

MEMORANDUM

To: Criminal and Delinquency Panel Members
From: Indigent Defense Administration, Bar Association of San Francisco
Date: September 16, 2004
Re: Re-classification of complex fraud cases as Regular Felonies

The definition of a serious felony utilized by the Superior Court and the Bar Association of San Francisco's Indigent Defense Administration for the dual purposes of remuneration and qualification of counsel is articulated in the Billing and Procedures Manual (of the San Francisco Superior Court) as well as on the application for membership to the criminal and delinquency conflicts panels. This definition for serious felonies does not currently parallel either the definition as stated in Penal Code section 1192.7, or the list of violent felonies contained in Penal Code section 667.5(c). A complete overhaul of the definition of serious felonies to mirror the aforementioned statutes cannot be considered without evaluating the significant fiscal impact such changes could bring. BASF's IDA is reviewing and will continue to review this issue.

However, the San Francisco Superior Court and BASF's Lawyer Referral and Information Service have implemented a change to the definition of serious felonies that is effective on September 16, 2004. **“Complex fraud” cases (defined as “securities, consumer, insurance or tax” fraud) are now removed from the definition of serious felonies and instead, reclassified as regular felonies.** The Court and BASF have also agreed that attorneys should be qualified at the serious felony level of experience to be appointed a complex fraud case, while compensation will be paid at the regular felony rate.

The reasons for the change in classification center on the disparity in sentencing, the ambiguity in the definition and the overwhelming cost of complex fraud cases. Complex fraud cases, as well as some violent crimes, have been compensated at \$92.00 per hour in criminal cases and \$87.00 per hour in delinquency cases. In contrast to violent crimes, complex fraud cases generally involve a great deal of document review and are not subject to severe penalties in state court. The imposition of a prison sentence in such cases is unusual. In addition, the definition of “complex fraud” is vague; the court, conflicts counsel and IDA administrators are often required to decide on a case-by-case basis whether the particular charges are eligible for appointment of more qualified counsel at the higher rate of compensation. IDA administrators have found that enormous costs are often associated with these multi-defendant “paper” prosecutions, though the cases are not subject to severe penalties.

Accordingly, following careful consideration by BASF and the Superior Court, complex fraud cases have been re-designated as regular felonies and will be compensated at \$77.00 for criminal cases and \$72.00 per hour for delinquency cases. This new compensation rate applies to all appointments made after September 16, 2004.