officer if the transaction was fair at the time it was entered into, or if the transaction is approved as provided in Section 11.2.

Section 11.2 Manner of Approval. A transaction in which a director or officer of the Corporation has a conflict of interest may be approved if:

(a) The material facts of the transaction and the interest of the director or officer were disclosed or known to the Board, or to a committee consisting entirely of members of the Board, and the Board or such committee authorized, approved or ratified the transaction; or

- (b) Approval is obtained from the Attorney General of the State of Tennessee, or from a court of record having equity jurisdiction in an action in which the Attorney General is joined as a party.

Section 11.3 No Conflict in Representation of Co- Defendants. Directors shall not have access to any client's files, nor shall there be discussion of individual cases or clients during Board or Committee meetings. All clients are represented by the Community Defender in accordance with the Plan for the Implementation of the Criminal Justice Act for the Eastern District of Tennessee (CJA Plan), and are not clients of the Corporation per se. There is no conflict of interest created where a Director represents a co-defendant of a client of the Community Defender, representation of whom is undertaken by employees or agents of the Corporation in accordance with the CJA Plan for the Eastern District of Tennessee.

Section 11.4 Quorum Requirements. For purposes of Section 11.2, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the Directors on the Board, or of a committee consisting entirely of members of the Board, who have no direct or indirect interest in the transaction; but a transaction may not be authorized, approved or ratified under this Article by a single director. A quorum is present for the purpose of taking action under this Article if a majority of the Directors on the Board or Committee who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction. The presence of, or vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 11.2(a) if the transaction is otherwise approved as provided in Section 11.2.

## ARTICLE XII

### WAIVER OF NOTICE

Whenever any notice is required to be given to any director, officer or committee member of the Corporation under the provisions of these By-Laws, the Charter, or the Act, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE XIII

### RECORDS AND REPORTS

Section 13.1 Corporate Records. The Corporation shall keep as permanent records minutes of all meetings of the Board of Directors, a record of all actions taken by the Board of Directors without a meeting, and appropriate accounting records.

Section 13.2 Records at Principal Office. The Corporation shall keep at all times a copy of the following records at its principal office:

1. Its Amended and Restated Charter and all amendments thereto;
2. These By-Laws and all amendments thereto;
3. Resolutions and Policy Statements adopted by the Board of Directors;
4. The minutes of all meetings of the Board of Directors and the records of all actions taken by the Board of Directors without a meeting for the past three (3) years;
5. All written communications to the directors generally within the past five (5) years', including the past five(5) years' annual financial statements;
6. A list of the names and business or home addresses of Its current directors and officers;
7. The executed annual Conflict of Interest statements; and
8. The most recent annual report delivered to the Tennessee Secretary of State.

Section 13.3 Annual Financial Statements. The Corporation shall prepare annual financial statements that include a balance sheet as of the end of the fiscal year, an income statement for that year, and such other information necessary to comply with the requirements of the applicable provisions of the Tennessee Nonprofit Corporation Act. Further, the Corporation shall file all required tax returns.

## ARTICLE XIV

### AMENDMENTS

These By-Laws and the Charter may be altered, amended, or repealed, and a new Charter or By-Laws adopted, upon the affirmative vote of two-thirds (66.6%) of the Board of Directors at any annual or special meeting, except to the extent that such alteration, amendment or repeal is inconsistent with Article XIV hereof, and except to the extent that such alteration, amendment or repeal is specifically prohibited by the Charter, these By-Laws, or the Act.

## ARTICLE XV

### EXEMPT STATUS

The Corporation has been organized and will be operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and, as such, will be exempt from taxation under Section 501(a) of the Code. The Corporation intends to apply for recognition of its exempt status by filing Internal Revenue Service Form 1023 within the time prescribed under Section 508 of the Code and Treas. Reg. Section 1.508-1(a)(2). Any provision of these By-Laws or of the Charter which would in any manner adversely affect the Corporation's tax exempt status shall be void and shall be deleted or modified as necessary to comply with all applicable federal and state requirements for the maintenance of the Corporation's tax exempt status.

**These Revised By-Laws of the Federal Defender Services of Eastern Tennessee have been adopted by the Board of Directors as of the 19th day of September, 2013.**

**APPENDIX III  
TO THE CRIMINAL JUSTICE ACT PLAN**

**CAPITAL CASES**

Pursuant to 18 U.S.C. § 3005 and 18 U.S.C. § 3599, the Court adopts the following provisions for the appointment of counsel in capital cases. In the event of any conflict between these provisions and any federal statute, or any rule or guideline issued by the Administrative Office of the U.S. Courts, the statute, rule or guideline controls. The purpose of this appendix is to recognize the unique skill and time challenges presented by capital case representation and to ensure that zealous, well qualified attorneys handle capital cases.

