

**CRIMINAL JUSTICE ACT PLAN
of the
UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF PENNSYLVANIA**

*Adopted pursuant to the Criminal Justice Act, as amended.
This Local Plan was last revised March 16, 2021*

CRIMINAL JUSTICE ACT PLAN

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CRIMINAL JUSTICE ACT PLAN

I. Authority

Pursuant to the Criminal Justice Act of 1964, as amended, Title 18, United States Code, § 3006A (“CJA”), and the Guidelines for Administering the Criminal Justice Act and Related Statutes, Volume 7 A, of the Guide to Judiciary Policy (“CJA Guidelines”), the judges of the United States District Court for the Western District of Pennsylvania adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. Statement of Policy

A. Objectives

The objectives of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and Guide, Vol. 7A, in a way that meets the needs of this district.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to

counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

B. Compliance

1. The Court, its clerk, the Federal Public Defender, attorneys provided by a bar association or legal aid agency, and private attorneys appointed under the CJA must comply with Guide, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.
2. The Court will ensure that a current copy of the CJA Plan is made available on the Court's website and provided to all attorneys selected to serve as a member of the CJA panel of private attorneys ("CJA Panel").

III. Definitions

A. Representation

"Representation" includes counsel and investigative, expert, and other services.

B. Appointed Attorney

"Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the Federal Public Defender and staff attorneys of the Federal Public Defender organization, and attorneys provided by a bar association or legal aid agency.

C. CJA Administrator

"CJA Administrator" is a person designated by the Federal Public Defender to administer the CJA Panel.

IV. Determination of Eligibility for CJA Representation

A. Subject-Matter Eligibility

1. Mandatory

Representation must 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 18 U.S.C. § 5031;
- 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 18 U.S.C. chapter 313;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- 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 18 U.S.C. § 4109;

- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

Whenever a district judge or 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 under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;
- c. is charged with civil or criminal contempt and 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. has been advised by the United States Attorney or a law enforcement officer that they are the target of a grand jury investigation;
- f. is proposed by the United States Attorney for processing under a pretrial diversion program; or

- g. is held for international extradition under 18 U.S.C. chapter 209.

3. Ancillary Matters

Representation may also be provided for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the Court should consider whether such representation is reasonably necessary:

- a. to protect a constitutional right;
- b. to contribute in some significant way to the defense of the principal criminal charge;
- c. to aid in preparation for the trial or disposition of the principal criminal charge;
- d. to enforce the terms of a plea agreement in the principal criminal charge;
- e. to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
- f. to effectuate the return of real or personal property belonging to the CJA client by filing a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

B. Financial Eligibility

1. Presentation of Accused for Financial Eligibility Determination

a. Duties of Law Enforcement

- (i) Upon arrest, and where the defendant has not retained or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate Court personnel, in connection with a federal criminal charge.
- (ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

b. Duties of United States Attorney

- (i) Upon the return or unsealing of an indictment or the filing of a criminal information, and where the defendant has not retained or waived counsel, the United States Attorney or their delegate will promptly notify, telephonically or electronically, appropriate Court personnel, as well as the Federal Public Defender. The Federal Public Defender should be informed at this time if there is a known actual or potential conflict of interest between the defendant and the Federal Public Defender's office.
- (ii) Upon issuance of a target letter, and where the individual has not retained or waived counsel, the United States Attorney or their delegate must promptly notify, telephonically or electronically, the appropriate Court personnel, who in turn will notify the Federal Public

Defender, unless the United States Attorney is aware of an actual or potential conflict with the target and the Federal Public Defender, in which case they must promptly notify the Court.

- (iii) Employees of the United States Attorney's Office should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

c. Duties of Federal Public Defender

- (i) In cases in which the Federal Public Defender may be appointed, the office will:
 - immediately investigate and determine whether an actual or potential conflict exists; and
 - in the event of an actual or potential conflict, promptly notify the Court to facilitate the timely appointment of other counsel.
- (ii) When practicable, the Federal Public Defender will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the completion of a financial affidavit (Form CJA 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.

Defender Services Committee Comment: The Judicial Conference recognizes the importance of the advice of counsel for persons subject to proceedings under

the Bail Reform Act, 18 U.S.C. § 3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the Conference encourages districts to take the steps necessary to permit the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing. JCUS-MAR 88, p. 18–19.

