

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
JUDICIAL COUNCIL

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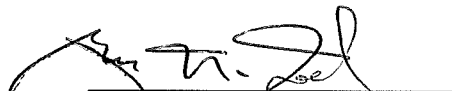
U.S. COURTS OF APPEALS
FOURTH CIRCUIT

In the Matter of the Review of the *
Amendments to the Plan of the United *
States District Court for the *
District of South Carolina * No. 406
in Implementation of the Criminal Justice Act *
*

ORDER

The Plan of the United States District Court for the District of South Carolina, as amended, which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:


James N. Ishida, Secretary

Date: January 22, 2020

United States District Court
For
The District of South Carolina

Plan for Implementing the
Criminal Justice Act of 1964,
As Amended, 18 U.S.C. Section 3006A

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UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF SOUTH CAROLINA

PLAN FOR IMPLEMENTING THE CRIMINAL JUSTICE ACT OF 1964,
AS AMENDED, 18 U.S.C. SECTION 3006

I. Preamble

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and *Guide to Judiciary Policy (Guide)*, Volume 7A, the judges of the United States District Court for the District of South Carolina adopt this Plan, as approved by the circuit, for furnishing representation in federal court for any person financially unable to obtain 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 the *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. Plan Modification

This Plan may be modified at any time with the approval of the Judicial Council of the Fourth Circuit. The District Court Judges of this District shall endeavor to review, and amend as appropriate, this Plan to ensure its compliance with the CJA Guidelines and other relevant Judicial Conference policies and legal authorities

every five (5) years. The District Court shall notify the Administrative Office of the United States Courts of any modifications of this Plan.

III. 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 (unless the modification sought is favorable to the supervisee and the government has not objected to the proposed change);
- 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 Court Judge or Magistrate Judge (hereinafter “the court”) 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. 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. Factual Determination of Financial Eligibility

- a. The determination of eligibility for representation under the Act is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial condition. Upon the appearance of a person before the court as provided above, or at any proceeding in which a person who is entitled to representation under this Plan appears without counsel, the court shall advise the person of the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford representation.
- b. Unless the person waives representation by counsel, the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the person. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry may follow the appointment of counsel as soon thereafter as is practical. All statements made by a person in requesting counsel during the

inquiry into eligibility shall be either (a) by financial affidavit sworn to before the court, or (b) under oath in open court.

2. Change in Eligibility

- a. If at any time after the appointment of counsel the court finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the court 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).
- b. 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.

IV. 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 District Court Judge or Magistrate Judge;
3. when they are formally charged or notified of charges if formal charges are sealed; or
4. when the court otherwise considers appointment of counsel appropriate under the CJA and related statutes.

B. Emergency Appointments

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

C. Retroactive Appointment of Counsel

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

V. Provision of Representational Services

A. Federal Public Defender Organization and Private Counsel

This Plan provides for representational services by the Federal Public Defender Organization for the District of South Carolina (“FPDO”), supervised by the Federal Public Defender for the District of South Carolina (“the Defender”). In addition, this Plan provides for the appointment and compensation of private counsel from the CJA Panel List maintained by the Clerk of Court. The determination of whether a party entitled to representation will be represented by the FPDO or by private counsel is within the discretion of the appointing District Court Judge or Magistrate Judge.

B. Apportionment of Cases

Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases. “Substantial” will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

C. 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.

VI. Federal Public Defender Organization

A. Establishment

The FPDO is to be headquartered in Columbia, South Carolina, and shall be capable of rendering defense services on appointment throughout the District. The FPDO shall operate pursuant to the provisions of the CJA, as well as the *Guide*.

B. Professional Conduct

The FPDO 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.

C. Private Practice of Law

Neither the Defender nor any employee of the FPDO may engage in the private practice of law.

D. Supervision of Defender Organization

The FPDO will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Defender.

VII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee (“the Committee”) will be established by the Court. The Committee will consist of at least one District Court Judge, at least one Magistrate Judge, the Defender, the CJA Panel Attorney District Representative,¹ and a criminal defense attorney who has served at least two years as a member of the CJA Panel. The Committee shall select its own Chairperson.
2. The Committee will meet periodically and at any time the Court asks the Committee to consider an issue.

B. Duties of the Committee

1. Membership

The Committee shall meet as needed to consider applications. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to serve on the CJA Panel. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

¹ The CJA Panel Attorney District Representative is a member of the District’s CJA Panel who is selected by the Court to serve as the representative for the national Defender Services CJA PADR program and local CJA committees.

2. Recruitment

The Committee shall engage in recruitment efforts to establish a diverse panel of attorneys and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases. 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, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

VIII. 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. A separate list of approved panel attorneys will be maintained in each of the following areas of the District:

1. Greenville,
2. Columbia,
3. Charleston, and
4. Florence.

B. Size of CJA Panel

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.

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available from the Clerk of Court. Completed applications shall be submitted to the Clerk of Court, who will transmit the applications to the Chairperson of the Committee.

2. Equal Opportunity

All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, sexual orientation, or disabling condition.

3. Eligibility

- a. Applicants for the CJA Panel must be licensed to practice law in the State of South Carolina and members in good standing of the federal bar of this District.
- b. 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.
- c. Applicants must have practiced law at a minimum of three years; completed three “second chair” experiences on federal criminal cases; observed or participated in at least one federal criminal trial from start to finish; attended United States Sentencing Guidelines training within the last year; and registered as a CM/ECF e-filer.
- d. 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 Committee’s consideration.

