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

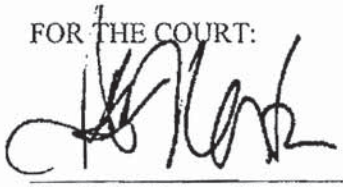
ORDER

The United States District Court judges of this Court have approved an amended plan for implementing the Criminal Justice Act (CJA) of 1964, as amended. The amended plan reduces the minimum annual training requirements from eight (8) hours to six (6) hours and provides that hours accumulated in excess of six (6) can be carried forward to the next annual reporting period. 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:



David C. Norton, Chief Judge
United States District Court
District of South Carolina

May 5, 2010
Charleston, South Carolina

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

PREAMBLE

Pursuant to the provisions of the Criminal Justice Act of 1964, as amended, 18 U.S.C. Section 3006A (hereinafter referred to as "the Act"), the Judges of the United States District Court for the District of South Carolina adopt the following amended plan for the representation of any person otherwise financially unable to obtain adequate representation.

(1) Representation shall 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 section 5031 of Title 18, U.S.C.;

(C) is charged with a violation of probation;

(D) is under arrest, when such representation is required by law;

(E) 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;

(F) is subject to a mental condition hearing under chapter 313 of Title 18, U.S.C.;

(G) is in custody as a material witness; and

(H) is entitled to appointment of counsel under the sixth amendment to the Constitution;

(I) faces loss of liberty in a case and federal law requires the appointment of counsel; or

(J) is entitled to the appointment of counsel under section 4109 of Title 18, U.S.C.

(2) Whenever the United States Magistrate Judge or the United States District Judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

(A) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or

(B) is seeking relief under section 2241,2254, or 2255 of Title 28.

(3) Private attorneys shall be appointed in a substantial proportion of the cases. Each plan may include, in addition to the provisions for private attorneys, either of the following or both:

(A) Attorneys furnished by a bar association or a legal aid agency.

(B) Attorneys furnished by a defender organization established in accordance with the provisions of subsection (g).

(C) The District Court may modify the plan at any time with the approval of 2 the Judicial Council of the Circuit. It shall modify the plan when directed by the Judicial Council of the Circuit. The District Court shall notify the Administrative Office of the United States Courts of any modification of its plan.

I. Provision for Furnishing Counsel.

A. This plan provides for the furnishing of legal services by a Federal Public Defender Organization, supervised by a Federal Public Defender, and serving the United States District Court for the District of South Carolina. In addition, this plan provides for the appointment and compensation of private counsel in a substantial proportion of cases. The term "private counsel"

includes counsel furnished by a bar association, a legal aid agency, and a state or local defender organization, and a claim by such an entity for compensation will be approved on the same basis as in the case of the appointment of private counsel.

B. The determination of whether a party entitled to representation will be represented by the Federal Public Defender Organization or by private counsel is within the discretion of the appointing District Judge or Magistrate Judge. Insofar as practical, private attorney appointments will be made in at least 25 percent of the cases.

II. Federal Public Defender Organization

A. The Federal Public Defender Organization for the District of South Carolina, established under this plan in accordance with the provisions of subsections (g) (1) and (2) (A) of the Act, is to be headquartered in Columbia, South Carolina, and shall be capable of rendering defense services on appointment throughout the District.

B. The Federal Public Defender Organization shall operate pursuant to the provisions of subsection (g) (2) (A) of the Act, as well as the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), promulgated by the United States Judicial conference pursuant to subsection (h) of the Act.

C. Neither the Federal Public Defender Organization nor any appointed staff attorney may engage in the private practice of law.

D. The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by the Director, reports of the organization's activities, its financial position and proposed budget.

E. The Federal Public Defender shall furnish to this Court the initial roster of staff attorneys and shall report any changes thereto to the Court.

F. In order to ensure the effective supervision and management of the Federal Public Defender Organization, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in that office. Accordingly, the Court will assign cases in the name of the Federal Public Defender Organization rather than in the name of individual staff attorneys.

III. Panel of Private Attorneys

A. Composition of Panel of Private Attorneys.

1. Approval. The existing panel of private attorneys presently maintained in the office of each full time United States Magistrate Judge is hereby ratified by the Court. The panel of private attorneys (hereinafter referred to as the "CJA Panel") will be comprised of those private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to Part B of this title. A separate list of approved panel attorneys will be maintained in each of the following areas of the District:

a. Greenville

b. Columbia

c. Charleston

d. Florence

e. Aiken

Members of the CJA Panel shall serve at the pleasure of the Court.