2. Factual Determination of Financial Eligibility

- a. In every case where appointment of counsel is authorized under 18 U.S.C. § 3006A(a) and related statutes, the Court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.
- b. The determination of eligibility for representation under the CJA is a judicial function to be performed by the Court after making appropriate inquiries concerning the person’s financial eligibility. Other employees of the Court may be designated to obtain or verify the facts relevant to the financial eligibility determination.
- c. In determining whether a person is “financially unable to obtain counsel,” consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.
- d. The initial determination of eligibility must be made without regard to the financial ability of the person’s family to retain counsel unless their family indicates willingness and ability to do so promptly.
- e. Any doubts about a person’s eligibility should be resolved in the person’s favor; erroneous determinations of eligibility may be corrected at a later time.

- f. Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).
- g. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).
- h. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

V. Timely Appointment of Counsel

A. Timing of Appointment

Counsel must be provided to eligible persons as soon as feasible in the following circumstances, whichever occurs earliest:

1. after they are taken into custody;
2. when they appear before a magistrate or district court judge;
3. when they are formally charged or notified of charges if formal charges are sealed; or
4. when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

B. Court's Responsibility

The Court, in cooperation with the Federal Public Defender and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

C. Pretrial Service Interview

A defendant shall be given an opportunity to consult with counsel before an initial interview with pretrial services and at his or her Initial Appearance. The Federal Public Defender, or an attorney from the CJA Panel if the Federal Public Defender has a conflict, as directed by the Court, will provide advice of rights to defendants before their interview with pretrial services.

Defender Services Committee Comment: Some courts make use of an “on call” or “duty day” attorney for this purpose. A CJA panel attorney or attorneys may be appointed to be on call to advise persons who are in custody, or who otherwise may be entitled to counsel under the CJA, during the pretrial service interview process.

D. Retroactive Appointment of Counsel

Appointment of counsel may be made retroactive to include representation provided prior to appointment.

VI. Provision of Representational Services

A. Federal Public Defender and Private Counsel

This Plan provides for representational services by the Federal Public Defender organization and for the appointment and compensation of private counsel from a CJA Panel list maintained by the Federal Public Defender in cases authorized under the CJA and related statutes.

B. Administration

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the Federal Public Defender.

C. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will 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 a minimum of twenty-five percent (25%) of the annual CJA appointments.

D. Number of Counsel

More than one attorney may be appointed in any case determined by the Court to be extremely difficult, or as needed under the Court’s mentor panel.

E. Capital Cases

Procedures for appointment of counsel in cases where the defendant is charged with a crime that may be punishable by death, or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255, are set forth in section XIV of this Plan.

VII. Federal Public Defender Organization

A. Establishment

The Federal Public Defender for the Western District of Pennsylvania is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

The Federal Public Defender organization must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender

program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980)).

C. Workload

The Federal Public Defender organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

D. Professional Conduct

The Federal Public Defender organization must conform to the highest standards of professional conduct, including but not limited to the American Bar Association’s Model Rules of Professional Conduct/American Bar Association’s Model Code of Professional Conduct/Code of Conduct for Federal Public Defender Employees/Model Code of Conduct for Federal Community Defender Employees/other standards for professional conduct adopted by the Court.

E. Private Practice of Law

Neither the Federal Public Defender nor any defender employee may engage in the private practice of law except as authorized by the Federal Public Defender Code of Conduct.

F. Supervision of Defender Organization

The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender organization. Accordingly, in all cases assigned to that organization, the subsequent assignment to staff attorneys is at the discretion of the Federal Public Defender.

G. Training

The Federal Public Defender will assess the training needs of Federal Public Defender staff and, in coordination with the CJA Panel

Attorney District Representative,¹ the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

H. Management of the CJA Panel

The federal public defender shall be responsible for the systematic distribution of cases to the CJA Panel and for the management of the CJA Panel on behalf of the district court, in accordance with the provisions of the Plan for Composition, Administration, and Management of the CJA Panel of Private Attorneys under the Criminal Justice Act, found in Section XI of this CJA Plan.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee will be established by the Court in consultation with the Federal Public Defender. The CJA Panel Committee will consist of the Chief Judge or his or her designee; the chief magistrate judge or his or her designee; the Federal Public Defender, the CJA Panel Attorney District Representative (“PADR”), and up to four additional CJA Panel members. Collectively, the CJA Panel members will have 2 votes, and the Chief Judge, the Chief Magistrate Judge and Federal Public Defender each will have one vote each.

