

1.02 Assignment of counsel or pro se representation

18 U.S.C. § 3006A; CJA Forms 20, 23

If counsel has not been assigned by the magistrate judge before defendant's first court appearance, assignment of counsel should be the first item of business before the judge.

[Note: If you have any doubts about defendant's ability to speak and understand English, consider appointing a certified interpreter in accordance with 18 U.S.C. § 1827.]

A. If defendant has no attorney:

1. Inform defendant:

- (a) of his or her constitutional right to be represented by an attorney at every stage of the proceedings;
- (b) that if he or she is unable to afford an attorney, the court will appoint one without cost to him or her (18 U.S.C. § 3006A, Fed. R. Crim. P. 44);
- (c) of the offense with which he or she is charged.

2. Ask defendant:

- (a) if he or she understands his or her right to an attorney;
- (b) if he or she wishes and is able to obtain counsel;
- (c) if he or she wants the court to appoint counsel.

B. If defendant requests appointed counsel:

- 1. Require the completion of a Financial Affidavit by defendant and sign the Appointment of Counsel order, both on the appropriate Criminal Justice Act forms.
- 2. Inform defendant that he or she is swearing to the answers to the questions on the affidavit and that he or she may be penalized for perjury if he or she gives false information.

C. If defendant does not wish counsel:

The accused has a constitutional right to self-representation. Waiver of counsel must, however, be knowing and voluntary.