2. Size. The Court shall fix, periodically, the size of the CJA Panel. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to

maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence, United States Sentencing Commission Guidelines, and substantive federal criminal law.

4. Pro Hac Vice Admission. Subsection (b) of the Act provides, in part, that:

> Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the Court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the District Judge presiding over the case or the Chief Judge if a District Judge has not yet been assigned to the case, 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. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who mayor 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.

5. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. **Panel Selection Committee.**

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one District Judge, one Magistrate Judge, one attorney who has served at least two years as a member of the CJA Panel, and the Federal Public Defender. The Committee shall select its own Chairperson.

2. Duties.

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

b. 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 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. Members approved by the Court shall serve at the pleasure of the Court.

C. **CJA Training Panel.**

Each Panel Selection Committee may establish a "CJA Training Panel" consisting of attorneys who do not have the expertise required for membership on the CJA Panel. 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.

D. **Annual Training and Certification.**

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 must periodically complete continuing legal education with respect to United States Sentencing Commission Guidelines and other matters associated with representation of those clients in this Court. Any attorney who wishes to apply to become a CJA Panel Attorney must first attend a seminar on United States Sentencing Commission Guidelines provided by the United States Probation Office for the District of South Carolina. 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. Additionally, CJA Panel Attorneys shall also 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 the six (6) hours credit in an annual reporting period may carry forward those excess hours only to the next annual reporting period. All CJA Panel Attorneys serve at the pleasure of the Court. This requirement is effective as of January 1, 2008.

IV. Selection for Appointment

A. **Maintenance of List and Distribution of Appointments.**

The Clerk of Court shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience, and shall furnish a copy of this list to each Judge and Magistrate. The Clerk of Court 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 office and private attorneys, according to the formula described in Title I(B) of this Plan.

B. **Method of Selection.**

Appointments from the list ofprivate 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, 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.

The Clerk of Court shall advise the District Judge or Magistrate Judge as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the panel of private attorneys. If the Magistrate Judge or District Judge decides to appoint an attorney from the panel, the Clerk shall provide the list of panel attorneys for the appropriate area to the appointing judicial officer.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk'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 as to the name of the attorney appointed and the date of the appointment.

V. Determination of Need for Counsel

A. **Advice of Right, Financial Inquiry, Appointment Procedure.**

Counsel should be provided to eligible persons pursuant to this plan as soon as feasible after they are taken into custody, when they appear before a Magistrate Judge or District Judge, when they are formally charged, or when they otherwise become entitled to counsel under the Act, whichever occurs earliest. The determination of eligibility for representation under the Act is a judicial function to be performed by the District Judge or Magistrate Judge after making appropriate inquiries concerning the person's financial condition.

Upon the appearance of a person before a Magistrate Judge or District Judge 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 adequate representation. 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 counselor during the inquiry into eligibility shall be either (a) by affidavit sworn to before the Court, or (b) under oath in open court.

Appointment of counsel may be made retroactive to include representation furnished pursuant to this plan prior to appointment.

The Court shall appoint separate counsel for persons having interests that cannot be represented by the same counselor when other good cause is shown. The Court, in the interest of justice, may substitute one appointed counsel for another at any stage of the proceedings.

B. **Duration and Substitution of Appointments.**

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. In determining whether the matter is ancillary to the proceedings the Court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal charge. If a United States Magistrate Judge appoints counsel to represent a person and the person is later before a District Court Judge in connection with the same charge, the same counsel shall appear before the District Judge to represent the person until the District Judge has had the opportunity to make an independent determination as to whether appointment of counsel in the proceeding is appropriate and, if so, who should be appointed. If at any time after the appointment of counsel the Magistrate Judge or the District Judge finds that the person is financially able to obtain counselor to make partial payment(s) for the representation, it may terminate the appointment of counselor authorize payment as provided in 18 U.S.C. § 3006A(f), as the interests of justice may indicate. If at any stage of the proceedings, including an appeal, the Magistrate Judge or District Judge finds that the person is financially unable to pay counsel whom he or she had retained, it may appoint counsel as provided in 18 U.S.C. § 3006A(b) and authorize payment as provided in 18 U.S.C. § 3006A(d), as the interests of justice may dictate. The Magistrate Judge or District