Defender Services Committee Comment: The composition of the CJA Panel Committee can be adjusted to reflect the degree of judicial, federal defender, or panel attorney involvement that is desired by each district court. The committee must incorporate judicial input into panel administration. See JCUS-SEP 2018, p. 39. The court should make a diligent effort to ensure that the composition of the CJA Panel Committee reflects the racial, ethnic, gender, and geographic diversity of the district.

¹ The CJA Panel Attorney District Representative (PADR) is a member of the district’s CJA Panel who is selected by the local [Federal Public Defender/community defender], with acquiescence from the Chief Judge, to serve as the representative of the district’s CJA Panel for the national Defender Services CJA PADR program and local CJA committees.

2. The Federal Public Defender or her representative, and the district's PADR, are permanent members of the CJA Panel Committee.
3. Membership on the CJA Panel Committee will otherwise be for a term of three years and may be extended for an additional three years. Members' terms will be staggered to ensure continuity on the CJA Panel Committee.²
4. The CJA Panel Committee will meet at least twice a year and at any time the Chief Judge or Board of Judges asks the Committee to consider an issue.

B. Duties of the CJA Panel Committee

1. Panel Selection and Review

The CJA Panel Committee examines the qualifications of applications for membership on the CJA Panel and reviews the existing roster of attorneys to determine those persons best qualified to fill positions on the Panel.

CJA Panel members serving on the CJA Panel Committee will be reviewed by all other members of the committee.

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 CJA Panel in any of the three divisions of the district, the Committee shall solicit applications, convene a special meeting to review the qualifications of the applicants and select prospective members for recommendation to the Board of Judges for approval. Any member selected to fill mid-term vacancies shall serve the remainder of the vacated term

² To facilitate the initial staggering of terms, at the expiration of the terms of the current CJA Panel Counsel Members of the Committee, their successors shall be appointed as follows: one member to a three-year term, two members to two-year terms and one member to a one-year term. Thereafter, the members shall be appointed for three-year terms as specified in the above section, or in the case of a vacancy, for the balance of the existing term of the outgoing Member.

and be automatically renewed if the remainder of the vacated term served did not exceed eighteen months.

2. Recruitment

Engage in recruitment efforts to establish a diverse panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

3. Annual Report

Review the operation and administration of the CJA Panel over the preceding year, and recommend any necessary or appropriate changes to the Chief Judge concerning:

- a. the size of the CJA Panel;
- b. the recruitment of qualified and diverse attorneys as required and set forth in this plan; and
- c. recurring issues or difficulties encountered by panel members or their CJA clients.

Defender Services Committee Comment: Recruitment efforts to establish a diverse CJA Panel could include the following:

- notifying bar associations comprised of racially and ethnically diverse populations of the availability of panel membership;
- advertising in legal journals directed towards women, people with disabilities, and people of color to encourage panel membership;
- informal person-to-person recruiting of women, people of color, and the disabled community by CJA panel committee members and panel administrators; and
- contacting current or former members of the panel, or other prominent local attorneys who have disabilities or are minorities or women for recommendations of potential panel members.

4. Removal

Recommend to the Board of Judges the removal of any CJA panel member who:

- a. fails to satisfactorily fulfill the requirements of CJA panel membership during their term of service, including the failure to provide high quality representation to CJA clients, or
- b. has engaged in other conduct such that his or her continued service on the CJA Panel is inappropriate. *See also* Section IX.C.7.

5. Training

Assist the Federal Public Defender organization in providing training for the CJA Panel on substantive and procedural legal matters affecting representation of CJA clients.

6. Voucher Review

The CJA Panel Committee will recommend to the Board of Judges a voucher review process. In the interim, the CJA Panel Committee, or an alternative independent entity recommended by the CJA Panel Committee, will review and make recommendations to the presiding judge on the processing and payment of CJA vouchers in those cases where the presiding judge, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by a CJA Panel attorney.

