

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
  
CRIMINAL JUSTICE ACT PLAN

Final CJA PLAN Amendment  
December 2019

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## I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (“CJA”), section 3006A of Title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (“CJA Guidelines”), the Judges of the United States District Court for the District of New Jersey adopt this Plan, as approved by the Circuit, 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 Organization and private attorneys appointed under the CJA shall 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. The court will ensure that a current copy of the CJA Plan is made available on the court’s website, and provided to CJA counsel upon the attorney’s designation 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.

#### C. CJA Administrator

“CJA Administrator” is a person designated by the Court to administer the CJA Panel.

### IV. DETERMINATION OF ELIGIBILITY FOR CJA REPRESENTATION

#### A. Subject Matter Eligibility

##### I. 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. § 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. § 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) effectuate the return of real or personal property belonging to the CJA client, which may be subject to 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 and Related Agencies

Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the Act, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender who shall 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) Duties of the Federal Public Defender Office

(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.

c) Pretrial Services Interview

Appointed counsel should be furnished to financially eligible defendants prior to the defendants being interviewed by pretrial services. If appointed counsel is not available within 30 minutes of notification of the defendant's arrival at the federal building, the pretrial services or probation officer may interview the defendant.

2. Waiver of Appointment of Counsel

When a person waives representation by counsel and is financially eligible, the Magistrate Judge or District Judge may appoint standby counsel, under the Court's inherent authority, to protect the integrity and continuity of the proceedings.

3. 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 Services Interview

When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer.

### 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 Court 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 Court.

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.

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. § 2255, are set forth in section XIV of this Plan.

## VII. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

The Federal Public Defender Organization of the District of New Jersey, previously established in this district pursuant to the provisions of the Act, is hereby recognized as the Federal Public Defender Organization for this district.

The Federal Public Defender Organization shall be capable of providing legal services throughout the District of New Jersey.

The Federal Public Defender shall administer the Office subject to the provisions of 18 U.S.C. 3006A.

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 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, and 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, the federal public defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys 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, the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

## VIII. CJA PANEL OF PRIVATE ATTORNEYS

### A. Establishment of the CJA Panel Committee

1. A Panel Selection and Management Committee (“Committee”) shall be established by the Court in consultation with the Federal Public Defender. The Committee shall consist of at least one District Judge from each vicinage, one Magistrate Judge from each vicinage, the Federal Public Defender or his/her designee, and three private attorneys as appointed by the Chief Judge of the District.
2. The Chief Judge of the District can appoint or remove members of the Committee at his or her discretion.
3. The CJA Committee will meet at least once a year and at any time the court asks the Committee to consider an issue.

### B. Duties of the CJA Committee

#### 1. Membership

The Panel Selection and Management Committee shall meet at least once a year to consider applications for vacancies on the CJA Panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

Once a year, the Committee shall review the operation and administration of the CJA Panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee concerning the appointment process and panel management, including:

- 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 issue or difficulties encountered by panel members or their CJA clients.

The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

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, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated and shall be immediately eligible for reappointment.

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. Removal

Recommend to the Court 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.

4. Training

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

C. Training Program

1. Introduction

The United States District Court (hereinafter “Court”) will establish a Training Panel program. The objective of the program will be to increase diversity and insure the availability of qualified applicants to the CJA Panel by providing attorneys who do not have the required experience for membership on the CJA Panel with an opportunity to gain the experience necessary to provide high quality representation in federal criminal cases to individuals who cannot afford to retain counsel. The CJA Panel attorney in each Training Panel case shall be referred to as the “lead attorney” or “mentor”. The training panel attorney (hereinafter referred to as TPA) may also be referred to as “mentee”.

2. Administration of the Criminal Justice Act (CJA) Training Program

The CJA Training Program will be administered by the District Court CJA Committee.

3. Assignment of Training Panel Attorneys

Each Training Panel member shall be assigned to a CJA Panel mentor, who may recommend to the District Judge presiding over the mentor's case, that a mentee be appointed to assist.