Judge may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

C. **Payment for Representation.**

(1) Compensation Amounts. Any attorney appointed pursuant to this plan or a bar association or legal aid agency or community defender organization which has provided the appointed attorney, at the conclusion of the representation or any segment thereof, shall be compensated at the rates not exceeding the statutory maximum for in-court time or out-of-court time unless the Judicial Conference determines that a higher rate is justified. Attorneys shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the Magistrate Judge or the District Judge.

For representation of a defendant before a Magistrate Judge or District Judge in any case in which one (1) or more felonies or misdemeanors are charged, for representation of a defendant in an Appellate Court, for representation before the United States Parole Commission in a proceeding under Section 4106A of Title 18, for representation of a offender in an appeal from a determination of the United States Parole Commission, and for any other representation authorized under 18 U.S.C. § 3006A, the compensation shall not exceed the statutory rates.

Payments in excess of any maximum amount provided in the paragraph above may be made for extended or complex representation whenever the court in which the representation was furnished, or the United States Magistrate Judge if the representation was furnished before him or her, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Fourth Judicial Circuit or an active United States Circuit Judge to whom approval authority has been delegated. No appointed counsel may

require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the Court.

(2) Disclosure of Fees.

(A) Public Disclosure. The amounts paid under this subsection for services in any case shall be made available to the public by the court upon the District Judge's or Magistrate Judge's approval of the payment.

(B) Pre-trial or Trial in Progress. If a trial is in pre-trial status or still in progress and after considering the defendant's interests as set forth in subparagraph (D), the court shall:

(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court;

(ii) and make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

(a) Arraignment and or plea.

(b) Bail and detention hearings.

(c) Motions.

(d) Hearings.

(e) Interviews and conferences.

(f) Obtaining and reviewing records.

(g) Legal research and brief writing.

(h) Travel time.

(i) Investigative work.

(j) Experts.

(k) Trial and appeals.

(l) Other.

(C) Trial Completed.

(i) In General. If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant's interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.

(ii) Protection of the Rights of the Defendant. If the Court determines that defendant's interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).

(D) Considerations. The interests referred to in subparagraphs (B) and (C) are:

(i) to protect any person's fifth amendment right against self-incrimination;

(ii) to protect the defendant's sixth amendment rights to effective assistance of counsel;

(iii) the defendant's attorney-client privilege;

(iv) the work product privilege of the defendant's counsel;

(v) the safety of any person; and

(vi) any other interest that justice may require.

(E) Notice. The Court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release un-redacted copies of the vouchers provided by defense counsel to justify the expenses to the Court. If there is an appeal, the Court shall not release un-redacted copies of the vouchers provided by defense counsel to justify the expenses to the Court until such

time as the appeals process is completed, unless the court determines that none of the defendant's interests set forth in subparagraph (D) will be compromised.

(F) Effective Date. These disclosure provisions will apply only to cases filed on or after the effective date of Public Law 105-119, 111 U.S.Stat. 2440 (November 26, 1997), and will lapse if the implementing legislation lapses, expires, or is repealed.

(3) Filing Claims. A separate claim for compensation and reimbursement shall be made to the District Court for representation, investigative, or other expert services before the United States District Court. A separate claim for compensation and reimbursement shall be made to the Appellate Court for any representation or services rendered there. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending in either the District Court or Appellate Court.

Claims shall be submitted on the appropriate CJA form to the office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the Guide for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), and if correct, shall forward the claim form to the appropriate District Judge or Magistrate Judge for consideration.

(4) New Trials. For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(5) Proceedings before Appellate Courts. If a person for whom counsel is appointed under this section appeals to an Appellate Court or petitions for a writ of certiorari, he or she may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of Title 28.

D. **Services Other Than Counsel.**

(1) Upon Request. Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States Magistrate Judge if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

(2) Without Prior Request.

(A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph (B) of this paragraph, the total cost of services obtained without prior authorization may not exceed the statutory amount and expenses reasonably incurred.

(B) The District Judge or the United States Magistrate Judge (if the services were rendered in a case disposed of entirely before the United States Magistrate Judge) may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds the statutory amount.