7. Mentoring

- a. The Court has created and implemented a mentoring program through the CJA Panel Committee, under which experienced members of the CJA Panel, who have practiced extensively in the federal courts, will be selected to serve as mentors. The details of the mentoring program are included in an addendum to this Plan.

- b. The CJA Panel Committee will request experienced CJA panel members and other members of the legal community to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel.
- c. When reviewing applications for membership on the CJA Panel, the CJA Panel Committee will also make recommendations concerning an applicant's participation in the mentoring program.

Defender Services Committee Comment: Mentoring programs may include compensation for mentees (1) under the CJA at the prevailing hourly rate when appointed as second counsel in cases determined by the Court to be extremely difficult; (2) under the CJA at a reduced associate rate with prior authorization by the Court; or (3) using the Court's Bar and Bench funds at a rate determined by the Court for non-representational services, such as consulting with appointed counsel or attending training sessions.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

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

Members of the CJA Panel shall serve at the pleasure of the Court and may be added or removed from the panels at any time the Chief Judge sees fit. The Chief Judge may also suspend an attorney from the Panel until he or she presents evidence that he or she has received training in a particular area of criminal law or in the rules of professional conduct.

B. Size of CJA Panel

- 1. The CJA Committee will review the size of CJA Panel annually to determine how many CJA Panel attorneys are needed to

handle the CJA caseload and make a recommendation to the Board of Judges.

2. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel shall be made available, upon request, by the Federal Public Defender or Clerk of Court. Completed applications shall be submitted to the Federal Public Defender, who will provide the applications to the CJA Panel Committee.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

3. Eligibility

- a. Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Third Circuit Court of Appeals.
- b. Applicants must maintain a primary, satellite, or shared office in this district.
- c. Applicants must possess strong litigation skills and must, during the four years prior to the application, have served for at least two years in a state or federal clerkship with a judge that presided in criminal cases; have served for at

least two years in a state or Federal Public Defender's or prosecutor's office; have served for at least three years in private practice with state and federal felony cases making up 25% or more of the attorney's overall caseload; or have tried at least two (2) federal felony cases from initial appearance or arraignment through verdict or judgment and have other significant litigation experience as determined by the CJA Panel Committee.

An attorney seeking initial membership must, within one year of application, also have attended at least one two-hour seminar about federal sentencing and at least one two-hour seminar on another federal criminal defense topic.

- d. Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.
- e. Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the CJA Committee's consideration.

4. Admission to CJA Panel

After considering the recommendations of the CJA Panel Committee, the Chief Judge will appoint or reappoint attorneys to the CJA Panel. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. *See* Section XIV of this Plan.

5. Terms of CJA Panel Members

Attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this plan.

6. Readmission of CJA Panel Members

There will be no automatic renewal of membership on the CJA Panel. At the end of a term of service, CJA Panel members will be notified by the Court to submit a new application for review by the CJA Panel Committee if they intend to seek readmission. The committee will review the application and may gather additional information, including but not limited to soliciting information from the Court, to determine whether the applicant should be recommended for readmission to the CJA Panel, removed from the CJA Panel or placed on probationary status.

To be eligible for readmission to the CJA Panel, an attorney shall, at a minimum, have completed at least eight hours of continuing legal education in federal criminal practice, including at least two hours on federal sentencing procedure, in each year of the prior three-year term.

In addition, an attorney seeking readmission to the CJA Panel must have attended CJA training provided by the Federal Public Defender, and accepted appointments when offered, during the prior term of service.

7. Removal from the CJA Panel

a. Mandatory removal

Any member of the CJA Panel who is suspended or disbarred from the practice of law by the state Court before whom such member is admitted, or who is suspended or disbarred from this Court or any federal court, will be removed from the CJA Panel immediately.

b. Automatic review

The CJA Panel Committee will conduct a review of any CJA Panel member against whom any licensing authority, grievance committee, or administrative body has taken action, or when a finding of probable cause,

contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

In the case of any of the circumstances outlined above in Sections IX.C.7.a. or b., the CJA Panel member must immediately notify the Chief Judge of the background and nature of the action that has been taken against him or her.

c. Complaints

(i) Initiation

A complaint against a CJA Panel member may be initiated by the CJA Committee, a judge, another panel member, a defendant, or a member of the Federal Public Defender office. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the CJA Committee, which will determine whether further investigation is necessary.

