



**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CRIMINAL JUSTICE ACT PLAN**

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United States District Court
For the Eastern District of Pennsylvania
Criminal Justice Act Plan

I. Authority

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and Guide to Judiciary Policy, Volume 7A, the judges of the United States District Court for the Eastern District of Pennsylvania 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 to Judiciary Policy*, 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 Community Defender Organization, and private attorneys appointed under the CJA must comply with *Guide to Judiciary Policy*, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.

2. The court will ensure that a current copy of the CJA Plan is made available on the court's website, and provided to 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 Chief Federal Defender, and staff attorneys of the Federal Community Defender Organization.

IV. Determination of Eligibility for CJA Representation

A. Subject Matter Eligibility

1. Mandatory

Representation **must** be provided for any financially eligible person who:

- a. is charged with a felony or with a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

- g. is subject to a mental condition hearing under 18 U.S.C. chapter 313;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
- k. has been called as a witness before a grand jury or has been advised by the United States Attorney or a law enforcement officer that they are the target of a grand jury investigation;
- l. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
- m. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary

Whenever a district judge or magistrate judge determines that the interests of justice so require, representation **may** be provided for any financially eligible person who:

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
- b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;
- c. is charged with civil or criminal contempt and faces loss of liberty;
- d. has been called as a witness before a 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; or

- e. 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 21 U.S.C. § 881 and 19 U.S.C. § 1602, 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 United States Attorney's Office
 - (i) Upon the return or unsealing of an indictment or the filing of a criminal information, or upon the defendant's arrest, and where the defendant has not retained or waived counsel, the United States

Attorney or their delegate will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the Chief Federal Defender.

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

b. Duties of Federal Community Defender Office

- (i) In cases in which the Chief Federal 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 Chief Federal 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. Duties of Pretrial Services Office

- (i) The pretrial services officer will advise financially eligible defendants of their right to counsel prior to any interview. The pretrial services officer will also explain the voluntary nature of the pretrial service interview and will explain that the defendant will not be questioned about the instant offense(s). The defendant may decline all or parts of the interview.
- (ii) The pretrial services officer 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). Defendants will be informed of the judicial procedure for appointment of counsel.

- (iii) The pretrial services officer shall notify the Federal Community Defender Office immediately if a defendant appears to qualify for or requests appointed counsel.
- (iv) If counsel has been appointed prior to the completion of the pretrial service interview, the pretrial services officer will, if time permits, provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer.

2. Factual Determination of Financial Eligibility

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

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

V. Timely Appointment of Counsel

A. Timing of Appointment

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

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

B. 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 Community Defender and Private Counsel

This Plan provides for representational services by the Federal Community Defender Organization and for the appointment and compensation of private counsel from a CJA Panel list maintained by the

Chief Federal Defender in cases authorized under the CJA and related statutes.

B. Administration

Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the Clerk of Court in consultation with the CJA Panel Committee.

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. §§ 2254 or 2255, are set forth in section XIV of this Plan.

VII. Federal Community Defender Organization

A. Establishment

The Federal Community Defender Organization, Defender Association of Philadelphia, Federal Office, is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district.

B. Standards

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

D. Professional Conduct

The Federal Community Defender Organization must conform to the highest standards of professional conduct, including but not limited to the Pennsylvania Rules of Professional Conduct and the Model Code of Conduct for Federal Community Defender Employees.

E. Private Practice of Law

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

F. Supervision of Defender Organization

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

G. Training

The Chief Federal Defender will assess the training needs of Federal Community Defender staff and, in coordination with the CJA Panel Attorney District Representative,¹ the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

¹ The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the court to serve as the representative of the district's CJA Panel for the national Defender Services CJA PADR program and local CJA committees. The Criminal Business Committee, in consultation with the CJA Committee, will recommend a candidate for PADR to the Chief Judge, who will submit the recommendation to the Board of Judges for approval.