(3) Maximum Amounts. Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed the statutory maximum, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the District Judge or by the Magistrate Judge, if the services were rendered in connection with a case

disposed of entirely before him or her, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Fourth Judicial Circuit. The Chief Judge of the Fourth Judicial Circuit may delegate such approval authority to an active Circuit Judge.

(4) *Ex Parte* Applications. *Ex parte* applications for services other than counsel shall be heard in camera, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial court, subject to further order of the District Judge or Magistrate Judge.

(5) Disclosure of Fees. The amounts paid under this subsection for services in any case shall be made available to the public.

(6) Receipt of other Payments. Whenever the United States Magistrate Judge or the District Judge finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) of the Criminal Justice Act to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

E. **Federal Public Defender Organization.**

The Federal Public Defender Organization shall comply with the requirements of 18 U.S.C. § 3006A(g)(1) and (g)(2)(A).

The Federal Public Defender Organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this table, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its budget authorization for these specific categories.

F. **Community Defender Organizations.**

Any community defender organization shall comply with the requirements of 18 U.S.C. § 3006A(g)(2)(B). A community defender organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this table, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

G. Rules and Reports. This Court shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify.

H. Appropriations. There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section, including funds for the continuing education and training of persons providing representational services under this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

VI. Federal Capital Prosecutions

If a person has been charged with a crime which may be punishable by death, and the required showing of indigence has been made, a United States District Judge or a United States

Magistrate Judge may appoint one (1) or more attorneys to represent a defendant so charged. At least one attorney appointed under this Section must have been admitted to practice in the District of South Carolina for at least five (5) years and must have not less than three (3) years actual experience in handling felony cases. Attorneys who are on the Court's first-tier list of death penalty counsel are deemed to have satisfied the requirements mentioned in the previous sentence of this Section. The District Judge or Magistrate Judge may authorize investigative and expert services and compensate Court-appointed counsel at such rates and amounts as he or she may determine to be reasonable and necessary without regard to the rates and maximum limits normally applicable to criminal cases.

VII. Provision of Counsel in Capital Habeas Corpus Cases, and Designation of the Center for Capital Litigation (formerly known as the South Carolina Death Penalty Resource Center) as a Community Defender Organization pursuant to 18 U.S.C. § 3006(g)(2)(B).

A. With respect to the provision of defense services for state prisoners under a sentence of death and who are seeking federal habeas corpus relief, the Court anticipates that the number of cases filed on behalf of such death-sentenced inmates will increase. The Court is also mindful of the provisions of the Anti-Terrorism and Effective Death Penalty Act of 1996 and of Fourth Circuit Judicial Council Order No. 113 (4th Cir., October 3, 1996). This Court remains responsible for ensuring the adequate representation of financially eligible state inmates under a sentence of death when such representation is in the interests of justice. In light of the requirements, demands, and timetables in death penalty litigation under 28 U.S.C. § 2254 or 28 U.S.C. § 2241, the following procedures will be applicable in such death penalty litigation:

(1) In all such cases, where a motion to proceed in forma pauperis has been granted, or the required showing of indigence has been made, if the District Judge or Magistrate Judge finds

that appointment of counsel is warranted, the District Judge or Magistrate Judge may appoint one or more attorneys to represent the petitioner upon proper motion. At least one attorney appointed must have been admitted to practice in the District of South Carolina for at least five (5) years or must be on the court's first-tier death penalty list. The District Judge or Magistrate Judge may authorize investigative or expert services and compensate court-appointed counsel at such rates and amounts that he or she may determine to be reasonably necessary without regard to the rates and maximum limits generally applicable to non-capital criminal cases but subject to the statutory limits in capital cases. Court-appointed attorneys, however, are reminded that the Anti-Terrorism and Effective Death Penalty Act of 1996, in certain circumstances, provides for disclosure of fees paid to attorneys in the representation of persons under a sentence of death.

(2) Notwithstanding the creation and maintenance of the CJA panel required by the CJA Plan, in appointing counsel for death-sentenced state prisoners, consideration will be given to attorneys who are members of the first-tier of the death penalty CJA panel, which shall be maintained by the Office of the Clerk of Court. However, the Court shall not be precluded from making appointments from the second-tier death penalty CJA panel or from the general CJA panel.