4. Training Panel

The Committee may establish a “CJA Training Panel” consisting of attorneys who do not have the expertise required for membership on the CJA Panel. CJA Training Panel members may be assigned by the court to assist members of the CJA Panel in a “second chair” capacity. Training Panel members are not eligible to receive appointments independently and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA panel.

5. Terms of CJA Panel Members

CJA panel attorneys are certified to serve by the Court and may be removed at any time.

6. Annual Certification of CJA Panel Members

- a. The United States District Court for the District of South Carolina seeks to ensure the highest quality of representation provided to indigent defendants by CJA Panel Attorneys. Therefore, CJA Panel Attorneys shall annually, on or before February 1, certify that they are available and willing to continue to accept appointments by the Court and that they have satisfied the training requirements of section XI(B)(2).
- b. The Committee also will consider how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, 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.

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, shall be removed from the CJA Panel immediately.

b. Removal for Good Cause

Members of the CJA Panel shall serve at the pleasure of the Court. Absent the conditions for “Mandatory Removal,” the Court may remove members of the CJA Panel after providing written notice of the proposed removal, a statement of reasons therefore, and an opportunity to respond.

IX. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

The Clerk of Court 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 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 FPDO and panel attorneys.
2. Appointments from the list of private attorneys should be made on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, the attorney's availability, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and a quality representation for each CJA defendant.
3. When the court determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant. To preserve the integrity of the panel selection process, such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in this District, should possess such qualities as would qualify him or her for admission to the District's CJA panel in the ordinary course of panel selection.

X. 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.
2. CJA panel members must notify the Court within thirty (30) days of any licensing authority, grievance committee, or administrative body having 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.

2. 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.
3. CJA panel attorneys must certify annually the number of hours of training received the previous year specifically related to the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, substantive federal criminal law, and United States Sentencing Commission Guidelines. At a minimum, each CJA panel attorney must complete six (6) hours of training each year on these topics to remain eligible for CJA Panel appointments. Any panel attorney who accumulates in excess of six (6) hours credit in an annual reporting period may carry forward those excess hours only to the next annual reporting period.
4. 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

A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the United States Magistrate Judge or the United States District Judge through appeal, including ancillary matters appropriate to the proceedings.

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 the *Guide*, Vol. 7A, Ch. 2, §§ 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.

XI. 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.

B. Payment Procedures

1. Claims for compensation must be submitted on the appropriate CJA form through the national "eVoucher" system to the CJA Panel Administrator. All vouchers are reviewed for mathematical and technical accuracy, as well as for conformity with the *Guide*, and forwarded to the judge for approval. Vouchers lacking necessary documentation will be returned to counsel for revision and proper submission.
2. Claims for compensation should be submitted no later than forty-five (45) days after final disposition of the case, unless good cause is shown.

3. Absent extraordinary circumstances, the court should act on CJA compensation claims within thirty (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.
4. When the court determines that a claim should be reduced based on reasonableness, appointed counsel should be given prior notice of the proposed reduction in a brief statement and allowed an opportunity to address the proposed reduction.

C. Independent Review Process

1. A panel attorney may challenge any voucher reduction made by the presiding judge to the Chief Judge of the District for reconsideration. If the Chief Judge was the presiding judge, the reconsideration request will be assigned to the senior most active judge in the District.
2. Any challenged reduction should be subject to review consistent with this independent review process.
3. All processes imposed within the District must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid under 18 U.S.C. § 3006A(d).

XII. 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 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 the *Guide*, Vol. 7A, Ch. 3.

XIII. 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 the *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 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).
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.

C. Appointment of Trial Counsel in Federal Death-Eligible Cases²

1. General Requirements

² 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.

- 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 capitally-qualified counsel upon request.
- 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 Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.
- e. To effectuate the intent of 18 U.S.C. § 3005 that the Defender’s recommendation be provided to the court, the judge should ensure the Defender has been notified of the need to appoint capitally-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 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 as co-counsel 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. Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.
- 2. Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.
- 3. 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.
- 4. Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.
- 5. 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).
- 6. 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.
- 7. 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. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment as co-counsel in capital § 2255 cases to achieve high quality representation together with cost and other efficiencies.
5. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
6. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
7. 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.
8. 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. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment as co-


counsel in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.

4. 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.
5. 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).
6. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
8. 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.
9. 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.

XIV. Effective Date

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

ENTERED FOR THE COURT ON December 18, 2019.


CHIEF JUDGE, DISTRICT COURT
District of S.C.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

IN RE:)
)
Amendments to the Plan of)
the United States District Court)
for the District of South Carolina)
for Implementing the)
Criminal Justice Act.)
_____)

ORDER

The Court has approved an amended plan, in the form attached to and made a part of this Order, for implementing the Criminal Justice Act (CJA) of 1964, as amended. The Clerk of Court is authorized to transmit the proposed amended CJA Plan to the Judicial Council of the Fourth Judicial Circuit.

The proposed CJA Plan indicates that it will become effective upon its approval by the Judicial Council of the Fourth Judicial Circuit.

IT IS SO ORDERED.

FOR THE COURT:



R. Bryan Harwell, Chief Judge
United States District Court
District of South Carolina

December 19, 2019