VIII. CJA Panel of Private Attorneys

A. Establishment of the CJA Panel Committee

1. A CJA Panel Committee (“CJA Committee”) will be established by the court in consultation with the Chief Federal Defender. The CJA Committee will consist of the Chief Federal Defender, and six private attorneys selected by the Board of Judges of the United States District Court for the Eastern District of Pennsylvania based on the recommendation of the Criminal Business Committee, four of whom shall have a primary office in Philadelphia and two of whom shall have a primary office in a county in the district other than Philadelphia. The private attorneys selected to serve on the CJA Committee shall be persons who the judges and magistrate judges of this court believe possess the qualifications, knowledge, ability and experience to determine whether or not attorney-applicants to the CJA Panel have the qualifications set forth in this Plan to become members of a panel from which appointments under the Criminal Justice Act shall be made. One of the private attorney members of the CJA Committee shall be selected to serve as the PADR.
2. The Chief Federal Defender shall serve as chair of the CJA Committee.

Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members' terms will be staggered to ensure continuity on the CJA Committee.
3. The CJA Committee will meet at least twice a year and at any time the court asks the Committee to consider an issue.

B. Duties of the CJA Committee

1. Responsibility of the CJA Committee

The CJA Committee's overall responsibility is to the clients served by the CJA Panel and to the due administration of justice.
2. Membership

Examine the qualifications of applicants for membership on the CJA Panel, including interviewing applicants (where the Committee deems an interview helpful to its evaluation), and recommend to the Criminal Business Committee the approval of those attorneys who

are deemed qualified and the rejection of the applications of those attorneys deemed unqualified. The determination whether to recommend approval or rejection of an applicant shall be made by majority vote of the CJA Committee. Five members of the Committee shall be deemed a quorum for the purpose of deliberations and voting.

3. 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.

4. Annual Report

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

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

5. Removal

Recommend to the Criminal Business Committee the removal of any CJA panel member who:

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

See also Section IX.C.7

6. Training

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

7. Voucher Review

Be available to provide to the court, upon the court's request, input on the processing and payment of CJA vouchers in those cases where the court, for reasons other than mathematical errors, is considering authorizing payment for less than the amount of compensation claimed by CJA counsel. The judge will, at the time the voucher is submitted to the CJA Committee, provide a statement describing questions or concerns he/she has with the voucher. Counsel will be notified of the potential voucher reduction and given the opportunity to provide to the Committee information or documentation relevant to the voucher and concerns raised by the judge. The CJA Committee will issue a written recommendation to the judge.

See also Section XII.B.6

7. Mentoring

Appoint experienced CJA panel members to serve on a subcommittee to create and administer a mentoring program designed to identify and help prepare viable candidates to qualify for consideration for appointment to the CJA Panel. Experienced members of the criminal defense bar who have practiced extensively in the federal courts will be selected to serve as mentors. The subcommittee, or an attorney designated by the subcommittee, will review the mentee applications, make recommendations to the CJA Committee concerning their participation in the mentoring program, identify appropriate cases for the mentoring program, evaluate the success of the mentoring program, and provide guidance to the mentors.

IX. Establishment of a CJA Panel

A. Approval of CJA Panel

1. The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
2. The chair of the CJA Committee will recommend attorneys for membership on the CJA Panel based on a majority vote of the CJA Committee.

B. Size of CJA Panel

1. The size of the CJA Panel will be determined by the Board of Judges in consultation with the Criminal Business Committee and

the CJA Committee, based on the caseload and activity of the panel members. The CJA Panel shall consist of no more than 200 members, and that number shall not increase, except upon approval of the Board of Judges.

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

C. Qualifications and Membership on the CJA Panel

1. Application

Application forms for membership on the CJA Panel are available from the Chief Federal Defender.

2. Equal Opportunity

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

3. Eligibility

- a. **Applicants for the CJA Panel must be members in good standing of the bar of the Eastern District of Pennsylvania 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 and courtroom advocacy skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Local Criminal Rules for the Eastern District of Pennsylvania.**
- 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.
- f. Applicants must also understand that membership on the CJA Panel is a privilege and not a property right.