4. Service as a Mentor

All CJA Panel members are expected to agree to reasonable mentoring requests unless a compelling reason excuses participation at a particular time or in a particular case.

5. Second Chair Attorney Duties and Responsibilities

- a) Appear and argue on the record as counsel for the defendant, with the Mentor, as counsel of record, present.
- b) Confer, on behalf of the defendant and under the direction of the Mentor, as counsel of record, with: the government; Chambers; U.S. Pretrial Services Agency; U.S. Probation Office; federal, state and local law enforcement agents and agencies; U.S. Bureau of Prison personnel; defendant's family, friends and potential witnesses; interpreters; and other members of the defense team, such as investigators or paralegals.
- c) Perform traditional paralegal assignments, such as: organizing and review of discovery material; legal research; organizing of exhibits; obtaining discovery or reproducing discovery, etc.
- d) Write and file submissions, pleadings, memoranda and motions, under the direction, review and co-authorship of the Mentor.
- e) Under the direction of the Mentor, participate in hearings, trials and evidentiary proceedings. Examination of witnesses or any addresses or statements to a jury will be done only under the direction of the Mentor and with the Mentor present during the examination, the address, or statement.

6. Completion Requirements

Completion of the training program will ordinarily require 12 to 18 months. Second chair attorneys must attend the orientation program and at least two CLE programs dealing exclusively with federal criminal practice. Neither participation in nor completion of the training program by the second chair attorney will guarantee appointment to the CJA Panel.

7. Compensation and Expenses of Training Panel Attorney

In their capacity as a TPA, mentees will provide services essential to the defense of the case. The services of the second chair, therefore, qualify as “other services necessary for adequate representation” of the defendant, and may be compensated upon ex parte application as provided in the CJA, Title 18 U.S.C. §3006A (e)(3) and the CJA Guidelines, Ch. 3. Such reimbursement shall be limited as follows:

- a) reimbursement rate may not exceed 60% of the set hourly rate.
- b) reimbursement of the TPA may not exceed the applicable case compensation maximums provided for “other services” in 18 U.S.C. §3006A (e)(3) and the CJA Guidelines, Section 310.20.10(a), unless otherwise approved by the district court;
- c) reimbursement will not be approved for services that duplicate the work of the CJA panel member appointed to the case;
- d) the reimbursement request shall be submitted on a CJA 21 and may not be submitted to the Court unless first approved by the CJA panel member appointed to the case; and
- e) the mentor and mentee will bill only for services rendered and will not bill for time spent principally on training and teaching.

## IX. ESTABLISHMENT OF CJA PANEL

### A. Approval

The Court shall establish one panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act, and one senior CJA panel of experienced criminal defense attorneys (hereinafter referred to as the "CJA Senior Panel") who are eligible and willing to be appointed. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection and Management Committee," established pursuant to paragraph VIII(A) of this Plan.

### B. Size

The size of the CJA Panel will be determined by the Panel Selection and Management Committee based on the caseload and activity of the panel members. The panel will be apportioned by vicinage to meet the needs of each Court. The division by vicinage shall not prohibit the Court where appropriate from appointing a panel member from one vicinage to serve in another vicinage, nor prohibit the Court on the basis of geographic considerations from allowing a panel member to serve in more than one vicinage. The Court may from time to time, on recommendation of the Panel Selection and Management Committee, re-determine the number of attorneys on the CJA Panel and/or the number of attorneys serving in each vicinage.

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 Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the chairperson of the Panel Selection and Management Committee.

#### 2. Equal Opportunity

All qualified attorneys shall be 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 demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.
- 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. Establishment of CJA Senior Panel

The Court will establish a senior CJA panel of experienced criminal defense attorneys. The presiding Judge, at his or her discretion, may appoint a member of the senior CJA Panel to matters where the Court concludes counsel of extraordinary ability and those with extensive experience are required. Members of the senior CJA panel, at the discretion of the Court, can also be made available for rotational assignments on ordinary cases. Members of the senior CJA Panel shall serve indefinite terms, and shall not be limited to the three-year terms set forth in Section IX(C).