(3) Where a state prisoner under a sentence of death has been represented by counsel in the state post-conviction proceedings and is eligible for appointment of counsel, primary consideration will be given to appointment of one of the same attorneys who represented the petitioner in state court, provided the prisoner desires such representation and the counsel is willing to continue the representation, and the Court finds that appointment of such counsel is appropriate. Where an attorney who represented the prisoner in the state post- conviction proceeding is not available for appointment, or where such appointment of previous counsel is

impracticable and would not assure adequate representation for the petitioner, the Court shall entertain a motion for appointment of counsel as described in paragraph 2 above.

B. The Court finds that the Center for Capital Litigation (formerly known as the South Carolina Death Penalty Resource Center and the Post-Conviction Defender Organization) is a non-profit, defense counsel service designed to furnish representation and assistance in connection with the representation of inmates under a sentence of death in the State of South Carolina. Subsection (g) of the Criminal Justice Act authorizes the establishment of such Community Defender Organizations in the District of South Carolina.

For the reasons set forth in the previous paragraph, the Center for Capital Litigation is, hereby, designated as a Community Defender Organization in accordance with subsection (g)(2)(B) of the Criminal Justice Act, and subject to the conditions set forth below:

(1) The Center for Capital Litigation is authorized by this Plan to provide representation, assistance, information, and other matters related federal death penalty habeas corpus cases pursuant to subsection (g)(2)(B) of the Criminal Justice Act. The bylaws of the Center for Capital Litigation were approved by this Court in Misc. No. 89-3 (D.S.C., October 25, 1989).

(2) The Center for Capital Litigation shall operate pursuant to the provisions of subsection (g)(2)(B) of the Criminal Justice Act, the terms and conditions of the sustaining grant (if applicable), and the Guidelines for the Administration for the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures), which is promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Criminal Justice Act.

(3) The Center for Capital Litigation shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position, and anticipated caseload and expenses for the upcoming fiscal year.

(4) The Center for Capital Litigation shall furnish to the Court its roster of staff attorneys and report any changes to the Office of the Clerk of Court. Such attorneys must be admitted to practice before the United States District Court for the District of South Carolina and shall enroll as members of the court's death penalty panel (first-tier or second-tier).

(5) The primary goal of the Center for Capital Litigation, insofar as federal district courts are concerned, will remain ensuring that adequate representation is provided to prisoners under a sentence of death who seek federal habeas corpus relief. Toward that goal, the Center for Capital Litigation will perform the following functions:

(a) monitor all capital litigation in the State of South Carolina;

(b) assist the Court in recruiting members of the private bar who are willing to serve as members of the Death Penalty CJA Panels of this Court and provide representation in death penalty post-conviction or habeas corpus in federal court;

(c) be authorized to receive payment for the services of its staff attorneys who are appointed as counsel in a death penalty proceedings under 28 U.S.C. § 2254, 28 U.S.C. § 2241, or related statutes;

(d) upon request pursuant to subsection (3) of the Criminal Justice Act and paragraph 3.16 of the Guidelines for the Administration of the Criminal Justice Act, of appointed or pro bono counsel in a federal habeas corpus death-penalty case, the Center for Capital Litigation shall provide consulting services in such areas including, but not limited to, records completion, exhaustion of state remedies, identification of issues, strategy review of drafted pleadings and briefs, and preparation for evidentiary hearings.

(e) coordinate resources with other state and national organizations providing legal assistance to death-sentenced inmates.

(f) maintain, and make accessible, a brief bank and clearinghouse of materials to assist attorneys in death-penalty habeas corpus cases in federal court.

(g) provide other tasks as may be necessary to ensure that adequate representation is *provided* to financially eligible persons in death-penalty habeas corpus proceedings; and

(h) obtain investigative, expert, or other services without regard to the requirement or limitations set forth in this Plan, with respect to the procurement of such services by panel attorneys, provided that total expenditures of the Center for Capital Litigation for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

C. Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the prisoner, each attorney so appointed shall represent the defendant throughout every subsequent 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 process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. Attorneys representing state prisoners under a sentence of death shall be expected to comply with all scheduling orders issued in a case by a District Judge or Magistrate Judge, so that the District Court may render a decision within the time limits imposed by the Anti-Terrorism and Effective Death Penalty Act of 1996.