4. Appointment to CJA Panel

After considering the recommendations of the CJA Committee, the Criminal Business Committee will make a recommendation to the Board of Judges as to which attorneys should be appointed or reappointed to the CJA Panel. The chief judge will then appoint or reappoint attorneys to the CJA Panel based on the vote of the Board of Judges. Due to the highly complex and demanding nature of capital and habeas corpus cases, special procedures will be followed for the eligibility and appointment of counsel in such cases. See Section XIV of this Plan.

5. Terms of CJA Panel Members

Attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this plan. The membership terms shall be staggered such that approximately one-third of the members of the CJA Panel are up for reappointment each year.

6. Reappointment of CJA Panel Members

- a. The Chief Federal Defender will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA 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 may solicit input concerning the quality of representation provided by lawyers seeking reappointment.
- d. The CJA 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. Information concerning the number of cases accepted and declined by panel members will be compiled by the Chief Magistrate Judge and provided to the CJA Committee.

- e. None of these procedures create a property interest in being on or remaining on the CJA Panel. Reappointment is not presumptive, but successful prior service on the CJA Panel may evidence the qualifications and commitment necessary for reappointment.

7. Removal from the CJA Panel

a. Mandatory removal

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

b. Automatic disciplinary review

When the CJA Committee learns that a licensing authority, grievance committee, or administrative body has taken action against a CJA panel member, or that a finding of probable cause, contempt, sanction, or reprimand has been issued against the panel member by any state or federal court, the Committee will conduct an automatic review of that member's eligibility for continued service on the Panel.

c. Complaints

(i) Initiation

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

(ii) Notice

When 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 to the Board of Judges 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 Criminal Business Committee, which will make a recommendation regarding disposition of the complaint to the Board of Judges. Before supplying its recommendation to the Board of Judges, the Criminal Business Committee, in its discretion, may, upon the attorney's request, permit the CJA attorney

an opportunity to supplement any information originally supplied to the CJA Committee. The chief judge will present the recommendation of the Criminal Business Committee to the Board of Judges for consideration and final disposition. The Board of Judges may also, in its discretion, provide an opportunity to the CJA attorney to appear before the full court.

- (vii) An attorney who is removed from the CJA Panel may subsequently reapply for admission to the CJA Panel after one year.
- (viii) Confidentiality
Any and all information provided to or acquired by the CJA Committee, or pertaining to the Committee's deliberations, shall be confidential unless otherwise ordered by the court.
- (ix) None of these procedures create a property interest in being on or remaining on the CJA Panel.

d. Notification

The Chief Federal Defender will be immediately notified when any member of the CJA Panel is removed or suspended.

X. CJA Panel Attorney Appointment in Non-Capital Cases

A. Appointment List

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

B. Appointment Procedures

1. The court is responsible for overseeing the appointment of cases to panel attorneys. The court will maintain a record of panel attorney appointments and, when appropriate, data reflecting the apportionment of appointments between attorneys from the Federal Community Defender Office and panel attorneys.

2. Appointment of cases to CJA panel members will ordinarily be made on a rotational basis. In a complex or otherwise difficult case, the court may appoint counsel outside of the normal rotation to ensure the defendant has sufficiently experienced counsel.
3. Under special circumstances the court may appoint a member of the bar of the court who is not a member of the CJA Panel. Special circumstances may include cases in which the court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed. Appointments made under this section will be reported to the CJA Committee by the appointing judge.
4. Unless otherwise impracticable, CJA panel attorney(s) must be available to represent defendant(s) at the same stage of the proceedings as is the Federal Community Defender Office.