(ii) Notice

When investigating, the CJA Committee will notify the panel member of the specific allegations.

(iii) Response

A panel member subject to investigation may respond in writing and appear, if so directed, before the CJA Committee or a subcommittee thereof.

(iv) Protective action

Prior to disposition of any complaint, the CJA Committee may recommend temporary suspension or removal of the panel member from any pending case, or from the panel, and may take any other protective action that is in the

best interest of the client or the administration of this Plan.

(v) Review and recommendation

After investigation, the CJA Committee may recommend dismissing the complaint, or recommend appropriate remedial action, including removing the attorney from the panel, limiting the attorney's participation to particular types or categories of cases, directing the attorney to complete specific CLE requirements before receiving further panel appointments, limiting the attorney's participation to handling cases that are directly supervised or overseen by another panel member or other experienced practitioner, or any other appropriate remedial action.

(vi) Final disposition by the Court

The CJA Committee will forward its recommendation to the Board of Judges for consideration and final disposition.

(vii) Confidentiality

Unless otherwise directed by the Court, any information acquired concerning any possible disciplinary action, including any complaint and any related proceeding, will be confidential.

(viii) None of these procedures create a property interest in being on or remaining on the CJA Panel.

d. Notification

The Chief Judge will immediately notify the Federal Public Defender when any member of the CJA Panel is removed or suspended.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The Federal Public Defender will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

B. Appointment Procedures

1. The Federal Public Defender is responsible for overseeing the appointment of cases to panel attorneys. The Federal Public Defender will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Public Defender office and panel attorneys.
2. Appointment of cases to CJA Panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Federal Public Defender may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
3. In the event of an emergency, or on weekends, holidays or other non-working hours of the Federal Public Defender, the Court may appoint a member of the bar of the Court who is not a member of the CJA Panel. Such special circumstances may include cases in which the Court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. All appointments made under this section must be immediately reported to the Chief Judge or the Federal Public Defender.

4. Unless otherwise impracticable, CJA Panel attorney(s) must be available to represent defendant(s) at the same stage of the proceedings as is the Federal Public Defender.

XI. Duties of CJA Panel Members

A. Standards and Professional Conduct

1. CJA Panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the rules in the state(s) of admission and practice and any other standards for professional conduct adopted by the Court.
3. CJA Panel members must notify the chair of the CJA Panel Committee within 30 days of when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

B. Training and Continuing Legal Education

1. Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.
2. Attorneys on the CJA Panel are expected to attend trainings sponsored by the Federal Public Defender.

3. Attorneys on the CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.
4. CJA panel members must attend at least 8 hours of continuing legal education hours relevant to federal criminal practice annually.
5. Failure to comply with these training and legal education requirements may be grounds for removal or suspension from the CJA Panel.

C. Facilities and Technology Requirements

1. CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases.
2. CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.
3. CJA panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

D. Continuing Representation

Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeal or review by *certiorari*, is closed; or until substitute counsel has filed a notice of appearance; or until an order is entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by Court order.

Defender Services Committee Comment: While the Defender Services Committee recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that trial counsel may not have the requisite skills to proceed as appellate counsel. There should be significant deference to the position of trial counsel regarding whether, in each matter, continuity is in the best interests of the

client and consistent with counsel's professional skills and obligations. (Good Practices for Panel Attorney Programs in the U.S. Court of Appeals, Vera Institute of Justice, January 2006.)

E. Miscellaneous

1. Case budgeting

In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost, the Court may require development of a case budget consistent with Guide, Vol. 7A, §§ 230.26.10–20.

2. 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 CJA, unless such payment is approved by order of the Court.

3. Redetermination of need

If at any time after appointment, counsel has reason to believe that a party is financially able to obtain counsel, or make partial payment for counsel, and the source of counsel's information is not protected as a privileged communication, counsel will advise the Court.

XII. Compensation of CJA Panel Attorneys

A. Policy of the Court Regarding Compensation

1. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in Court and time reasonably expended out of Court and reimbursed for expenses reasonably incurred.