The CJA Senior Panel will be selected by the Court from the pool of applicants to the overall CJA Panel.

5. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the Court 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.

6. Terms of CJA Panel Members

Upon adoption of this Plan, all current members of the CJA Panel shall be required to reapply for membership on the Panel. To establish staggered CJA membership terms, those attorney's selected to be on the Panel will be divided into three groups, equal in number. Initially, members will be assigned to one of the three groups on a random basis. Members of the first group will continue to serve on the CJA Panel for a term of one year, members of the second group will continue to serve on the CJA Panel for a term of two years, and members of the third group will continue to serve on the CJA Panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this Plan.

7. Reappointment of CJA Panel Members

- a) The Court will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel. All current CJA Panel members shall be required to reapply if they wish to remain on the Panel.
- b) A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term at least three months prior to the expiration of his or her current term.
- c) The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d) The CJA Committee also will consider how many cases that CJA panel member has accepted and declined during the review period, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.
- e) Presumptively, a panel member will serve no more than two consecutive terms.

8. Removal from 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 the Court or any federal court, will be removed from the CJA Panel immediately.

b) Automatic disciplinary review

The CJA Committee will conduct an automatic disciplinary 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.

c) Complaints

(i) Initiation

A complaint against a panel member may be initiated by the CJA Committee, a judge, another panel member, a defendant, or a member of the federal public defender's 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 conducting an investigation, 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 its subcommittee.

(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 Chief Judge for consideration and final disposition by the Court.

(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 federal public defender will be immediately notified when any member of the CJA Panel is removed or suspended.

## X. SELECTION FOR APPOINTMENT IN NON-CAPITAL CASES

### A. Maintenance of List

The Clerk of the Court shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers. Each attorney's most recent application form, outlining their qualifications and experience, shall be kept on file by the Clerk. The Clerk shall furnish a copy of the list to each District Judge and Magistrate Judge. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender's Office and private attorneys.

### B. Distribution of Appointments

CJA Panel attorneys are to be appointed in multi-defendant and conflict cases, or where the Federal Defender Office is otherwise unavailable and where it is appropriate to provide federal court experience to CJA Panel attorneys and satisfy the Ratio of Appointments.

### C. Method of Selection

The Court is responsible for overseeing the appointment of cases to panel attorneys. The Clerk of Court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Public Defenders Office and panel attorneys.

Appointment of cases to CJA Panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the Court may appoint counsel outside of the normal rotation, including members of the CJA Senior Panel, to ensure the defendant has sufficiently experienced counsel.

Under special circumstances, 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 anticipated that special circumstances will rarely, if ever, arise, 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. Appointments made under this section will be reported to the CJA Committee.

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

In the event of an emergency, i.e., weekend, holidays, or other non-working hours of the Clerk of the Court's office, the presiding District Judge or Magistrate Judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing District Judge or Magistrate Judge shall notify the Clerk of the Court as to the name of the attorney appointed and the date of the appointment.

## XI. DUTIES OF APPOINTED COUNSEL

### 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 American Bar Association’s Model Rules of Professional Conduct, American Bar Association’s Model Code of Professional Conduct and other standards for professional conduct adopted by this Court.
3. CJA Panel members must notify, within 30 days, the chair of the CJA Committee 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 required 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 four (4) 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 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 appeals (unless provided otherwise by the Third Circuit's CJA Plan) 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.

E. Miscellaneous

1. Case budgeting

Counsel are expected to use case budgeting techniques in non-capital representations that appear likely to become extraordinary in terms of potential costs consistent with Guide to Judiciary Policy Volume 7A Chapter 2, Sections 230.26.10-20. Courts and appointed counsel shall contact the Third Circuit Case Budgeting Attorney with questions regarding the appropriateness of a case for budgeting and procedures for submitting a case budget.