XI. Duties of CJA Panel Members

A. Standards and Professional Conduct

1. CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. See *Polk County v. Dodson*, 454 U.S. 312, 318 (1981) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.” (quoting ABA Standards for Criminal Justice section 4-3.9 (2d ed. 1980))).
2. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Pennsylvania Rules of Professional Conduct.
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 expected to attend trainings sponsored by the Chief Federal 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, available at <https://www.fd.org/docs/select-topics/cja/federal-adaptation-of-nlada-performance-guidelines-for-criminal-defense-representatives.pdf?sfvrsn=2>.
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 systems.
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 encouraged to use case budgeting techniques in non-capital representations that appear likely to become extraordinary in terms of potential cost consistent with Guide to Judiciary Policy, Vol. 7A, Ch. 2, §§ 230.26.10–20. Courts and appointed counsel should contact the 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 of CJA Panel Attorneys

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

1. Claims for compensation must be submitted on the appropriate CJA form through the court's eVoucher system.
2. Claims for compensation should be submitted no later than 60 days after final disposition of the case, unless good cause is shown.
3. The court or its designee will review the claim for mathematical and technical accuracy and for conformity with *Guide to Judiciary Policy, Vol. 7A* and [if correct] will forward the claim for consideration and action by the presiding judge.

4. Absent extraordinary circumstances, 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 circumstances.
5. Except in cases involving mathematical corrections, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard.
6. When contemplating reduction of a CJA voucher for other than mathematical reasons, the court may refer the voucher to the CJA Committee for review and recommendation before final action on the claim is taken, if the Committee's input is desired. See Section VIII of this Plan. The availability of this procedure is not intended to limit the court's discretion to address questions or concerns about a claim for compensation in other ways, including by contacting appointed counsel in the first instance to inquire regarding the court's questions or concerns.

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 shall 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 to Judiciary Policy, 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 to Judiciary Policy, 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, post-trial motions, 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 may 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 Chief Federal 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. *Guide to Judiciary Policy*, Vol. 7A, Ch. 6, § 640 Questions about the appointment and compensation of counsel, and the authorization and payment of investigative, expert, and other service providers in federal capital cases may also be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

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

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 Chief Federal Defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.

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. *Guide to Judiciary Policy*, 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.

- e. To effectuate the intent of 18 U.S.C. § 3005 that the Chief Federal Defender's recommendation be provided to the court, the judge should ensure the Chief Federal Defender has been notified of the need to appoint capital-qualified counsel.
- f. Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the Chief Federal 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 Chief Federal 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. 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.
3. Due to the complex, demanding, and protracted nature of death penalty proceedings, the court shall consider appointing the

district's Federal Community Defender Office, which has a highly skilled and trained Capital Habeas Unit.

4. Where the district's Federal Community Defender Office is not available for appointment, the court may appoint any of the Third Circuit's other federal public defender organizations that have a Capital Habeas Unit. Where no such organization is available, the court should consider the recommendation of the Chief Federal Defender, who may consult with Regional Habeas Assistance and Training Counsel projects. The court may appoint an out-of-circuit federal defender organization that staffs a Capital Habeas Unit.
5. When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the Chief Federal Defender, who will consult with the Federal Capital Habeas § 2255 Project.
6. 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.
7. Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
8. When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.
9. 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.
10. 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 the district's Federal Community Defender Office, which has a highly skilled and trained Capital Habeas Unit.
3. Where the district's Federal Community Defender Office is not available for appointment, the court may appoint any of the Third Circuit's other federal public defender organizations that have a Capital Habeas Unit. Where no such organization is available, the court should consider the recommendation of the Chief Federal Defender, who may consult with Regional Habeas Assistance and Training Counsel projects. The court may appoint an out-of-circuit federal defender organization that staffs a Capital Habeas Unit.
4. When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the Chief Federal Defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.

The Defender's recommendation may be to appoint this district's Capital Habeas Unit, a Capital Habeas Unit from another district, or other counsel who qualify for appointment under 18 U.S.C. § 3599 and this Plan, or any combination of the foregoing appropriate under the circumstances.

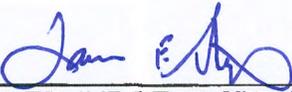
5. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.
6. In order for federal counsel to avail themselves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

8. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
9. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
10. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
11. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

XV. Effective Date

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

ENTER FOR THE COURT ON (month) (day), (year). *November 27, 2017*



CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE THIRD CIRCUIT ON (month) (day), (year).



CHIEF JUDGE, COURT OF APPEALS