2. Voucher cuts should be limited to:

- a. Mathematical errors;
- b. Instances in which work billed was not compensable;
- c. Instances in which work was not undertaken or completed; and
- d. Instances in which the hours billed are clearly in excess of what was reasonably required to complete the task. *See JCUS-SEP 2018, p. 42.*

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the Court's eVoucher system.
2. Claims for compensation should be submitted no later than 45 days after final disposition of the case, unless good cause is shown.
3. The Clerk of Court, or her designee, will review the claim for mathematical and technical accuracy and for conformity with Guide, Vol. 7A and, if correct, will forward the claim for consideration and action by the presiding judge.
4. Absent extraordinary circumstances, the presiding judge should act on CJA compensation claims within 30 days of submission, and vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances.
5. Except in cases involving mathematical corrections, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.

6. When the presiding judge is contemplating a reduction of a CJA voucher for other than mathematical reasons, the judge should promptly notify counsel. Thereafter, either the presiding judge or CJA counsel may bring the proposed reduction of the voucher to the Voucher Review Committee for review and recommendation before final action is taken. *See* Section VIII of this Plan.
7. Notwithstanding the procedure described above, the presiding judge may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation. In the event that the matter is resolved to the satisfaction of the presiding judge and CJA Panel member, the claim for compensation need not be referred for further voucher review.

XIII. Investigative, Expert, and Other Services

A. Financial Eligibility

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request such services in an ex parte application to the Court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the Court must authorize counsel to obtain the services.

Defender Services Committee Comment: A Court may choose to have applications for investigative, expert, and other services considered by a non-presiding judge to help ensure appointed counsel's ability to obtain the necessary resources in a manner that does not unreasonably compromise or interfere with the exercise of sound independent professional judgment.

B. Applications

Requests for authorization of funds for investigative, expert, and other services must be submitted in an ex parte application to the Court (using the Court's eVoucher system) and must not be disclosed except

with the consent of the person represented or as required by law or Judicial Conference policy.

C. Compliance

Counsel must comply with Judicial Conference policies set forth in Guide, Vol. 7A, Ch. 3.

XIV. Appointment of Counsel and Case Management in CJA Capital Cases

A. Applicable Legal Authority

The appointment and compensation of counsel in capital cases and the authorization and payment of persons providing investigative, expert, and other services are governed by 18 U.S.C. §§ 3005, 3006A, and 3599, and Guide, Vol. 7A, Ch. 6.

B. General Applicability and Appointment of Counsel Requirements

1. Unless otherwise specified, the provisions set forth in this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post-conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.

2. Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the

Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. *See* 18 U.S.C. § 3599(e).

3. Qualified counsel must be appointed in capital cases at the earliest possible opportunity.
4. Given the complex and demanding nature of capital cases, where appropriate, the Court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects (“Resource Counsel projects”) which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the Court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.
5. The Federal Public Defender should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.
6. All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.
7. All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation,

taking into account their current caseloads and the extraordinary demands of federal capital cases.

8. All attorneys appointed in federal capital cases should comply with the American Bar Association's 2003 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Guidelines 1.1 and 10.2 et seq.), and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.
9. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
10. All capital cases should be budgeted with the assistance of the circuit's case-budgeting attorney and/or resource counsel where appropriate.
11. There should be no formal or informal non-statutory budgetary caps on capital cases, whether in a capital trial, direct appeal, or habeas matter.
12. Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases³

1. General Requirements
 - a. Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal

³ The Judicial Conference adopted detailed recommendations on the appointment and compensation of counsel in federal death penalty cases in 1998 (JCUS-SEP 98, p. 22). In September 2010, the Defender Services Committee endorsed revised commentary to the Judicial Conference's 1998 recommendations. CJA Guidelines, Vol. 7A, Appx. 6A (Recommendations and Commentary Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010)) ("Appx. 6A") is available on the judiciary's website.

criminal offense where the penalty of death is possible. *See* 18 U.S.C. § 3005.