D. ***Ex Parte* Matters.** No *ex parte* proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

E. Compensation.

1. Compensation shall be paid to attorneys appointed under this section at a rate of not more than statutory maximum as adjusted by the Judicial Conference pursuant to Section 5305 of Title 5 for in-court and out-of-court time.

2. Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized shall not exceed statutory maximum in any case, unless payment in excess of that limit is certified by the United States District Judge, or by the United States Magistrate Judge, if the services were rendered in connection with the case disposed of entirely before such Magistrate Judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Fourth Judicial Circuit or by an active Circuit Judge to whom approval authority has been delegated.

3. The amounts paid for services under this section may be disclosed to the public upon request, after the disposition of the petition.

F. **Services other than Counsel.**

1. Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, in cases commenced in federal district court, or appellate proceedings in which an appeal is perfected, or habeas proceedings, motions for stay of executions, or motions for appointment of counsel commenced on or after April 24, 1996, the District Judge or Magistrate Judge may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses.

2. Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized shall not exceed the statutory maximum in cases commenced, or appellate

proceedings in which an appeal is perfected, or habeas proceedings, motions for stay of executions, or motions for appointment of counsel commenced on or after April 24, 1996, unless payment in excess of that limit is certified by the District Judge, or by the Magistrate Judge, if the services were rendered in connection with the case disposed of entirely before such Magistrate Judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Fourth Judicial Circuit or by an active Circuit Judge to whom approval authority has been delegated. The statutory maximum applies to the total payments for investigative, expert, and other services in a case, not to each service individually.

3. If it can be anticipated that payments for investigative, expert, and other services will exceed the statutory maximum, advance approval should be obtained from the district court and from the Chief Judge of the Fourth Judicial Circuit or an active Circuit Judge to whom approval authority has been delegated.

4. For capital cases commenced, and appellate proceedings in which an appeal was perfected before April 24, 1996, the presiding District Judge or Magistrate Judge shall set compensation for investigative, expert, and other services in an amount reasonably necessary to obtain such services without regard to limitations imposed by the Criminal Justice Act or the Anti-Terrorism and Effective Death Act of 1996.

5. The District Court will comply with Section 6.03(C)["Consulting Services in Federal Habeas Corpus Cases and in Federal Capital Prosecutions"] in Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures.

6. Interim Payments to Persons Providing Investigative, Expert, and other Services.

(a) The Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures, at Section 6.03(D), "urge[s] that the court or magistrate judge permit interim payment of compensation in capital cases."

(b) With respect to federal capital prosecutions and federal capital habeas corpus proceedings commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996, attorneys shall use the "special set of procedures for effecting interim payments" set forth in Appendix F, beginning at page F-ll, of Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures.

(c) For capital cases commenced, and appellate proceedings in which an appeal was perfected, before April 24, 1996, there are no expert services maximums. Attorneys shall comply with the separate procedures for effecting interim payments set forth in Appendix F, beginning at page F-7, of Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures.

7. Forms. Claims shall be submitted on the appropriate CJA form to the Office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the Guide for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), and if correct, shall forward the claim form to the appropriate District Judge or Magistrate Judge for consideration.

8. Review of Vouchers. Absent extraordinary circumstances, a District Judge or Magistrate Judge shall act on claims for compensation for investigative, expert, or other services within thirty (30) days of submission.

VIII. Miscellaneous

A. Forms. Where standardized forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, or by the Administrative Office of United States Courts, such forms or forms substantially similar shall be used by the Court, Office of the Clerk of Court, the Federal Public Defender Organization, and other appointed counsel. As provided in Local Civil Rule 83.VIIL07 (D.S.C.), versions of such forms on electronic media are deemed to be substantially similar forms.

B. Guidelines for the Administration of the Criminal Justice Act. The Court, the Office of the Clerk of Court, the Federal Public Defender Organization, and attorneys appointed under the Criminal Justice Act and this Plan shall comply with the provisions of the Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures.

IX. Effective Date

This Plan shall take effect upon its approval by the Judicial Council of the Fourth Judicial Circuit.

FOR THE COURT:

May 5, 2010
Charleston, South Carolina

David C. Norton, Chief Judge
United States District Court
District of South Carolina