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 – FILING OF VOUCHERS

A. Policy of the Court Regarding Compensation

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.

B. Payment Procedures

Claims for compensation shall be submitted in the Court's electronic voucher system on the appropriate CJA form to the office of Clerk of the Court, no later than 45 days after final disposition of the case, unless good cause is shown. Absent extraordinary circumstances, a voucher will not be considered for payment more than 365 days after final disposition of a case. The Clerk of the Court shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), and, if correct, shall forward the claim form for consideration by and action of the presiding District Judge or Magistrate Judge.

Absent extraordinary circumstance, the Court 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 circumstance.

It is acknowledged that in some cases reduction of the amount of compensation sought will be necessary or appropriate. In those cases, the procedure set forth in the balance of this section shall be followed.

In any case where the judicial officer intends to reduce the amount of payment requested in a trial level voucher, CJA counsel shall be notified of the amount of the intended reduction and the reasons for same, and be provided the opportunity to address the matter before the judicial officer. However, notice need not be given where the reduction is based on mathematical or technical errors. After review of any submission by appointed counsel, including his/her response to the judicial officer's reasons for the reduction, and the completion of any other steps deemed appropriate by the judicial officer, the judicial officer shall inform CJA counsel



of the Court's determination. If counsel wishes further consideration of the Court's decision, he/she may seek further review by the Executive Committee of the Board of Judges for the District of New Jersey. The judicial officer shall take action on the voucher consistent with the Plan, the Criminal Justice Act and the interests of justice.

Notwithstanding the procedure described above, the Court may, in the first instance, contact appointed counsel to inquire regarding questions or concerns with a claim for compensation, and so resolve the issue.

The Third Circuit shall consider all vouchers submitted by appellate counsel.

### 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.

#### 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. 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. §§ 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, and (3) Federal Capital Habeas § 2255 Project. 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. The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is

fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. See 18 U.S.C. § 3006A(a)(3).

7. 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.
8. 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.
9. 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.
10. All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.
11. As early as practicable after appointment, appointed counsel in capital cases shall contact the Third Circuit Case Budgeting Attorney to submit an initial case budget that will be subject to modification in light of facts and developments that emerge as the case proceeds. 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](mailto:ods_lpb@ao.uscourts.gov).

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

1. General Requirements

- a) Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal 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 counsel, the judge must consider the recommendation of the federal public defender who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel.
- 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 capitally-qualified counsel.
- f) There is no list for appointment of capital counsel 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.
- g) 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.
- h) 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 the recommendation of the federal public defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.
- 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 should consider the recommendation of the federal public defender, who will consult with the Federal Capital Habeas § 2255 Project.
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.

Amendments

Amendments to this Plan may be made from time to time, as adopted by a majority vote of the Judges of this Court. Any such amendment or amendments shall be subject to the approval of the Judicial Council of the Third Circuit, and shall become effective only upon and at the time of appropriate notice by it of such approval. The Clerk shall notify the Director of the Administrative Office of the United States Courts promptly of any and all amendments to this Plan as may be made.

Rules of Construction

It shall be the policy and practice of this Court to construe and apply this Plan in manner and effect consistent with the purposes and provisions of the Criminal Justice Act, as well as such modification of this Plan as may be made from time to time by the Judicial Council of the Third Circuit. Provisions not contained in the Plan shall be governed and controlled by the Criminal Justice Act.

Supersession

This Plan supersedes all prior Criminal Justice Act Plans of this Court.

**EFFECTIVE DATE**

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

ENTER FOR THE COURT ON 12-17, 2019.

  
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FREDA L. WOLFSON  
CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE THIRD CIRCUIT ON

May 8, 2020, 2019.

  
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D. BROOKS SMITH  
CHIEF JUDGE, COURT OF APPEALS