- b. To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the Court may appoint capital-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.
- c. At the outset of every capital case, the Court must appoint two attorneys, at least one of whom meets the qualifications for “learned counsel” as described below. If necessary, for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. *See* 18 U.S.C. § 3005.
- d. When appointing trial counsel, the judge must consider and give due weight to the recommendation of the Federal Public Defender and/or Federal Death Penalty Resource Counsel. If the recommendation is not followed, the judge must articulate reasons why the recommendation was not followed.
- e. To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender’s recommendation be provided to the Court, the judge should ensure the Federal Public Defender has been notified of the need to appoint capital-qualified counsel.
- f. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the Federal Public Defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.

Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital trials to

achieve high quality representation together with cost and other efficiencies.

- g. In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

2. Qualifications of Learned Counsel

- a. Learned counsel must either be a member of this district's bar or be eligible for admission *pro hac vice* based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.
- b. Learned counsel must meet the minimum experience standards set forth in 18 U.S.C. §§ 3005 and 3599.
- c. Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.
- d. "Distinguished prior experience" contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.
- e. The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.

- f. Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- g. Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

3. Qualifications of Second and Additional Counsel

- a. Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.
- b. Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.
- c. Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.
- d. The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

D. Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases

- 1. When appointing appellate counsel, the judge must consider and give due weight to the recommendation of the Federal Public Defender and/or Federal Death Penalty Resource Counsel. If the recommendation is not followed, the judge must articulate reasons why the recommendation was not followed.
- 2. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.

3. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
4. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.
5. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
6. At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C. § 3599(c) or (d).
7. In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
8. In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

E. Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases (28 U.S.C. § 2255)

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. *See* 18 U.S.C. § 3599(a)(2).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the Court should consider appointing at least two attorneys.

3. In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.
4. When appointing counsel in a capital § 2255 matter, the Court must consider and give due weight to the recommendation of the Federal Public Defender, who will consult with the Federal Capital Habeas § 2255 Project. If the recommendation is not followed, the Court must articulate reasons why the recommendation was not followed.
5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.
6. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
8. In evaluating the qualifications of proposed post-conviction counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
9. In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

F. Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254)

1. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. *See* 18 U.S.C. § 3599(a)(2).
2. Due to the complex, demanding, and protracted nature of death penalty proceedings, the Court should consider appointing at least two attorneys.
3. The appointment of counsel shall be made to the Capital Habeas Unit of the Federal Public Defender for the Western District of Pennsylvania. If the Capital Habeas Unit (“CHU”) is unable to undertake representation, it will inform the Court and seek assistance from another CHU within the Third Federal Judicial Circuit under the Administrative Office of the United States Courts Defender Services Office’s federal defender out-of-district protocol. If no other Capital Habeas Unit can accept an appointment, the Court shall appoint private attorneys who are members of the District’s CJA Panel and who qualify for appointment pursuant to section 848(q) of title 21, United States Code. *See* also IV.C.1.b. of this Plan.

To effectuate the intent of 18 U.S.C. § 3005 that the Federal Public Defender’s recommendation be provided to the Court, the judge should ensure the Federal Public Defender has been notified of the need to appoint capitally-qualified counsel.

Before appointment of counsel in a capital habeas case, the Court should obtain the consent of the defender or other counsel the Court seeks to appoint.

4. When appointing private attorneys counsel in a capital § 2254 matter, the Court must consider and give due weight to the recommendation of the Federal Public Defender, who will consult with the National or Regional Habeas Assistance and Training Counsel projects. If the recommendation is not followed, the Court must articulate reasons why the

recommendation was not followed. Before appointment of counsel in a capital habeas case, the Court should obtain the consent of the defender or other counsel the Court seeks to appoint.

5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.
6. In order for federal counsel to avail themselves of the full statute of limitations period to prepare a petition, the Court should appoint counsel and provide appropriate litigation resources at the earliest possible time permissible by law.
7. Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the defendant, capital § 2254 counsel must represent the defendant throughout every subsequent stage of available judicial proceedings and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. *See* 18 U.S.C. § 3599(e).
8. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
9. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
10. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

11. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

XV. Effective Date

This Plan will become effective when approved by the Judicial Council of the Third Circuit.

ENTER FOR THE COURT ON March 22, 2021



CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE THIRD CIRCUIT ON

March 16, ~~2020~~
2021



CHIEF JUDGE, COURT OF APPEALS