- A. Capital cases: “Cases involving the death penalty” or “capital cases” include cases not yet filed in this District in which the government may seek the death penalty under federal law or any case in which the penalty of death has been imposed by a state or federal court upon an individual seeking to set aside or vacate a conviction or sentence pursuant to 28 U.S.C. §§ 2254 or 2255. This Plan is intended to provide for the appointment of counsel when required as trial counsel, appellate counsel for direct appeal, or post conviction counsel.
  
- B. Trial Counsel
  - 1. Notification of Eligibility for Capital Punishment: In order to conserve scarce resources, to facilitate good administration under the CJA, and to ensure the appointment of qualified counsel, the United States Attorney’s Office shall, consistent with other lawful obligations, promptly notify the Court and the Community Defender that a death-eligible offense has been or is to be charged.
  
  - 2. Timing of Appointment of Trial Counsel: The provisions of this section shall apply at the earliest opportunity. The Court may upon its own motion or at the request of any interested party, including the Community Defender, appoint counsel before the formal initiation of proceedings in order to protect the rights of a person who is the focus of an investigation in a capital case. The provisions of this section take effect no later than when a defendant is charged with a federal criminal offense for which the death penalty is possible, unless the United States Attorney’s Office issues written notice at or before the initial appearance that they will not seek the death penalty or unless the court orders that death is not an applicable punishment upon conviction. If such written notice is later withdrawn, the provisions of this section must be implemented as soon as possible.
  
  - 3. Initial Appointment: The Community Defender may appear and act as counsel before the formal appointment of counsel subject to subsequent approval by the Court, or the appointment of additional or different counsel under the provisions of this Plan.
  
  - 4. Appointment Process: In assigning counsel under these provisions, the Court must consider the recommendation of the Community Defender in compliance with 18 U.S.C. § 3005. The Community Defender shall be responsible for maintaining and coordinating with the Panel Selection Committee in each of the District’s Divisions a list of attorneys who, in addition to the requirements for Panel membership set out in Section I. A.3. of Appendix I to the

Criminal Justice Act Plan for the Eastern District of Tennessee, meet the following requirements:

- a. Statutory requirements of 18 U.S.C. § 3599 and 18 U.S.C. § 3005;
- b. To the extent practical, the guidelines adopted by the American Bar Association, *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (Feb.2003)([http://www.americanbar.org/content/dam/aba/uncategorized/Death\\_Penalty\\_Representation/Standards/National/2003Guidelines.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/Death_Penalty_Representation/Standards/National/2003Guidelines.pdf));
- c. Attendance at a sufficient number of recent hours of CLE approved seminars or training programs where the focus was the defense of capital cases; and
- d. Demonstration of a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases.

The Panel Selection Committees in each Division shall review the qualifications of those attorneys on the capital panel list at least annually and shall remove the names of any who do not meet the requirements set out above.

5. Waiver of Appointment Requirements under B(1)(a)-(d): The Court for good cause, upon considering the recommendation of the Community Defender, may appoint an attorney whose background, knowledge, or experience would otherwise enable him or her to provide proper representation in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation. The Court for good cause, upon considering the recommendation of the Community Defender, may appoint an out of district attorney as one of the two trial attorneys.
6. Number of Trial Counsel: At the initial appearance, the defendant shall be advised of the right to be represented by two appointed attorneys, at least one of whom shall be learned in the law applicable to capital cases under 18 U.S.C. § 3005.
7. Appointment of Community Defender as Trial Counsel: Consistent with the resources available to the Community Defender's Office and consistent with the qualifications set out above, the Community Defender may be appointed as learned counsel or as second chair.

C. Appellate Counsel

1. Appointment of Two or More Attorneys: In the event the defendant is convicted and sentenced to death, after consultation with trial counsel and the defendant, the Community Defender, where appropriate, shall provide the presiding judge with the names of at least two attorneys to perfect a direct appeal, at least one of whom did not represent the appellant at trial.
2. Qualifications: In appointing appellate counsel, the Court should consider the attorney's experience in federal criminal appeals and capital appeals and should consider their attendance at relevant CLE courses. At least one of the attorneys should meet the qualifications as "learned counsel," and both attorneys should be qualified as set out in Section B(1)(a)-(d).

#### D. Post-Conviction Counsel

1. Appointment of Counsel: The court shall appoint the Community Defender with his or her consent or another attorney qualified under section 3599(c) of Title 18 of the United States Code.
2. Qualifications: The Panel Selection Committees in each Division of the District shall maintain lists of qualified attorneys who are experienced in the field of post conviction criminal defense and in federal appellate practice. Attorneys on the panel list should also have attended CLE programs focusing on post-conviction representation and/or death penalty representation and shall have demonstrated proficiency of representation and commitment required by a capital case.
3. Community Defender: The Federal Community Defender may be appointed as sole counsel in such proceedings.